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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–077–2]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by expanding the quarantined areas in the city of New York and in Nassau and Suffolk Counties, NY. As a result the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on September 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Staff Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 6, 2000, and published in the **Federal Register** on September 12, 2000 (65 FR 54943–54945, Docket No. 00–077–1), we amended the Asian longhorned beetle regulations contained in 7 CFR 301.51–1 through 301.51–9 by adding new areas in the city of New York and in Nassau and Suffolk Counties, NY, to the list of quarantined areas in § 301.51–3. That action restricted the interstate movement of regulated articles from those areas.

Comments on the interim rule were required to be received on or before November 13, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Asian longhorned beetle regulations by expanding the quarantined areas in the city of New York and in Nassau and Suffolk Counties, NY. As a result of that action, the interstate movement of regulated articles from those areas is restricted.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The small businesses potentially affected by the interim rule are nurseries, arborists, tree removal services, and firewood dealers located within the quarantined areas. The actual number of such businesses in the quarantined areas added by the interim rule is unknown. However, we anticipate that the number of such businesses is small since the newly quarantined areas are urban and suburban communities as opposed to rural farm areas.

It is further estimated that the number and value of regulated articles that would, upon inspection, be determined to be infested, and therefore denied a certificate or a limited permit for movement, is small. Current data from the Animal and Plant Health Inspection Service (APHIS) Asian longhorned beetle project being conducted in Amityville, NY, support this conclusion.

Finally, the regulations allow businesses to chemically treat, fumigate, or process by chipping or burning all regulated articles before they are presented for APHIS inspection. It is likely that, given their low value relative to the cost of treatment, most regulated articles would not undergo such treatment.

Under these circumstances, the Administrator of APHIS has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 54943–54945 on September 12, 2000.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 2nd day of August 2001.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–19826 Filed 8–7–01; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, 226, and 230

[Regulations B, E, M, Z, and DD; Docket Nos. R–1040, R–1041, R–1042, R–1043, and R–1044]

Equal Credit Opportunity; Electronic Fund Transfers; Consumer Leasing; Truth in Lending; Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rules; lifting mandatory compliance date.

SUMMARY: On March 30, and April 4, 2001, the Board published interim final rules to establish uniform standards for using electronic communication to deliver disclosures required under five

consumer protection regulations: B (Equal Credit Opportunity), E (Electronic Fund Transfers), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings). The Board established October 1, 2001 as the mandatory compliance date for the interim final rules. To address commenters' concerns, the Board is considering adjustments to the rules to provide additional flexibility. Therefore, the Board is lifting the mandatory compliance date for the interim rules. Once permanent final rules are issued, the Board expects to afford institutions a reasonable period of time to comply with those rules.

DATES: The October 1, 2001, mandatory compliance date for the interim final rules published at 66 FR 17322 and 17329 (March 30, 2001) and at 66 FR 17779, 17786 and 17795 (April 4, 2001) is lifted.

FOR FURTHER INFORMATION CONTACT: David A. Stein or Ky Tran-Trong, Attorneys; Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667.

SUPPLEMENTARY INFORMATION:

I. Lifting the Mandatory Compliance Date for the Interim Rules

Financial institutions and others covered by the Board's consumer disclosure rules are currently permitted to provide electronic disclosures if they obtain consumers' consent consistent with the requirements of the federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act), which became effective on October 1, 2000. On March 30 and April 4, 2001, the Board published interim final rules to provide guidance on how the E-Sign Act applies to the consumer financial services and fair lending laws and regulations administered by the Board. The Board established October 1, 2001 as the date for mandatory compliance with the interim final rules. *See* 66 FR 17779 (Regulation B, Equal Credit Opportunity); 66 FR 17786 (Regulation E, Electronic Fund Transfers); 66 FR 17322 (Regulation M, Consumer Leasing); 66 FR 17329 (Regulation Z, Truth in Lending); 66 FR 17795 (Regulation DD, Truth in Savings).

The interim rules give guidance on the timing and delivery of electronic disclosures. Disclosures can be provided by e-mail or can be made available at another location such as an institution's web site. If a disclosure—such as an account statement or a notice of a change in account terms—is provided at a web site, an institution must notify the consumer of the disclosure's availability by e-mail. In addition, the disclosure must remain available on the web site for 90 days.

A number of commenters on the interim final rules noted that there are operational issues raised by the interim rules' requirement that institutions alert consumers by e-mail when electronic disclosures are made available at another location, such as a web site. They also noted that the October 1, 2001, compliance deadline does not afford them adequate time for making the needed changes.

Some institutions have been offering electronic disclosures for several years under Regulations E and DD, based on interim rules issued by the Board in 1998 and 1999 respectively. *See* 63 FR 14528; 64 FR 49846. Others have been permitted to give electronic disclosures under Regulations B, M, and Z since the E-Sign Act took effect last year. Many of these institutions have not used e-mail to alert consumers to disclosures posted at their web sites.

Based on the comments, the Board is considering adjustments to the rules to provide additional flexibility. Therefore, the Board is lifting the mandatory compliance date for the interim rules. Institutions may continue to provide electronic disclosures under their existing policies and practices, or may follow the interim rules, until the Board issues permanent rules. Once permanent final rules are issued, the Board expects to afford institutions a reasonable period of time to comply with those rules.

II. Withdrawal of 1998 and 1999 Interim Rules Unaffected

In 1998 and 1999, the Board adopted interim rules under Regulations E and DD respectively, to allow the electronic delivery of certain disclosures, if the consumer agrees. The 1998 and 1999 interim rules did not specify the manner or form of consumer's consent to electronic disclosures.

Effective October 1, 2000, the E-Sign Act permits institutions to provide disclosures to consumers using electronic communications, if the institution complies with the requirements of section 101(c) of that act. The Board's 2001 interim final rules set forth the general rule that institutions subject to Regulations E and DD may provide disclosures electronically only if the institution complies with section 101(c) of the E-Sign Act. Accordingly, the Board's 2001 interim rules provided that the 1998 and 1999 interim rules were withdrawn. The Board's action lifting the mandatory compliance date for the 2001 interim rules has no effect on the withdrawal of the 1998 and 1999 interim rules.

III. Foreign Language Disclosures

To provide consistency among the regulations, the interim final rules also included revisions to Regulations B (§ 202.4(b)), E (§ 205.4(a)(2)), and Z (§ 226.27) that permit disclosures in languages other than English as long as disclosures in English are also available upon request. The Board's action lifting the mandatory compliance date for the 2001 interim rules has no effect on these provisions.

By order of the Board of Governors of the Federal Reserve System, August 2, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–19811 Filed 8–7–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–314–AD; Amendment 39–12370; AD 2001–16–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200F, –200C, —100B, –300, –100B SUD, –400, –400D, –400F, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to find cracking of the frame web, strap, inner chords, and inner chord angle of the forward edge frame of the number 5 main entry door cutout, and repair, if necessary. These actions are necessary to find and fix such cracking, which could result in severing of the frame, inability of the edge frame to react door stop loads, and consequent rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 12, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on March 20, 2001 (66 FR 15662). That action proposed to require repetitive inspections to find cracking of the frame web, strap, inner chords, and inner chord angle of the forward edge frame of the number 5 main entry door cutout; and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters have no objection to the proposed rule.

Limit Applicability

One commenter, the manufacturer, states that, subsequent to issuance of Revision 2 of the referenced service bulletin, it committed to a production revision at line number 1305, Production Revision Request 85415, which eliminates the need for the inspections in the proposed rule for airplanes with and after that line number. The commenter recommends that the applicability in the proposed rule be limited to Model 747 series airplanes, line numbers 1 through 1304, except Model 747SP.

The FAA partially agrees. We will change the applicability section in the final rule to specify all affected models in the subject line of the final rule; it will not include the 747SP series airplane. However, because the Production Revision Request has not yet been incorporated, we cannot limit the line number applicability.

Clarification of Compliance Time—Paragraph (a)

One commenter asks that paragraph (a) of the proposed rule be changed. The commenter states that paragraph (a)(1) of the proposed rule does not actually state a compliance time or refer to the referenced service bulletin as a means of compliance. The commenter adds that paragraph (a)(2) of the proposed rule calls for the inspection to be done within 3,000 flight cycles after the first inspection in the bulletin. Therefore, the inspection may never be done if operators decide not to do the bulletin, but the commenter presumes this statement has been added for those operators that did the inspection before the release of the AD, per the bulletin. The commenter notes paragraph (a)(2) is redundant because repeat inspections will already have been carried out per the bulletin. The commenter states that the specified compliance times are very difficult to understand and suggests the following wording for the compliance times be used in the proposed rule:

- At the times specified in the logic diagram of the referenced service bulletin, except substituting ''receipt of service bulletin'' for ''effective date of this AD.'' Or
- Within 3,000 flight cycles from the effective date of the AD, whichever is later. The commenter's interpretation of paragraph (a)(2) of the proposed rule is that the commenter would have until 3,000 flight cycles after the inspection at 16,000 flight cycles to inspect its oldest airplane.

The FAA partially concurs. (The paragraph numbering in the final rule has been revised.) Paragraph (b) of the final rule has been changed for clarification, to specifically cite accomplishment of the inspection at the applicable time specified in the logic diagram in Figure 1 of the service bulletin. However, we do not concur that paragraph (c) of the final rule should be revised to within 3,000 flight cycles from the effective date of the AD. Paragraph (c) addresses those operators who have already accomplished the inspections per previous revisions of the service bulletin. The 3,000-flight-cycle threshold allows operators to transition from the old revisions to the revision of the service bulletin specified in this final rule.

Additionally, we do not concur that the commenter would have until 3,000 flight cycles after the inspection at 16,000 flight cycles to accomplish the initial inspection on its airplanes. The commenter has not accomplished the inspections on its airplanes per the old revisions to the service bulletin, so paragraph (c) does not apply, and the commenter must accomplish the initial inspection at the 16,000-flight-cycle threshold as mandated by paragraph (b) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 1,314 airplanes of the affected design in the worldwide fleet. The FAA estimates that 258 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $247,680, or $960 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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 power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–16–02 Boeing: Amendment 39–12370. Docket 2000-NM–314–AD.

Applicability: All Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, –400, –400D, –400F, and 747SR series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking of the frame web, strap, inner chords, and inner chord angle of the forward edge frame of the number 5 main entry door cutout, which could result in severing of the frame, inability of the edge frame to react door stop loads, and consequent rapid depressurization of the airplane, accomplish the following:

Repetitive Inspections (No Terminating Action)

(a) Inspect the airplane for cracks per Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001; at the later of the times specified in either paragraph (b) or (c) of this AD, per Table 1 as follows:

TABLE 1.—INSPECTION REQUIREMENTS

Type of inspection	Area to inspect
(1) Detailed Visual	Strap inner chords forward and aft of the web, and exposed web adjacent to the inner chords on station 2231 frame from stringer 23 through 31 per Figure 5 or Figure 6 of the service bulletin, as applicable.
(2) Surface High Frequency Eddy Current (HFEC).	Station 2231 inner chord angles at lower main sill interface per Figure 5 or Figure 6 of the service bulletin, as applicable.
(3) Open Hole HFEC	Station 2231 frame fastener locations per Figures 4 and 7, and either Figure 5 or 6 of the service bulletin, as applicable.
(4) Surface HFEC	Around fastener locations on station 2231 inner chords from stringer 23 through 31 per Figure 5 or Figure 6 of the service bulletin, as applicable.
(5) Low Frequency Eddy Current	Station 2231 frame strap in areas covered by the reveal per Figure 5 or Figure 6 of the service bulletin, as applicable.

(b) Do the inspections per Table 1 at the applicable time specified in the logic diagram in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001. Where the compliance time in the logic diagram specifies a compliance time beginning, ''from receipt of this service bulletin,'' this AD requires that the compliance time begin ''after the effective date of this AD.'' Repeat the inspections after that at intervals not to exceed 3,000 flight cycles.

(c) Within 3,000 flight cycles after accomplishment of the inspections specified in Figure 1 of Boeing Alert Service Bulletin 747–53A2450, dated May 4, 2000; or Revision 1, dated July 6, 2000; repeat the inspections after that at intervals not to exceed 3,000 flight cycles.

Note 2: There is no terminating action currently available for the inspections required by paragraph (a) of this AD.

Note 3: Where there are differences between the AD and the alert service bulletin, the AD prevails.

Repair

(d) If any cracking is found during any inspection required by paragraph (a) of this AD, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(g) The inspections shall be done in accordance with Boeing Alert Service Bulletin 747–53A2450, Revision 2, including Appendix A, dated January 4, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on September 12, 2001.

Issued in Renton, Washington, on July 26, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19245 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–371–AD; Amendment 39–12365; AD 2001–15–30]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes, that requires inspection to detect incorrect wiring of the fire extinguisher bottles located on the engines and on the auxiliary power unit (APU), and corrective action, as necessary. It also requires modification of the wiring of the fire extinguisher bottles located on the engines and on the APU. This amendment is prompted by reports of incorrect wiring of the fire extinguisher bottles on the engines and the APU discovered during routine maintenance. The actions specified by this AD are intended to prevent failure of the fire extinguisher bottles to discharge, which could result in the inability to extinguish a fire in the engines or in the APU.

DATES: Effective September 12, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes was published in the **Federal Register** on April 25, 2001 (66 FR 20766). That action proposed to require inspection to detect incorrect wiring of the fire extinguisher bottles located on the engines and on the auxiliary power unit (APU), and corrective action, as necessary. It also proposed to require modification of the wiring of the fire extinguisher bottles located on the engines and on the APU.

Comments

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

Changes to the Final Rule

The FAA has revised paragraph (a) of the final rule to cite the latest service information, BAE Systems (Operations) Limited Inspection Service Bulletin ISB.26–60, Revision 2, dated January 18, 2001, as the appropriate source of service information for accomplishment of the actions required by that paragraph. The original issue and Revision 1 of the service bulletin were cited in the proposed AD; however, Revision 2 is similar to those versions of the service bulletin. In addition, the FAA has added a new **Note 2** to this final rule to provide credit to those operators that accomplished one of the earlier versions of the service bulletin.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $2,640, or $60 per airplane.

The FAA estimates that it will take approximately 4 work hours per airplane to accomplish the required modification of the wiring of the fire extinguisher bottles on the engines, and that the average labor rate is $60 per work hour. According to the applicable service bulletin, the cost of required parts is to be arranged between BAE Systems and the operator. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $10,560, or $240 per airplane, excluding any costs to the operator for required parts.

The FAA also estimates that it will take approximately 1 work hour per airplane to accomplish the required modification of the wiring of the fire extinguisher bottles on the APU, and that the average labor rate is $60 per work hour. According to the applicable service bulletin, the cost of required parts is to be arranged between BAE Systems and the operator. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $2,640, or $60 per airplane, excluding any costs to the operator for required parts.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein 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 power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–15–30 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–12365. Docket 2000–NM–371–AD.

Applicability: Model Avro 146–RJ series airplanes, certificated in any category, with modifications HCM01582A, HCM01582B, HCM36192A, or HCM36192B embodied.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the fire extinguisher bottles on the engines or on the auxiliary power unit (APU) to discharge, which could result in the inability to extinguish a fire in the engines or in the APU, accomplish the following:

Inspection

(a) Within 90 days after the effective date of this AD: Perform a one-time inspection consisting of a ''continuity check'' to detect incorrect wiring on the fire extinguisher bottles located on the engines and on the APU, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.26–60, Revision 2, dated January 18, 2001. If incorrect wiring is detected, prior to further flight, correct the wiring in accordance with the service bulletin.

Note 2: Accomplishment of the actions required by paragraph (a) of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.26–60, dated September 4, 2000, or Revision 1, dated October 10, 2000, is acceptable for compliance with the requirements of that paragraph.

Repeat Inspection

(b) Following any maintenance work, including a complete engine change, that affects the wiring of the fire extinguisher bottles located on the engines or on the APU and prior to further flight thereafter: Perform the inspection required by paragraph (a) of this AD. If incorrect wiring is detected, prior to further flight, correct the wiring in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.26–061–36220A or SB.26–060–01688A, both dated January 18, 2001, as applicable.

Modification

(c) Within one year after the effective date of this AD: Modify the wiring of the fire extinguisher bottles located on the engines, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.26–060–01688A, dated January 18, 2001; and modify the wiring of the fire extinguisher bottle located on the APU, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.26–061–36220A, dated January 18, 2001. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.26–60, Revision 2, dated January 18, 2001; BAE Systems (Operations) Limited Modification Service Bulletin SB.26–061–36220A, dated January 18, 2001; and BAE Systems (Operations) Limited Modification Service Bulletin SB.26–060–01688A, dated January 18, 2001; as applicable. Revision 2 of BAE Systems (Operations) Limited ISB.26–60 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 13	2	January 18, 2001.
2–4, 6–12, 14	Original	September 4, 2000.
5	1	October 10, 2000.

(The revision date is listed only on the first page of the document; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 002–09–2000.

Effective Date

(g) This amendment becomes effective on September 12, 2001.

Issued in Renton, Washington, on July 25, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19253 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 241–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ) is exempting two Privacy Act systems of records from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These systems of records are the ''Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003''; and ''Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004''. The exemptions are necessary to protect law enforcement and investigatory information and functions and will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

EFFECTIVE DATE: This final rule is effective August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill at 202–207–1823.

SUPPLEMENTARY INFORMATION: On June 4, 2001 (66 FR 29921) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

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

List of Subjects in 28 CFR Part 16

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

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

PART 16—[AMENDED]

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

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

2. Add to subpart E, § 16.130 to read as follows:

§ 16.130 Exemption of Department of Justice Systems: Correspondence Management Systems for the Department of Justice (DOJ–003); Freedom of Information Act, Privacy Act and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ–004).

(a) The following Department of Justice systems of records are exempted from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(1) Correspondence Management Systems (CMS) for the Department of Justice (DOJ), DOJ/003.

(2) Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests and Administrative Appeals for the Department of Justice (DOJ), DOJ/004.

(b) These systems are exempted for the reasons set forth from the following subsections:

(1) *Subsection (c)(3).* To provide the subject of a criminal, civil, or counterintelligence matter or case under investigation with an accounting of disclosures of records concerning him or her could inform that individual of the existence, nature, or scope of that investigation, and thereby seriously impede law enforcement of counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) *Subsection (c)(4).* This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) *Subsection (d)(1).* Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) *Subsection (d)(2).* Amendment of the records would interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) *Subsection (e)(1).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations.

(8) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts.

(11) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: July 30, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–19895 Filed 8–7–01; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 242–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), is exempting a Privacy Act System of records from subsections (c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5) and (8), (f) and (g) of the Privacy Act, 5 U.S.C. 552a,

pursuant to 552a(j)(2) and (k)(2). This system of records is maintained by the DOJ Joint Automated Booking System (JABS) Program Office and entitled ''Nationwide Joint Automated Booking System, DOG–005.'' Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties. The reasons for the exemptions are set forth in the text below.

EFFECTIVE DATE: This final rule is effective August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Cahill—(202) 307–1823.

SUPPLEMENTARY INFORMATION: On April 23, 2001 (66 FR 20410) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

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

List of Subjects in 28 CFR Part 16

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

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

PART 16—[AMENDED]

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

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

2. Add to subpart E, § 16.131 to read as follows:

§ 16.131 Exemption of Department of Justice (DOJ)/Nationwide Joint Automated Booking System (JABS), DOJ–005.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), (3), (4)(G) and (H), (e)(5) and (8), (f) and (g): Nationwide Joint Automated Booking System, Justice/DOJ–005. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Where compliance would not interfere with or adversely affect the law enforcement process, the DOJ may waive the exemptions, either partially or totally.

(b) Exemption from the particular subsections are justified for the following reasons:

(1) From subsections (c)(3), (c)(4), and (d) to the extent that access to records in this system of records may impede or interfere with law enforcement efforts, result in the disclosure of information that would constitute an unwarranted invasion of the personal privacy of collateral record subjects or other third parties, and/or jeopardize the health and/or safety of third parties.

(2) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede,compromise, or interfere with law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law enforcement agencies in discharging their law enforcement responsibilities.

(3) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement since it may be necessary to obtain and verify information from a variety to sources other than the record subject to ensure safekeeping, security, and effective law enforcement. For example, it maybe necessary that medical and psychiatric personnel provide information regarding and the subject's behavior, physical. health, or mental stability, etc. to ensure proper care while in custody, or it may be necessary to obtain information from a case agent or the court to ensure proper disposition of the subject individual.

(4) From subsection (e)(3) because the requirement that agencies inform each individual whom it asks to supply information of such information as required by subsection (e)(3) may, in some cases, impede the information gathering process or otherwise interfere with or compromise law enforcement efforts, e.g., the subject may deliberately withhold information, or given erroneous information.

(5) From subsection (4)(G) and(H) because the application of these provisions would present a serious impediment to law enforcement efforts.

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes, may prevent the eventual development of the necessary criminal intelligence, or otherwise impede law enforcement or delay trained law enforcement personnel from timely exercising their judgment in managing the arrestee.

(7) From subsection (e)(8) to the extent that such notice may impede, interfere with, or otherwise compromise law enforcement and security efforts.

(8) From subsection 5 U.S.C. 552a(f) to the extent that compliance with the requirement for procedures providing individual access to records, compliance could impede, compromise, or interfere with law enforcement efforts.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

Dated: July 30, 2001.

Janis A. Sposato,

Acting Assistant Attorney General for Administration.

[FR Doc. 01–19896 Filed 8–7–01; 8:45 am]

BILLING CODE 4410–FB–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301155; FRL–6793–2]

RIN 2070–AB78

Ethalfluralin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of ethalfluralin in or on safflower seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on safflower. This regulation establishes a maximum permissible level for residues of ethalfluralin in this food commodity. The tolerance will expire and is revoked on June 30, 2003.

DATES: This regulation is effective August 8, 2001. Objections and requests for hearings, identified by docket control number OPP–301155, must be received by EPA on or before October 9, 2001.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please

follow the detailed instructions for each method as provided in Unit VII of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301155 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially 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 codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing 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 under **FOR FURTHER INFORMATION CONTACT**.

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,'' ''Regulations and Proposed Rules,'' 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301155. The official record consists of the documents specifically referenced in this action, 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, Mall #2, 1921 Jefferson Davis Hwy., 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.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide ethalfluralin, [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4(trifluoromethyl)benzenamine], in or on safflower seed at 0.05 part per million (ppm). This tolerance will expire and is revoked on June 30, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Ethalfluralin on Safflower and FFDCA Tolerances

The applicants state that there are no herbicides registered for use on safflower that effectively control kochia and ALS-resistant kochia. Kochia resistant to sulfonylurea herbicides, 2,4-D, and dicamba are found throughout the state. Research data and grower experience indicate that Treflan (trifluralin) only provides suppression of kochia and can result in three times more kochia density than Sonalan (ethalfluralin). Kochia (especially ALS resistant biotypes) has become a very serious weed problem that farmers have had difficulty controlling. The problem has become particularly noticeable since 1998. No specific economic data has been generated to study safflower yield impacts from kochia competition. However, research conducted in several other crops has documented that yield

reductions of 25 to 75 percent can result from kochia competition.

Safflower is an annual oil seed crop that is most productive when seeded early in the spring. Annual grasses and broadleaf weeds that compete with safflower germinate and emerge along with safflower seedlings. Although delayed seeding and or tillage can reduce weed abundance, it is not a compatible practice in safflower production. Safflower is not very competitive with weeds in the early vegetative stages. In-crop cultivation is not viable for weed control. Harrowing after planting with a light spike tooth or light coil spring may control some weeds, but damage to the emerging safflower can occur and some plants will be buried.

EPA has authorized under FIFRA section 18 the use of ethalfluralin on safflower for control of kochia and ALS-resistant kochia in North Dakota and Montana. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of ethalfluralin in or on safflower. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on safflower seed after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether ethalfluralin meets EPA's registration requirements for use on safflower or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of ethalfluralin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than North Dakota and Montana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for ethalfluralin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of ethalfluralin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of ethalfluralin in or on safflower seed at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effect level (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the dose at which the lowest adverse effect level (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for ethalfluralin used for human risk assessment is shown in the following Table 1:

TABLE 1. — SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ETHALFLURALIN FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for RiskAssessment	Study and Toxicological Effects
Acute dietary females 13–50 years of age	NOAEL = 75 mg/kg/day UF = 100 Acute RfD = 0.75 mg/kg/day	FQPA SF = 3 aPAD = acute RfD ÷ FQPA SF = 0.25 mg/kg/day	Oral developmental toxicity study in rabbits LOAEL = 150 mg/kg/day based on an increased number of resorptions and increased sternal and cranial variations.
Acute dietary general population including infants and children	None	None	None
Chronic dietary all populations	NOAEL = 4.0 mg/kg/day UF = 100 Chronic RfD = 0.04 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.04 mg/kg/day	1–year oral toxicity study in dogs LOAEL = 20 mg/kg/day based on altered red cell morphology and urinary bilirubin.
Short-term dermal (1 to 7 days) Intermediate-term dermal (1 week to several months)	None	None	A dermal penetration study with Rhesus monkeys indicated that 2.8 % of a dermal dose was absorbed through the skin. Although the developmental and fetotoxic effects (refer to toxicological effects for acute dietary for females above) would normally be used for this assessment, the dermal absorption rate of 2.8% precludes the need. Dermal absorption is too low to cause concern.
Short-term inhalation (1 to 7 days) Intermediate-term inhalation (1 week to several months) Long-term inhalation (several months to lifetime) (Residential)	None	None	Ethalfluralin has a low inhalation toxicity category (III). The maximum attainable concentration (gravimetric) was tested in an acute inhalation toxicity study, and no deaths occurred to exposed rats. Clinical signs included hypoactivity, dyspnea, ataxia, chromodacryorrhea, poor grooming, and yellow urine; these were reversible after 4 days (LC_{50} >0.94 mg/L). This maximum attainable concentration is considered to be non-lethal. An inhalation risk assessment is not required
Cancer (oral, dermal, inhalation)	Ethalfluralin has been classified as a possible human carcinogen (Group C). Q_1* = 8.9 x 10^{-2} (mg/kg/day)$^{-1}$	10^{-6}	2–year chronic carcinogenicity study in rats, showing an increased incidence of mammary gland fibroadenomas and combined adenomas/fibroadenomas in female rats.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.416) for the residues of ethalfluralin, in or on a variety of raw agricultural commodities. Permanent tolerances for residues of ethalfluralin are established for dry beans and peas, cucurbits, peanuts, soybeans, sunflower seeds, and goats (fat, meat, and meat byproducts). These tolerances are all 0.05 ppm. A 0.05 ppm time-limited tolerance associated with a section 18 request is also established for canola. Risk assessments were conducted by EPA to assess dietary exposures from ethalfluralin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has

indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The dietary exposure evaluation model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA (1989–1992) nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities anticipated residues (ARs) were used. The ARs used for this analysis are the same as those used for the March 1995 reregistration eligibility decision (RED) document prepared for ethalfluralin. No percent crop treated (PCT) adjustment was made therefore, 100% crop treated was assumed. Further refinements (such as percent crop-treated adjustments and/or Monte Carlo analysis) would yield even lower estimates of acute dietary exposure.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA (1989–1992) nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities ARs were used. The ARs used for this analysis are the same as those used for the March 1995, RED document. In addition, weighted average PCT data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iii. *Cancer*. In conducting this cancer dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA (1989–1992) nationwide CSFII. The following assumptions were made for the cancer exposure assessments: Tolerance-level residues were used for cucurbit vegetables, canola oil, safflower oil, and goat commodities. All other plant commodities for which there are ethalfluralin tolerances are considered to be blended. For these commodities ARs were used. The ARs used for this analysis are the same as those used for the March 1995, RED document. In addition, weighted average PCT data were used for dry beans and peas, melons, cantaloupe, cucumbers, watermelons and soybeans.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) authorizes EPA to use available data and information on the ARs levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to ARs to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings:

Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group.

Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 34% of dry beans and peas treated; 4% melons and cantaloupes treated; 16% cucumbers treated; 15% watermelons treated and 1% soybeans treated.

The Agency believes that the three conditions listed have been met. With respect to condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to under estimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to under estimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an under estimation. As to conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which ethalfluralin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for ethalfluralin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of ethalfluralin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The

GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to ethalfluralin they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of ethalfluralin for acute exposures are estimated to be 2.3 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 0.052 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Ethalfluralin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. 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.''

EPA does not have, at this time, available data to determine whether ethalfluralin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, ethalfluralin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ethalfluralin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. In the developmental toxicity study in rats, the maternal (systemic) NOAEL was 50 milligrams/kilograms/day (mg/kg/day), based on decreased body weight gain and dark urine at the LOAEL of 250 mg/kg/day. The developmental (fetal) NOAEL was 1,000 mg/kg/day the highest dose tested (HDT).

In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 75 mg/kg/day, based on abortions and decreased food consumption at the LOAEL of 150 mg/kg/day. The developmental (fetal) NOAEL was also 75 mg/kg/day, based on a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants at the LOAEL of 150 mg/kg/day.

3. *Reproductive toxicity study*. In a 3–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 12.5 mg/kg/day, based on decreased mean body weight gains in males in all generations at the LOAEL of 37.5 mg/kg/day. The reproductive (pup) NOAEL was 37.5 mg/kg/day the HDT.

In a 7–month multi-generation bridging study in rats, the parental NOAEL of 20 mg/kg/day was based on increased liver weights at the LOAEL of 61 mg/kg/day. The reproductive (pup) NOAEL was ≥ 61 mg/kg/day the HDT.

4. *Prenatal and postnatal sensitivity.* There is qualitative evidence of increased susceptibility following *in utero* exposure to ethalfluralin in the developmental toxicity study in rabbits demonstrated by abortions and a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants in the pups. There was no indication of increased susceptibility following *in utero* exposure to ethalfluralin in the prenatal developmental toxicity study in rats.

5. *Conclusion*. There is a complete toxicity data base for ethalfluralin and exposure data are complete or estimated based on data that reasonably accounts for potential exposures. Based on the oral developmental toxicity study in rabbits, an *ad hoc* FQPA Safety Factor Committee determined that the appropriate safety factor for assessing acute dietary risk is 3X and for assessing chronic dietary risk is 1X.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the US EPA Office of Water

to calculate DWLOCs: 2Liters/70 kilograms (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to ethalfluralin in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of ethalfluralin in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* An acute dietary endpoint was only identified for females. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to ethalfluralin will occupy less than 1% of the aPAD for females 13 years and older. In addition, despite the potential for acute dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2. — AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ETHALFLURALIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–50 years old)	0.25	<1	2.3	0.02	7,500

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to ethalfluralin from food will utilize less than 1% of the cPAD for the U.S. population and all other population subgroups included in DEEM. There are no residential uses for ethalfluralin that result in chronic residential exposure to ethalfluralin. In addition, despite the potential for chronic dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3. — AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.40	<1	0.052	0.02	1,400
Children	0.40	<1	0.052	0.02	400
Infants	0.40	<1	0.052	0.02	400

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Ethalfluralin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that exposure to ethalfluralin from food will result in an estimated lifetime cancer risk to the U.S. population of 5.8 x 10^{-7}. Currently there are no uses registered for ethalfluralin that will result in residential exposures. In addition, despite the potential for chronic (cancer) dietary exposure to ethalfluralin in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of ethalfluralin in surface and ground water, EPA does not expect the aggregate exposure to be greater than 1 x 10^{-6}, as shown in the following Table 4:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (CANCER) EXPOSURE TO ETHALFLURALIN

Population Subgroup	Q_1*	Cancer Risk Estimate (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	8.9 x 10^{-2} $(mg/kg/day)^{-1}$	5.8 x 10^{-7}	0.052	0.02	0.18

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to ethalfluralin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (GLC-ECD) is available in PAM II to enforce the tolerance expression. The limit of detection in plant commodities is 0.01 ppm.

B. International Residue Limits

There are no Codex maximum residue limits (MRLs) established for ethalfluralin. Mexico has established MRLs of 0.05 ppm in/on squash, cucumber, and melon. Canada has labels for uses on oil seed and pulse crops, wheat, field crop vegetables, barley, rapeseed, flax, canola, and mustard. There are no published tolerances so presumably the Canadian default tolerance of 0.10 ppm applies to these crops.

C. Conditions

Do not exceed 1.15 lbs. active ingredient (ethalfluralin) per acre per crop year.

VI. Conclusion

Therefore, the tolerance is established for residues of ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4(trifluoromethyl)benzenamine, in or on safflower seed at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301155 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 9, 2001.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301155, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types

of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: July 25, 2001.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.416 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Safflower, seed	0.05	6/30/03

* * * * *

[FR Doc. 01–19755 Filed 8–7–01; 8:45 a.m.]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094–1094–01; I.D. 080201C]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Closure

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

ACTION: Closure.

SUMMARY: NMFS announces that, effective 0001 hrs, local time, August 17, 2001, through 2400 hr, local time, November 14, 2001, vessels may not fish for, or possess, red crab harvested from the exclusive economic zone (EEZ) in excess of 100 lb (45.4 kg) per trip. This action is based on a determination that the red crab total allowable catch (TAC) is projected to be reached as of August

17, 2001, and is necessary to prevent the fishery from exceeding the TAC established by the emergency rule that was published May 8, 2001.

DATES: Effective 0001 hrs, local time, August 17, 2001, through 2400 hrs, local time, November 14, 2001.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135, e-mail martin.jaffe@noaa.gov.

SUPPLEMENTARY INFORMATION: On May 8, 2001, NMFS published a red crab emergency interim rule (66 FR 23182) to address concerns that overfishing of the red crab resource may be occurring within the EEZ from Cape Hatteras Light, NC, northward to the U.S.-Canada border. This action contained measures that included a TAC of 2.5 million lb (1,134 mt) of red crab for the 180-day period of effectiveness for the rule. To help ensure that the TAC is not exceeded, this rule also contained regulations that require the closure of the directed red crab fishery as of the date NMFS determines that the total landings of red crab will reach or exceed the TAC. NMFS is required to publish notification of such closure in the **Federal Register** (50 CFR 648.264).

NMFS has determined, based on landings and other available information, that 100 percent of the TAC for red crab will be harvested by August 17, 2001. Therefore, effective 0001 hrs, local time, August 17, 2001, through 2400 hrs, local time, November 14, 2001, notwithstanding any other regulations of Subpart M of 50 CFR part 648, vessels may not fish for, or possess, red crab harvested from the EEZ in excess of 100 lb (45.4 kg) per trip. If NMFS decides to recommend a 180-day extension of the emergency rule to the Secretary of Commerce (Secretary), and the Secretary approves, a notification will be published in the Federal Register to inform the industry.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 3, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19893 Filed 8–3–01; 2:59 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013–1013–01; I.D. 080301A]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the fourth seasonal apportionment of the 2001 halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 4, 2001, until 1200 hrs, A.l.t., October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21 (d)(3)(iii)(A), was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001), adjusted (66 FR 17087, March 29, 2001), and amended (66 FR 34852, July 2, 2001) for the fourth season, the period July 1, 2001, through October 1, 2001, as 200 metric tons.

In accordance with § 679.21 (d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the fourth seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for species included in the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the fourth seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the fourth seasonal apportionment of the 2001 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 3, 2001.

Bruce C. Morehead

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19894 Filed 8–3–01; 2:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 66, No. 153

Wednesday, August 8, 2001

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2072–00; AG Order No. 2497–2001]

RIN 1115–AF61

Adjustment of Certain Fees of the Immigration Examinations Fee Account

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the fee schedule of the Immigration Examinations Fee Account (IEFA) for certain immigration and naturalization applications and petitions, as well as the fee for the fingerprinting of applicants who apply for certain immigration and naturalization benefits. Fees collected from persons filing these applications and petitions are deposited into the IEFA and used to fund the full cost of processing immigration and naturalization applications and petitions and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The proposed fees will allow the Service to process applications and petitions that it expects to receive in 2002 and 2003, and provide funding to other programs supported by IEFA.

DATES: Written comments must be submitted on or before October 9, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC, 20536. To ensure proper handling, please reference INS Number 2072–00 on your correspondence. The public may also submit comments electronically at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2072–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Immigration Services Branch, Office of Budget, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 314–3410.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does the Service Have To Charge Fees?

A. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Acts of 1989 and 1991

With reference to the fees for applications and petitions, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1989, Pub. L. No. 100–459, Sec. 209, 102 Stat. 2186, 2203 (1988) authorized the Immigration and Naturalization Service (Service) to prescribe and collect fees to recover the cost of providing certain immigration and naturalization benefits. That law also authorized the establishment of the IEFA in the Treasury of the United States. All revenue from fees collected for immigration and naturalization benefits are deposited in the IEFA and remain available to provide immigration and naturalization benefits and the collection, safeguarding and accounting for fees. 8 U.S.C. 1356(n).

In subsequent legislation, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101–515, Sec. 210(d), 104 Stat. 2101, 2121 (1990), Congress further provided that ''fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.'' 8 U.S.C. 1356(m).

The House Conference Report to the bill entitled, ''Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies For the Fiscal Year Ending September 30, 1996, and For Other Purposes,'' H.R. Conf. Rep. No. 104–378, at 82 (1995), directs the Service to fund the cost of the Cuban-Haitian Entrant Program from the IEFA. The Report states, ''(t)he conferees have also agreed that the activities related to the resettlement of Cubans and Haitians should be transferred to the * * * Service and that the costs of these activities should be supported by the [IEFA].'' *Id.*

With reference to the fingerprint fee, the Department of Justice Appropriations Act, 1998, Pub. L. No. 105–119, 111 Stat. 2440, 2448 (1997), required the Service, with limited exceptions, to prepare all fingerprint cards used to conduct FBI criminal background checks on individuals applying for certain benefits under the Immigration and Nationality Act of 1952, as amended (Act). This legislation also authorized the Service to charge a fee for this fingerprinting service. *Id.* The Service deposits this fee into the IEFA established by 8 U.S.C. 1356(m)–(p). On March 29, 1998, the Service began charging $25 for the fingerprinting service.

B. The Independent Offices Appropriation Act, 1952

The Service also employs the authority granted by the Independent Offices Appropriation Act, 1952 (IOAA), 31 U.S.C. 9701, commonly referred to as the ''user fee statute,'' to develop its fees. The user fee statute directs Federal agencies to identify services provided to unique segments of the population and to charge fees for those services, rather than supporting such services through general tax revenues. The IOAA states that ''[i]t is the sense of Congress that each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a).

The IOAA further provides that charges for such services or things of value should be fair and based on ''(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) the public policy or interest served; and (D) other relevant facts.'' 31 U.S.C. 9701(b).

C. The Chief Financial Officers Act of 1990

The Service must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Pub. L.

No. 101–576, 104 Stat. 2838 (1980). Subsection 205(a)(8) of the CFO Act requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' *Id.* at 2844, 31 U.S.C. 902(a)(8).

What Federal Cost Accounting and Fee Setting Standards and Guidelines Were Used in Developing the Proposed Fee Changes?

A. Office of Management and Budget (OMB) Circular No. A–25, User Charges

When developing fees for special benefits, the Service adheres to the principles contained in OMB Circular No. A–25, Revised, User Charges (1993). OMB Circular No. A–25 states that as a general policy a ''user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' *Id.* at Sec. 6.

The guidance contained in OMB Circular No. A–25 is applicable to the extent that it is not inconsistent with any Federal statute. For example, specific legislative authority to charge fees for special benefits takes precedence over OMB Circular No. A–25 when the statute expressly designates ''who pays the charge; how much is the charge; where collections are deposited.'' *Id.* at Sec. 4(b). When a statute does not address issues of how to calculate fees or what costs to include in the fee calculation, Federal agencies must follow the principles and guidance contained in OMB Circular No. A–25 to the fullest extent allowable. The guidance directs Federal agencies to charge the ''full cost'' of providing benefits when calculating fees that provide a special benefit to recipients. *Id.* at Sec. 6(a)(2)(a). Subsection 6(d) of OMB Circular No. A–25 defines ''full cost'' as including ''all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment;

(c) Management and supervisory costs; and

(d) The costs of enforcement, collection, research, establishment of standards, and regulation.

Finally, section 6(d)(1)(e) states that ''[f]ull cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.''

B. Federal Accounting Standards Advisory Board Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government

When developing fees for services, the Service also adheres to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. The FASAB defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment, as will be discussed later. *Id.* at 36–42.

How Are the Adjudication of Immigration and Naturalization Benefits Funded and Supported?

A. Background

In 1988, Congress established the IEFA. See Pub. L. No. 100–459, Sec. 209, 102 Stat. at 2203. In the first year of the IEFA's existence, the Service retained the appropriation that funded the processing of immigration and naturalization applications and petitions. During that year, fees collected for these applications and petitions were used to enhance the Adjudications and Naturalization Program (although Congress did temporarily direct the Service to deposit $50 million of the fee revenue into the General Fund of the Treasury). *Id.* In subsequent years, fees deposited into the IEFA have been the primary source of funding for the Adjudications and Naturalization Program, and other Programs as directed by Congress, and generally have replaced the annual appropriation that the Service received for such services. In subsequent legislation, Congress directed the Service to use revenue in the IEFA to fund the cost of asylum processing and other services provided to immigrants at no charge. *See* Pub. L. No. 101–515, sec. 210(d)(2), 104 Stat. at 2121. Consequently, the Service began to add a ''surcharge'' to the immigration and naturalization fees to recover these additional costs.

B. Sufficiency of the Current Fee Schedule

In a fee review of the IEFA for certain immigration and naturalization applications and petitions completed in July 1997, the Service identified a shortfall of revenues to expenses in the IEFA because the fees did not recover the full costs of services provided. This review involved an in-depth analysis of resources, activities, and applications and petitions using an activity-based costing methodology. The majority of current immigration and naturalization application and petition fees are based on this review.

A recent General Accounting Office report entitled ''Immigration Benefits—Several Factors Impede Timeliness of Application Processing'' (May 2001), identified inadequate automation as one of the three factors which has impeded the INS' ability to reduce backlogs, improve processing times, and effectively manage its workload. *Id.* at 2. The report also identified the need for increased quality controls when processing immigration and naturalization benefits. *Id.* at 42. Information technology and quality assurance are included within the definition of ''full cost'' as defined by OMB Circular No. A–25, however these costs are not currently recovered in the fees. Information technology and quality assurance are critical to improving service to applicants and petitioners and ensuring consistent adjudication. Therefore, the Service is including additional resources in its proposed fees that will be dedicated solely to recovering information technology and quality assurance costs.

Since fiscal year (FY) 1998, the costs of providing immigration and naturalization benefits have risen as a result of general cost-of-living increases. Therefore, the fees need to be adjusted to recover the full costs associated with the benefits provided.

C. Programs That Support Immigration and Naturalization Services

The major Service programs that support immigration and naturalization services are discussed below.

The *Adjudications and Naturalization (A&N) Program* processes, adjudicates, and ultimately grants or denies applications and petitions for benefits provided under the Act. It is responsible for processing applications and petitions for immigration and naturalization benefits, including, but not limited to: applications for permanent resident status; applications for work authorization; petitions for relatives; applications and petitions for immigrant and nonimmigrant workers; applications for travel documents; and applications for extensions of temporary stay by non-immigrants in the United States.

Naturalization processes also include the examination of aliens to determine their qualifications for naturalization, the issuance of citizenship documents, the appearance of Service officials and the conduct of administrative naturalization oaths, and the appearance of Service officials at Federal and State Courts that administer naturalization oaths.

The A&N Program operates in District Offices located throughout the United States, and in four Service Centers located in California, Texas, Nebraska, and Vermont. Applications for immigration, nationality and citizenship benefits, and naturalization are received and adjudicated by a corps of immigration Adjudication Officers and adjudication support personnel. District Officers adjudicate cases that may require personal appearances by applicants and petitioners. Service Center operations concentrate on cases that can be processed without individual appearances, and benefit from the economies generated by large volume, production-oriented processing.

The *Information and Records Management Program* creates, maintains, stores and tracks records; responds to Freedom of Information Act and Privacy Act requests; provides information and application forms to the public (both in person and by telephone) on immigration-related matters; and compiles, analyzes, publishes, and issues the Service's statistical data.

The *Investigations and Intelligence Programs* focus on the detection and deterrence of fraud to protect the integrity of benefits and documents legitimately provided by the Service to authorized persons.

The *International Affairs Program* adjudicates refugee and asylum applications (including FBI fingerprint checks of certain applicants), conducts investigations for preference and relative visa petitions, and conducts other records checks and background investigations as required by overseas Service offices. Officers assigned to this program also provide assistance to citizens and lawful permanent residents abroad regarding foreign adoptions, immigration, or parole of alien spouses and children, and other benefits under the Act. They also review requests to the Attorney General to grant humanitarian parole into the United States for deserving persons. Through grants and cooperative agreements, staff also administer the Resettlement Program and Unaccompanied Minors Program.

The *Training Program* provides the staff and resources necessary to maintain an employee development program that meets the training needs of the Service's asylum, adjudications, and naturalization workforce.

The *Data and Communications Program* develops and operates automated information systems that support immigration and naturalization processes.

The *Legal Proceedings Program* provides support and/or represents the Service in cases involving asylum, rescission, naturalization, visa petition, adjustment of status, registry, sections 212(c) (8 U.S.C. 1182(c)) and 241(f) (8 U.S.C. 1231(f)) of the Act, and other examinations-related cases and matters.

The *Management and Administration Program* supports Service personnel and offices involved in the processing and adjudication of applications and petitions by providing various administrative services including personnel, accounting, budgeting, equal employment opportunity, procurement, property management, fleet management, and security.

How Was the Proposed Application and Petition Fee Schedule Determined?

A. 1999 Fee Review

The Service conducted a partial review of the current fee levels in FY 1999. This review attempted to build upon the extensive work completed in a 1997 review. In the FY 1999 review, the Service made numerous changes to the underlying methodology of the 1997 review and selected a few forms to conduct further analysis. As a result of the methodology changes, the FY 1999 model produced different fee levels than the 1997 review. However, the Service could not easily explain the programmatic reasons for the changes in fee levels, *i.e.,* application processing had not significantly changed since the 1997 review. For example, the Application for Naturalization (N–400) fee increased by more than 50%, from $225 to $345. This increase of more than 50% would have followed a 137% increase, from $95 to $225, that took place in January 1999. At the time of the fee increase, the Service was able to identify programmatic reasons, such as the Naturalization Quality Procedures program, for the significant increase in the cost of processing naturalization applications. However, the processing of naturalization applications has remained fundamentally unchanged since January 1999. The Service also had concerns that the revised model may have inadvertently included costs associated with the application backlog. As a result, the Service did not have confidence in basing the proposed fee levels on the 1999 review due to questions regarding the revised methodology as well as the limited nature of the review.

B. Basis for the Proposed Fee Schedule

Because of the apparent problems with the FY 1999 review, the Service is relying primarily on the 1997 review, on which the majority of current fees are based, to determine the proposed fees. This is consistent with OMB's statement in Circular No. A–25 that ''full cost shall be determined or estimated from the best available records of the agency.'' Sec. 6(d)(1)(e). The 1997 review was based on an Activity-Based Costing (ABC) methodology to determine the full costs of processing immigration and naturalization applications and petitions. ABC is sanctioned by FASAB as one of the recommended full cost methodologies. In the 1997 review, applying ABC involved an in-depth analysis of resources, resource drivers, activities, activity drivers, and applications/petitions. The Service continues to believe that the current fees accurately represented the costs for adjudicating cases in 1998. However, costs have increased as a result of inflation.

Therefore, the current fees have been adjusted for inflation (per OMB inflationary factors) from 1998 to 2002. The adjusted fee level was then averaged with the 2003 inflationary fee level, as the fee is anticipated to be effective during 2002 and 2003. The Service then applied $5.00 equally to all applications and petitions to recover information technology and quality assurance costs that are not included in the current fee levels. The Service believes that this approach recovers the full costs of processing immigration applications/petitions that it expects to receive over the next two years.

The Service requests comments on whether it should set separate fee schedules for FY 2002 and FY 2003 versus a single, blended schedule that is

effective for both years. Commenters may want to consider whether changing fee schedules would unduly confuse applicants and petitioners.

Does the Service Plan on Conducting a New Fee Review?

Yes, the Service plans on conducting a new fee study during the next two years. Based on its experience with the 1999 review, the Service plans on conducting a review of all application forms, as it did in the 1997 review. As with this proposed rule, the Service intends to continue using activity-based costing methodology as the primary basis for the fees.

How Was the Proposed Fingerprint Fee Determined?

The Service began to operate its own fingerprint program in 1998. Individuals applying for certain immigration and naturalization benefits that require an FBI criminal background check are fingerprinted by one of four methods. The four methods are as follows:

(1) The Service fingerprints the majority of individuals at 129 Service offices known as Application Support Centers (ASCs);

(2) Designated Law Enforcement Agencies (DLEAs) that have entered into cooperative agreements with the Service fingerprint individuals who do not reside near an ASC;

(3) Service personnel use mobile equipment to fingerprint individuals at remote locations (mobile routes);

(4) United States consular offices or military installations abroad fingerprint individuals residing outside of the United States.

The Service charges a fee to recover the operating costs of its fingerprinting program. Congress directed the Service to implement changes to its fingerprinting process within three months. This short timeframe did not allow for an in-depth analysis of the costs. Accordingly, the Service initially estimated the appropriate fee for fingerprinting at $25 per individual and the fee was established by publication of an interim rule in the **Federal Register**. *See* Establishing a Fee for Fingerprinting by the Service, 63 FR 12,979, 12,986 (interim rule March 17, 1998). The Service began collecting that fee on March 29, 1998. However, the Service soon determined that it was not recovering the full costs of the fingerprint program.

To determine the actual cost of fingerprinting individuals applying for certain immigration and naturalization benefits, the Service reviewed the FY 1999 costs of operating the fingerprint program. The applications included in this review were Forms I–360, Petition for Amerasian, Widow(er), or Special Immigrant; I–485, Application to Register Permanent Residence or Adjust Status; I–600/600A, Petition to Classify Orphan as an Immediate Relative/ Application for Advance Processing of Orphan Petition; I–817, Application for Benefits under the Family Unity Program; and N–400, Application for Naturalization. The Service determined the number of individuals fingerprinted by taking an average of the number of prints taken for FY 1998 and FY 1999 in order to allow for variances in available application volumes. To determine the fingerprinting unit cost for individuals seeking certain immigration and naturalization benefits, the Service divided the cost of the fingerprint capture program by the average number of individuals fingerprinted.

The Service assigned the cost of operating and maintaining the ASCs, DLEAs, and mobile routes to the cost of operating and maintaining the fingerprint capture program. The main costs included the fee for contractor services at the ASCs and the Service's labor cost for persons assigned to the fingerprinting program. The FY 1999 cost was adjusted for inflation (per OMB inflationary factors) to FY 2000 and FY 2001, and averaged FY 2002 and FY 2003 costs, as the fee is anticipated to be effective during these latter fiscal years.

What Are the Proposed Fees and How Do the Proposed Fees Compare to the Current Fees?

A. Applications and Petitions

The proposed fees, current fees, and their dollar differences are displayed in Table 1.

TABLE 1.—CURRENT VERSUS PROPOSED APPLICATION AND PETITION FEES

Form No.	Description	Proposed fee	Current fee	Change
I–17	Petition for Approval of School Attendance by Non-Immigrant Student	$230	$200	$30
I–90	Application to Replace Alien Registration Card	130	110	20
I–102	Application for Replacement/Initial NonImmigrant Arrival/Departure Document	100	85	15
I–129	Petitions for Nonimmigrant Worker	130	110	20
I–129F	Petition to Classify Nonimmigrant as Fiancé	110	95	15
I–130	Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa	130	110	20
I–131	Application for Travel Document	110	95	15
I–140	Immigrant Petition for Alien Worker	135	115	20
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	195	170	25
I–192	Application for Advance Permission to Enter as a Non-Immigrant	195	170	25
I–193	Application for Waiver of Passport and/or Visa	195	170	25
I–212	Application to Reapply for Admission into the U.S. After Deportation	195	170	25
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	130	110	20
I–485	Application to Register Permanent Residence or Adjust Status	255	220	35
I–506	Application for Change of Nonimmigrant Classification	85	70	15
I–526	Immigrant Petition by Alien Entrepreneur	400	350	50
I–539	Application to Extend/Change Nonimmigrant Status	140	120	20
I–600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	460	405	55
I–601	Application for Waiver on Grounds of Excludability	195	170	25
I–612	Application for Waiver of the Foreign Residence Requirement	195	170	25
I–751	Petition to Remove the Conditions on Residence	145	125	20
I–765	Application for Employment Authorization	120	100	20
I–817	Application for Voluntary Departure under the Family Unity Program	140	120	20
I–824	Application for Action on an Approved Application or Petition	140	120	20
I–829	Petition by Entrepreneur to Remove Conditions	395	345	50
N–300	Application to File Declaration of Intention	60	50	10

TABLE 1.—CURRENT VERSUS PROPOSED APPLICATION AND PETITION FEES—Continued

Form No.	Description	Proposed fee	Current fee	Change
N–336	Request for Hearing on a Decision in Naturalization Procedures	195	170	25
N–400	Application for Naturalization	260	225	35
N–470	Application to Preserve Residence for Naturalization Purposes	95	80	15
N–565	Application for Replacement of Naturalization/Citizenship Document	155	135	20
N–600	Application for Certification of Citizenship	185	160	25
N–643	Application for Certification of Citizenship in Behalf of an Adopted Child	145	125	20

B. Fingerprint Fee

Based on its review of costs, the Service is proposing to increase the fingerprint fee to $50. The proposed fee has been rounded up to the nearest whole $5 in accordance with the Service's standard practice.

TABLE 2.—CURRENT VERSUS PROPOSED FINGERPRINT FEE

Description	Proposed fee	Current fee	Change
Fingerprinting by the Service	$50	$25	$25

Why Is the Fee for LIFE Act Adjustment of Status Applications (I–485) Different Than the Fee Proposed in This Rule?

In an interim final rule published June 1, 2001, Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act and Legalization Provisions and LIFE Act Amendments Family Unity Provisions, 66 FR 29,661, 29,672 (June 1, 2001), the Service established a $330 fee for filing legalization applications under section 1004 of the Legal Immigration Family Unity Equity Act (LIFE Act) and the LIFE Act Amendments. In establishing the fee, the Service first identified the adjustment of status application (Form I–485) process as most similar to the new legalization application process. *Id.* at 29,667. The Service then referred to the 1999 review, which identified an estimated full cost of the Form I–485 to be $330. *Id.* at 29,668.

The Service now questions the methodology and limited nature of this review and is proposing that the Form I–485 fee be $255. However, the Service also recognizes that there are start-up costs associated with processing legalization applications that were not accounted for in the 1999 review and, therefore, will not be recovered with the proposed Form I–485 fee. As a result, the Service is currently reviewing the $330 fee established for filing legalization applications. In light of these developments, the Service intends to publish a separate **Federal Register** document to extend or reopen, as appropriate, the comment period on the $330 fee. Moreover if the Service determines that the current full cost of a legalization application is not $330, it will undertake a separate rulemaking to adjust the fee and take whatever actions are appropriate to ensure equity.

Does the Service Have the Authority To Waive Fees on a Case-by-Case Basis?

Yes, the Service has the authority to waive fees on a case-by-case basis pursuant to 8 CFR 103.7(c).

How Does This Proposal Fit With the President's Backlog Initiative?

The Administration is committed to building and maintaining an immigration services system that ensures integrity, provides services accurately and in a timely manner, and emphasizes a culture of respect. The President proposed a universal six-month processing standard for all immigration applications. To support this standard, the 2002 Budget proposed $100 million—the first installment in a five-year, $500 million initiative to address the backlog problem.

In contrast to the budget, which requests appropriated resources to eliminate the application backlog, this proposed rule addresses the costs of processing cases that will be filed over the next two years. If the Service does not adjust the current fees to reflect the costs of processing applications and petitions, the backlog will likely increase.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

The Service acknowledges, however, that a number of small entities, particularly those filing business-related applications and petitions, such as Forms I–140, Immigrant Petition for Alien Worker; I–526, Immigrant Petition by Alien Entrepreneur; and I–829, Petition by Entrepreneur to Remove Conditions may be affected by this rule. For FY 2001, the Service projects approximately 130,000 Forms I–140, 400 Forms I–526, and 400 Forms I–829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multi-national corporations to small domestic businesses. The Service does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. Even if all of the employers applying for benefits met the definition of small businesses, however, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

This rule will not impose a mandate of enforceable duty on State, local and tribal governments, in the aggregate, or on the private sector, and it will not significantly or uniquely affect small governments. Accordingly, no further actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by the Small Business Regulatory

Enforcement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). Based on the data included in the proposed rule, this rule will result in an annual effect on the economy of $169 million, in order to generate the revenue necessary to fund the increased expenses of processing the Service's immigration and naturalization applications and petitions. The increased fees will be paid by persons who file applications or petitions to obtain immigration benefits.

The projected increase in revenues probably overstates the actual receipt of applications and petitions because it is likely that there will be fewer applications and petitions filed due to the implementation of the higher fees. The decrease in volume due to the higher fees has a real economic effect in that there will be fewer people applying for and receiving services paid for by the Service's user fees.

Executive Order 12866

This rule is considered by the Department of Justice to be an economically ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, because it will have an annual effect on the economy of over $100 million. Without the fee adjustments, the Service estimates that it will collect approximately $815 million in fees for immigration and naturalization benefits in FY 2002. If the fee adjustments become effective on January 1, 2002, the Service anticipates collecting approximately $942 million in FY 2002—$127 million in additional revenue.

The projected increase in revenues probably overstates the actual receipt of applications and petitions because it is likely that there will be fewer applications and petitions filed due to the implementation of the higher fees. The decrease in volume due to the higher fees has a real economic effect in that there will be fewer people applying for and receiving services paid for by the Service's user fees.

This increase in revenue will be used to fund the processing of immigration and naturalization applications and petitions. The revenue increase is based on the Service's costs and workload volumes. The volume of applications and petitions filed is projected based on a regression analysis of a 5-year history of actual applications and petitions received by the Service. The regression analysis is adjusted for any anticipated or actual changes in laws, policies, or procedures that may affect future filing patterns. The proposed fees will be paid by an estimated 6.6 million individuals and businesses filing immigration and naturalization applications and petitions. Accordingly, this regulation has been submitted to OMB for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. No. 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by revising the entry ''For fingerprinting by the Service'' and by revising the entries for the following forms. The revisions read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For fingerprinting by the Service. A service fee of $50 will be charged by the Service for any individual who is required to be fingerprinted in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States as defined in section 101(a)(38) of the Act.

* * * * *

Form I–17. For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$230.00.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$130.00.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$100.00.

* * * * *

Form I–129. For filing a petition for a nonimmigrant worker, a base fee of $130. For filing an H–1B petition, a base fee of $130 plus an additional $1,000 fee in a single remittance of $1,130. The remittance may be in the form of one or two checks (one in the amount of $1,000 and the other in the amount of $130). Payment of this additional $1,000 fee is not waivable under § 103.7(c)(1). Payment of this additional $1,000 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter, and this additional $1,000 fee also does not apply to certain filings by any employer as provided in § 214.2(h)(19)(v) of this chapter.

Form I–129F. For filing a petition to classify nonimmigrant as fiancé or fiancé under section 214(d) of the Act—$110.00.

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$130.00.

Form I–131. For filing an application for travel documents—$110.00.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$135.00.

* * * * *

Form I–191. For filing applications for discretionary relief under section 212(c) of the Act—$195.00.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$195.00.

Form I–193. For filing an application for waiver of passport and/or visa—$195.00.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$195.00.

* * * * *

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$130.00, except there is no fee for a petition seeking classification as an Amerasian.

Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$255.00 for an applicant 14 years of age or older; $160.00 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act. All applicants filing for Adjustment of Status under LIFE Act Legalization (Public Law 106–553) must pay $330.00.

* * * * *

Form I–506. For filing an application for change of nonimmigrant classification under Section 248 of the Act—$85.00.

Form I–526. For filing a petition for an alien entrepreneur—$400.00.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$140.00.

* * * * *

Form I–600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$460.00.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$460.00.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$195.00.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$195.00.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$145.00.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$120.00.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$140.00.

* * * * *

Form I–824. For filing for action on an approved application or petition—$140.00.

Form I–829. For filing a petition by entrepreneur to remove conditions—$395.00.

* * * * *

Form N–300. For filing an application for declaration of intention—$60.00.

Form N–336. For filing a request for hearing on a decision in naturalization proceedings under section 366 of the Act—$195.00.

Form N–400. For filing an application for naturalization—$260.00.

* * * * *

Form N–470. For filing an application for section 316(b) or 317 of the Act benefits—$95.00.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$155.00.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$185.00.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$145.00.

* * * * *

Dated: August 3, 2001.

Larry D. Thompson,

Acting Attorney General.

[FR Doc. 01–19875 Filed 8–3–01; 2:37 pm]

BILLING CODE 4410–10–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925, 930, 931, 932, and 933

[No. 2001–17]

RIN 3069–AB06

Capital Requirements for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing a small number of modifications to the capital and related regulations that were adopted on December 20, 2000. Many of the changes were identified in response to an advance notice of proposed rulemaking (ANPR) relating to unforeseen issues that were not addressed by the final capital rule. In addition to proposing certain conforming amendments, the Finance Board is proposing to clarify that the Federal Home Loan Banks (Banks) may pay dividends on Class A stock from retained earnings, to provide Banks with discretion to prohibit members from transferring Bank stock, to define the phrase ''charges against the capital of the Bank'', to clarify the off-balance sheet conversion factors for commitments to make advances and commitments to acquire loans, to change the provision governing the membership termination date for members seeking to voluntarily withdraw from the Bank System, and to add a requirement that a Bank make certain disclosures to its members before its capital plan can be implemented. This proposal also addresses other issues arising under the capital rule that, based on the ANPR comments, appear to require additional explanation or clarification, even though no amendments to the regulations are being proposed.

DATES: The Finance Board will consider written comments on the proposed rulemaking that are received on or before September 7, 2001.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at , or by regular mail to the Board, at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991; Ellen

Hancock, Senior Financial Analyst, (202) 408–2906; or Christina Muradian, Senior Financial Analyst, (202) 408–2584, Office of Policy, Research and Analysis; or Deborah F. Silberman, General Counsel, (202) 408–2570; Neil R. Crowley, Deputy General Counsel, (202) 408–2990; Thomas F. Hearn, Senior Attorney-Advisor, (202) 408–2976; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION

I. Background

The Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999) (GLB Act), amended the Federal Home Loan Bank Act (Bank Act) to change, among other things, the capital structure of the Banks from a ''subscription'' structure to one that includes both risk-based and minimum leverage requirements. The GLB Act also required the Finance Board to prescribe uniform capital standards for the Banks and required each Bank to adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations.

In addition to approving the new capital regulations, the Finance Board adopted on December 20, 2000 a resolution directing its staff to develop an ANPR that would seek comment on any issues that could arise in the capital planning process, from actions of other regulatory bodies or from other events in the general economy that could affect the capital development of the Banks, and that could require further action by the Finance Board. Accordingly, on March 2, 2001, the Finance Board approved an ANPR to help identify issues or uncertainties that were not contemplated by, or fully addressed in, the final capital rule or that have arisen only after the Banks have begun to develop their capital plans. *See* 66 FR 14093 (March 9, 2001). In addition to soliciting information on unresolved issues, the ANPR also sought comment on two specific issues: (1) how best to pay dividends on Class A stock, given statutory language that could be read to create a property interest for Class B stock holders in retained earnings; and (2) whether additional consideration needed to be given to the question of capitalizing out-of-district assets.

The Finance Board received 16 comment letters on the ANPR. Eight letters were from Banks, five from trade associations, and three letters were from Bank members, although two of the member comment letters were from the same member. The Finance Board has carefully considered all comments received on the ANPR. It is addressing below, however, only those issues that were not fully considered and resolved in the final capital rule, that have arisen since the Finance Board adopted the capital rule or that appear to require additional clarification or explanation. Some of the issues are addressed by proposing specific changes to the capital rule. In other cases, the Finance Board addresses the issues through a more complete explanation of current regulatory provisions.

II. Proposed Changes to the Regulations

Voluntary withdrawal from membership. One Bank requested guidance for applying § 925.26(b) and (c) of the Finance Board's rules in two specific situations. *See* 12 CFR 925.26(b) and (c). The Finance Board believes that the first issue raised by the commenter may best be addressed through a rule change, as is discussed below, while the second issue can be addressed by the Banks themselves in their capital plans.

The first issue assumes that a member is required to hold Class B shares to support outstanding borrowing from a Bank and is required to hold Class A shares as a condition of membership. Under those circumstances, the Bank asked whether a member withdrawing from the Bank could redeem its Class A stock at the end of the six-month redemption period or must the member wait until the end of the five-year Class B redemption period.

As adopted, § 925.26(b) sets the effective date of a member's termination as of the date on which the last of the applicable stock redemption period ends for the member's stock, whether the stock in question is held as a condition of membership, to fulfill an activity-based stock purchase requirement or as excess stock, unless the member cancels its withdrawal notice before that date. Thus, this provision would appear to prevent the Bank from redeeming Class A stock at the end of the six-month redemption period because that stock would be required to be held as a condition of membership until the membership terminates at the end of the five-year redemption period for the member's outstanding Class B stock. Because the rule appears effectively to extend the redemption notice period for Class A stock in the situation described by linking the membership termination to activity-based stock purchase requirements, and thereby, may burden members unnecessarily, the Finance Board is proposing to change the regulation. Under the proposed change, the membership of an institution that has submitted a notice of withdrawal would terminate as of the date on which the last of the applicable stock redemption periods end for the stock that is held as a condition of membership, as that requirement is set out in the Bank's capital plan, unless the institution has cancelled its notice of withdrawal prior to that date. If adopted, the proposed change would, in situations like those described by the Bank, require the Bank to redeem the Class A shares that are held as a condition of membership at the end of six-months, unless a Bank's membership requirement also required a member to hold Class B stock. In most cases, however, the Finance Board believes that the proposed rule change would help assure that the redemption date for the Class A stock held as a condition of membership would correspond to the date on which the member's withdrawal became effective.

The Bank also requested a clarification of the application of § 925.26(c), to a member that continues to participate in an activity after filing a notice of withdrawal. Specifically, the Bank asked if the redemption period for any additional Class B stock bought to fulfill an activity stock purchase requirement would begin to run from the date that the original withdrawal notice was filed, from the date of purchase of the new Class B stock, or some other date.

Under § 925.26(c), as adopted, the receipt by the Bank of a member's notice to withdraw commences the applicable stock redemption period for all Bank stock held by the member that is not already subject to a redemption request. The regulation does not address when the redemption period would commence for Bank stock purchased after the notice to withdraw has been submitted (such as to support new advances taken by the member). The regulation currently sets a minimum standard for the commencement of the notice period, as required by the Bank Act. *See* 12 U.S.C. 1426(d)(1). To the extent that a Bank is concerned about the commencement of the redemption periods for stock purchased subsequent to the submission of the notice to withdraw, it can address this issue in its capital plan by specifying that the redemption period either automatically commences upon purchase of the stock or only after the member has filed a notice to redeem the stock. The Bank, however, could not deem the redemption period to begin earlier than the date of purchase of the stock (such as on the date the Bank received the notice to withdraw) because that would

effectively cut short the statutory redemption period for the stock.

Alternatively, the redemption period may not be effectively lengthened either. For example, consider a member that holds only Class B stock, provides the Bank with a notice of withdrawal, and on the same day takes down a seven-year advance and purchases the additional Class B stock to support the advance. Five years after the notice of withdrawal, membership would terminate and all excess stock would be redeemed. The member, however, still would have an advance outstanding and still would hold stock that supports the advance. At the time of withdrawal, the member would have the option to hold the advance until maturity—in this case, another two years. If the institution makes the decision to hold the advance until maturity, the Bank would have to redeem the stock supporting the advance once the advance has been repaid, because the five-year redemption notice period would have elapsed two years earlier.

The Finance Board does not believe that a change in § 925.26(c) is required and intends to maintain the current flexibility provided in the rule, as outlined above.

Dividends on Class A stock. In the ANPR, the Finance Board requested comments on whether, in light of the GLB Act provisions conferring an ownership interest in the retained earnings of a Bank in favor of the Class B stockholders, a Bank could pay dividends to its Class A stockholders from its retained earnings. The Finance Board expressed the view that Congress was unlikely to have intended that the retained earnings provisions would be applied in such a manner as to preclude the possibility of a Bank paying dividends on its Class A stock, and indicated that it was inclined to amend the capital regulations to permit the payment of dividends on Class A stock from the retained earnings of the Bank. *See* 66 FR at 14093–94.

The Finance Board received comments from several Banks, all of which generally favored amending the regulations as necessary to permit the payment of Class A dividends from retained earnings. One Bank commented that the GLB Act should be construed as permitting dividends to be paid to Class A shareholders from retained earnings. Another Bank recommended that the GLB Act provisions giving Class B shareholders an ownership interest in the retained earnings be construed to mean that Class B shareholders get the retained earnings upon liquidation or the declaration of a dividend, but at all other times the board of directors is free to use the retained earnings in the ordinary course to pay an FHLBank's obligations, including the declared dividends on Class A Stock. A third Bank indicated that it plans to address any potential problem paying dividends on Class A stock from retained earnings by requiring all members to hold Class B stock; therefore no class of its members will be disadvantaged by a decision to pay dividends on Class A stock. That Bank further indicated that it would limit the amount of dividends paid on its Class A stock to the amount of its current earnings (presumably after they have been transferred to retained earnings), so that there would be no expropriation of retained earnings from a previous period by Class A shareholders. That Bank asked the Finance Board to clarify the conditions under which the Banks may be permitted to pay dividends on Class A stock.

A fourth Bank concurred that there is no indication that Congress intended to deprive Class A shareholders of dividends when it granted ownership of retained earnings to the Class B shareholders, and recommended that the Finance Board permit a Bank to pay Class A dividends from current earnings that have been closed to the Bank's retained earnings account.[1] Another Bank noted that under generally accepted accounting principles in the United States (GAAP) a Bank could pay Class A dividends from its current earnings before closing them to retained earnings, provided the Bank had given the Class A dividend a preferred status. If the Bank did not give the Class A stock such a dividend preference, however, it is not clear that paying such dividends from current net earnings would be permitted under GAAP.

The question about the use of retained earnings as a source of dividends for a Bank's Class A stock arises because of the interrelationship of three provisions of the Bank Act. One provision permits a Bank to pay dividends on its stock only from two sources: previously retained earnings and current net earnings. 12 U.S.C. 1436(a). A separate provision, added by the GLB Act, provides that the holders of the Class B stock shall own the retained earnings of the Bank. Id. Section 1426(h)(1). Yet another provision authorizes the Banks to issue either, or both, Class A and Class B stock and to establish the ''terms, rights, and preferences including * * * dividends * * * of each class of stock * * * consistent with Finance Board regulations and market requirements.'' *Id.* Section 1426(c)(4)(B).

The use of current earnings as a source of dividends (whether for Class A or Class B stock) is problematic because under GAAP a Bank must close its current earnings to its retained earnings account at the close of each accounting period. Although the previously retained earnings of a Bank are, by statute, a source for the payment of dividends, the GLB Act provisions conferring on the Class B stockholders an ownership interest in the retained earnings have created some uncertainty about whether a Bank may use its retained earnings to pay dividends on its Class A stock or only on its Class B stock. *See id.* Section 1426(h)(1). Read narrowly, this provision of the GLB Act could be construed to preclude a Bank from using its retained earnings—the ''property'' of the Class B stockholders—to pay dividends to the Class A stockholders, at least without the consent of the Class B stockholders. If the Finance Board were to endorse that view, however, it very well could preclude a Bank from paying any dividends on its Class A stock (assuming the Class A stock does not pay a preferred dividend, as noted above), which could effectively frustrate the clear intent of Congress to allow each Bank to determine whether to issue one or two classes of stock. If neither the retained earnings (due to the interest of the Class B stockholders) nor the current earnings (due to the requirements of GAAP) were available to pay dividends on the Class A stock, a Bank would have no other source under the Bank Act from which to pay dividends on its Class A stock.

As noted above, there are other provisions of the GLB Act that suggest strongly that the Congress did not intend that the retained earnings provision should be read so narrowly as to preclude the payment of dividends on the Class A stock. For example, Congress provided that each Bank must include in its capital plan, among other things, provisions relating to the ''terms, rights, and preferences, including * * * dividends * * * of each class of stock issued by the bank, consistent with Finance Board regulations and market requirements.'' *Id.* Section 1426(c)(4)(B). That language clearly contemplates an intent that each Bank should be permitted to establish the dividend rights for each class of its capital stock, and to do so based on its perception of

[1] Following that recommendation, however, would require the Finance Board to declare that current earnings that have been transferred to the retained earnings acount are not ''retained earnings'' for regulatory purposes, but continue to be current earnings despite the transfer. Such a change would require the Finance Board to create an accounting standard that varies from GAAP, which the Finance Board does not believe is necessary in order to achieve the same result.

what the ''market'' for its stock required, *i.e.,* the terms, rights, and dividends that the members would require in return for purchasing each class of Bank stock.

Given the intent of Congress to allow an individual Bank, subject to Finance Board regulation, to determine the dividend rights for any class of stock that it issues, it appears unlikely that the Congress also intended to preclude a Bank from paying any dividends on the Class A stock. Even if the Congress were to have intended that result, it is more likely that the Congress would have done so expressly, rather than indirectly by enacting a new provision that is somewhat at odds with a long-standing provision of the Bank Act regarding the available sources of dividends for Bank stock. Moreover, construing these provisions of the Bank Act in a manner that would effectively preclude the payment of dividends on the Class A stock could make it difficult, if not impossible, for a Bank to sell Class A stock to its members. That would be an absurd result, in light of the clear intent of the Congress to create a new capital structure for the Banks. For those reasons, the Finance Board believes that it should construe these provisions to allow the payment of dividends on Class A stock from retained earnings, as those amounts may be calculated under GAAP. Accordingly, the Finance Board proposes to amend § 931.4 to state expressly that a Bank may pay dividends on both Class A and Class B stock from either of the sources specified in 12 U.S.C. 1436(a).

Transfer of capital stock. One commenter requested that the Finance Board eliminate a member's right to transfer excess capital stock to another member (or prospective member) of that Bank. *See* 12 CFR 931.6. In the alternative, the commenter requested that the rule be amended to make such member-to-member transfers of Bank stock expressly subject to a Bank's approval. After considering this comment, the Finance Board is proposing to amend § 931.6 to allow a Bank the option of generally prohibiting its members from transferring Bank stock and if a Bank chooses to allow transfers, making the transfers clearly subject to the Bank's approval.

The limited circumstances set forth in § 931.6 in which a member can transfer Bank stock to another member are broadly consistent with current practice for stock transfers that have long been allowed under the Bank Act. *See* 12 U.S.C. 1426(f)(1994). Further, as initially adopted, § 931.6 effectively provides the Bank with the ability to nullify individual stock transfers by requiring that a member's transfer of Bank stock be recorded in the books and records of the Bank to be effective, although the provision does not expressly require a Bank to approve a specific transfer. This provision does not, however, allow a Bank generally to prohibit such transfers.

Upon consideration of this comment, the Finance Board believes that it would be consistent with the discretion afforded a Bank in the GLB Act ''to establish standards, criteria, and requirements for the * * * transfer * * * of stock issued by that bank,'' *id.* Section 1426(c)(5)(B), to allow a Bank, as part of its capital plan, either to prohibit any transfers of its stock among its members or to permit these transfers subject to the conditions currently set forth in § 931.6. The Finance Board, therefore, is proposing to amend § 931.6 accordingly and to make a conforming change to § 933.2(e)(3). Under this proposed change, each Bank would be required to state in its capital plan whether a member may transfer capital stock of the Bank, and, if such transfers are allowed, to specify the procedures that a member must follow to effect the transfer, and to specify that any transfer may only be undertaken in the limited circumstances currently set forth in § 931.6. The proposed amendment also expressly provides that a Bank, in its capital plan, may require a member to obtain the Bank's approval to effect the transfer of stock.

Charges against capital. Seven Banks commented that the phrase ''charges against the capital of the Bank'' as used in § 931.8 was ambiguous. *See* 12 CFR 931.8. Commenters were unsure if the phrase referred to charges against any component of total or permanent capital, including retained earnings, or only to charges against the capital stock of a Bank. They contended that the latter meaning was more reasonable, especially from an operational standpoint, and should be applied.

Section 931.8 specifies that a Bank may not redeem or repurchase capital stock without the written permission of the Finance Board if the Finance Board or the board of directors of the Bank determines that the Bank has or is likely to incur losses that result in or are likely to result in charges against the capital of the Bank. The prohibition of § 931.8 applies even if the Bank would be in compliance with its regulatory capital requirements after the stock repurchase or redemption and for as long as the Bank continues to incur such charges or until the Finance Board determines that such charges are not expected to continue. This provision implements the requirements of § 6(f) of the Bank Act, as amended by the GLB Act, which states that:

> [i]f the Finance Board or the board of directors of a * * * [B]ank determines that the [B]ank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the [B]ank, the [B]ank shall not redeem or repurchase any stock * * * without the prior approval of the Finance Board * * *

12 U.S.C. 1426(f).

After further consideration, the Finance Board agrees that the phrase ''charges against the capital of the Bank'' as used in § 931.8 should be clarified. The phrase is taken from 6(f) of the Bank Act, as amended by the GLB Act, but it is not defined in that provision or elsewhere in the statute. More generally, while the statute defines both ''permanent capital'' and ''total capital'', the term ''capital'' itself is not defined in the Bank Act. The Finance Board, however, believes that, given general principles of statutory construction, the purpose of the statutory provision and the regulatory scheme established by the Bank Act, the phrase ''charges against the capital of the Bank'' is more reasonably interpreted to mean a charge against the capital stock of a Bank.

General rules of statutory constructions dictate that every word or clause in a statute should be given effect. *See* 2A Norman J. Singer, *Statutes and Statutory Construction* § 46:06 (6th ed. 2000). If Congress intended the phrase ''charges against the capital of the Bank'' to mean a charge against any element of total and permanent capital, which would include retained earnings, a reference to a loss would be sufficient to trigger the applicable limitations in 6(f) of the Bank Act, and the addition of the phrase ''charges against the capital of the Bank'' would be redundant. To explain more fully, a Bank will experience a loss when its expenses exceed its income for a certain period so that the Bank records negative net income for that period. Negative net income, in turn, results in a decline in retained earnings, or put another way, any loss will result in a charge against retained earnings. If the phrase ''charge against the capital of the Bank'' were interpreted to mean a charge against any element of permanent or total capital, which would include retained earnings, a charge against the capital of the Bank would occur whenever a Bank experienced a loss. By requiring that a loss result in ''charges against the capital of the Bank'' before the applicable limitations in 6(f) of the Bank Act are triggered, the statutory language appears to contemplate that ''charges against the capital of the Bank'' must

mean a charge against something other than retained earnings.

More importantly, interpreting ''charges against the capital of the Bank'' to include a charge against retained earnings would seem inconsistent with other provisions in the statute. Specifically, the Bank Act authorizes the Banks to pay dividends from previously retained earnings, but contains no prohibition on paying such dividends if the Bank is or is about to incur a loss. *See* 12 U.S.C. 1436. It seems inconsistent, and without purpose, to interpret the statute to burden the Banks with obtaining Finance Board approval to redeem or repurchase stock if there is a loss but still allow the Bank to use retained earnings without restriction to pay dividends. By contrast, other limitations in the statute that are placed on retained earnings with the apparent purpose of preserving the Bank's total or permanent capital apply both to redemption and repurchase of capital stock and the payment of dividends. *See* 12 U.S.C. 1426(f) (no redemption or repurchase of capital stock if such action results in the Bank's failing to meet its capital requirements) and 12 U.S.C. 1426(h)(3) (no distribution of retained earnings if the distribution results in the Bank's failing to meet its capital requirements). In addition, it seems unreasonable to burden the Banks with the requirements of 6(f) of the Bank Act whenever the Banks experienced or were expected to experience even a small loss.

Thus, the Finance Board believes that the phrase ''charges against the capital of the Bank'' should be interpreted to mean a charge against the capital stock of the Bank.[2] To codify this interpretation, the Finance Board is proposing to define ''charges against the capital of the Bank'' in § 930.1 to mean an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount. This definition is based on the criteria set forth in the Industry Audit Guide published by American Institute of Certified Public Accountants (AICPA) for evaluating impairment of Federal Home Loan Bank and Federal Reserve Bank stock. *See* Audits of Banks, Investment in Debt and Equity Securities, FHLB or Federal Reserve Bank Stock, §§ 5.97–5.101 (AICPA May 1, 2000). The Finance Board drew on the capital stock impairment criteria because 6(f) of the Bank Act, based on the title of the provision, appears intended to address capital impairment. Further, by drawing on the AICPA criteria, the Finance Board is relying on industry guidance that is applied in a manner consistent with GAAP. It has generally been the Finance Board's goal to be consistent with GAAP to the extent possible in its capital regulations. *See* 65 FR 43408, 43420 (July 13, 2000) (proposed capital rule); and 66 FR at 8281–82. In evaluating whether a decline in value of a Bank's equity is other than temporary, as that term is used in the proposed definition of ''charges to capital'', the Finance Board would consider, and would expect the Banks to consider the AICPA's criteria for evaluating impairment of Bank stock.

Off-balance sheet credit conversion factors. Section 932.4(f) requires the Banks to convert all off-balance sheet credit exposures into equivalent on-balance sheet credit exposures or credit equivalent amounts, determine the type of the item, and then apply the appropriate credit risk percentage requirement to estimate the instrument's credit risk capital charge. *See* 12 CFR 932.4(f). Section 932.4(f)(1) allows the Banks to use Finance Board-approved internal models to convert some or all off-balance sheet credit exposures into on-balance sheet credit equivalents. For Banks that lack appropriate internal models, the regulation provides credit conversion factors for off-balance sheet items in Table 2 of part 932.

In adopting Table 2, the Finance Board divided a category that had been proposed as ''commitments to make advances or other loans'' into two categories one of which covered commitments to make advances and the other which covered commitments to acquire loans. This change recognized that under Acquired Members Asset (AMA) programs, the Banks may enter into certain commitments to acquire loans that may be recorded as off-balance sheet items. Like the former category, the new categories of commitments were given a 100 percent conversion factor.

The Finance Board received comments from seven Banks on the off-balance sheet credit conversion factor for commitments to acquire loans. Generally, the commenters expressed concern that ''master commitments'' to acquire loans under AMA programs would appear to have a 100 percent conversion factor even though such commitments were not an accurate indicator of future acquisitions. Commenters suggested that the Finance Board conform its requirements to those of other federal bank regulators, who would apply a 100 percent conversion factor only to commitments subject to ''certain drawdown,'' (*i.e.,* commitments that an institution is legally obligated to honor at a specified future date no matter what change may have occurred in the counterparty's financial situation). Where there is uncertainty as to the amounts to be delivered under particular loan commitments, and in recognition that such commitments are often unfulfilled, the other federal bank regulators would apply a 50 percent conversion factor for commitments with a maturity of greater than one year, and zero percent for such commitments with maturities of one year or less.[3] An exception is provided for other commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration in a borrower's creditworthiness, at any time without prior notice. The credit conversion factor for such commitments is zero.

Because it was generally the intent of the Finance Board to conform to the extent possible its credit risk charges to the Basle Accord as currently incorporated by the federal bank regulatory agencies, the Finance Board is proposing to revise the credit conversion factors of Table 2 so that the 100 percent credit conversion factor applies only to commitments subject to certain drawdown. Further, the Finance Board is proposing to define certain drawdown to mean a legally binding agreement that commits the Bank to make an advance or to acquire a loan, at or by a specified future date.

Because, as noted by one Bank, AMA master commitments to acquire loans, in general, appear to be effectively cancelable by either party, it appears that most, if not all AMA master commitments, would not be commitments subject to certain

[2] In practical terms, the Bank's regulatory capital under the Bank Act and the current Finance Board rules consists of the paid-in value of Bank stock and retained earnings. If a Bank experienced a loss that resulted in a charge against its capital stock, the loss would have already been more than the Bank's retained earnings so that the Bank would have no retained earnings from which to pay dividends. Thus, the statutory scheme imposes a *de facto* prohibition on the payment of dividends in this situation while § 6(f) of the Bank Act provides the Finance Board with discretion to impose similar prohibition on the redemption and repurchase of stock.

[3] The Basel Committee on Banking Supervision (Basel Committee) is proposing to change the credit conversion factor for commitments with maturities of one year or less to 20 percent. *See* Basel Committee ''The Standardized Approach to Credit Risk, Supporting Document in the New Basel Capital Accord 10'' (Jan. 2001). In its capital rule, the Finance Board adopted the approach that was eventually put forth in the proposed Basel Accord of a 20 percent credit converion factor for commitments with maturities of one year or less, subject to an exception for commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration in a borrower's creditworthiness.

drawdown. Moreover, they appear to be eligible for the exception provided in § 932.4(f)(2), which applies to commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration in the borrower's creditworthiness, and, therefore, to have a credit conversion factor of zero percent. Likewise, advance commitments that are unconditionally cancelable or that effectively provide for automatic cancellation due to the deterioration of the borrower's credit worthiness, at any time by the Bank without prior notice, also would not be subject to certain drawdown and would be eligible for a credit conversion factor of zero percent under the exception in § 932.4(f)(2).

Disclosure to members. As part of its efforts to provide assistance to the Banks in the preparation of their capital plans, the Finance Board transmitted to the Bank Presidents at the end of May, 2001, a package of staff guidance materials (Guidance) consisting of: (1) A series of checklists for consistency with the capital regulations; (2) a description of materials that could be submitted to support a determination of capital plan feasibility and approval of Risk Assessment Procedures and Controls; and (3) Bank System level review procedures. One aspect of item (2) describes materials that would best demonstrate feasibility of the implementation of the Bank's capital plan, as required by § 933.2(g) of the Finance Board's rules. 12 CFR 933.2(g). The Guidance notes that the Finance Board will evaluate the extent to which the Bank's members have been provided with sufficient information about the costs of membership and the desirability of Bank services under the capital plan, and that such information will be used to establish, to the extent possible, the degree of confidence that may be placed in the capital plan's assumptions regarding the size and make-up of the Bank's post-conversion membership base, pro-forma financial statements and the ability of the Bank to adequately capitalize its activities to verify that the capital plan can be safely implemented.

The Guidance indicates that the Finance Board will review materials and communications made available by the Banks to their members for the quality of information provided regarding a number of issues, including: (1) Adequate description of the member's minimum investment requirements; (2) sufficient information to describe whether the capital requirements favor some members over others, or whether certain activities are priced to encourage or discourage member participation; (3) sufficient description of the Bank's dividend policy, including discussion, as appropriate, of any risk factors that could adversely affect dividends, and of the potential impact of different member leverage and risk-based capital requirements on return on equity; (4) description of the Bank's current operating and financial condition, including material issues that bear on the future operations of the Bank; and (5) description of any changes in products, activities and strategies contemplated in the Bank's capital plan or strategic plan.

As the Guidance was being developed, and even after the Guidance was transmitted to the Banks, a number of the Banks have requested clarification with respect to the type and amount of communications they should or will be required to provide to members in connection with their capital plans. The Finance Board was not inclined initially to impose specific disclosure requirements on the capital plan process, choosing instead to leave the entire member outreach process to the discretion of the Banks. Given that the use of disclosure documents can be a valuable tool in any member outreach program, given that the Banks have continued to ask for assistance in this area, and given that the quality of disclosure on a number of important issues will play a critical role in the Finance Board's review of the capital plans, the Finance Board has now come to believe that there is merit in prescribing a baseline of required disclosure that would help the Banks meet the criteria established in the Guidance. The Finance Board believes also that it is appropriate to look to the disclosure standards established by the Securities and Exchange Commission (SEC) as the model for any disclosure requirements that it includes in its rules, and it has done so in drafting proposed § 933.5.

The proposed rule first would require that no capital plan become effective until disclosure meeting the requirements of Item 11(a) through (d) and Item 12(a) through (e) of Schedule 14A of the SEC's proxy rules (17 CFR 240.14a–101, Items 11 and 12) (Proxy Statement Disclosure) and of § 933.5(b) of the proposed rule has been provided to members. Finance Board rules establish the effective date of a Bank's capital plan as the date on which the Bank first issues any Class A or Class B stock. *See* 12 CFR 931.9(a).

Items 11 and 12 of Schedule 14A are usually thought of as mutually exclusive provisions—Item 11 requires disclosure regarding transactions in which action is to be taken with respect to the authorization or issuance of securities otherwise than for exchange of outstanding securities of the issuer; Item 12 requires disclosure regarding transactions in which action is to be taken with respect to the modification of any class of securities of the issuer, or the issuance or authorization for issuance of securities of the issuer in exchange for outstanding securities of the issuer. Because of the unique nature of the Banks and of this capitalization, the transactions that will occur upon implementation of the Banks' capital plans are something of a hybrid. Rather than try to characterize the transactions as one or the other, § 933.5(a) of the proposed rule contemplates that the appropriate disclosure from both items would be provided, such as: the title and amount of securities ''authorized'' under the capital plan (Item 11(a)); the information required by Item 202 of Regulation S–K of the SEC's regulations (17 CFR 229.202) (a description of dividend rights, and other rights, terms and preferences of the stock) (Item 11(b)); a description of any material differences between the outstanding securities and the ''new'' securities in respect of any Item 202 of Regulation S–K matters (Item 12(b)); the reasons for the transaction and the general effect upon the rights of existing security holders (Items 11(d) and 12(c)); and a brief outline of any other material features of the capital plan (Item 12(e)).

Section 933.5(b)(1)(i) of the proposed rule would require disclosure of financial information that is in scope, form and content consistent with the requirements of the SEC's regulations S–X and S–K (17 CFR parts 210 and 229). The proposed rule also would require disclosure of pro forma financial information related to the implementation of the capital plan, consistent with that referenced in the Guidance. Proposed § 933.5(b)(1)(ii) would require disclosure of quarterly pro forma balance sheets and income statements covering two years from the ''as of'' date (next-to-latest quarter or latest quarter-end prior to submission of the capital plan) or, at a minimum, six quarters from the expected date of conversion to the new capital stock, whichever time period is greater, in detail sufficient to illustrate changes in the Bank's capital structure, dividends, product volumes, investment volumes, new business lines, and risk profile. Section 933.5(b)(1)(iii) of the proposed rule would require disclosure of the pro forma risk-based capital requirement for the ''as of'' date and for the quarterly periods reflected pursuant to proposed § 933.5(b)(1)(ii), if not already included

in the pro forma balance sheet. Disclosure of the assumptions underlying the pro forma financial information, and the bases for these assumptions, would be required by § 933.5(b)(1)(iv) of the proposed rule.

Any of the financial information required by proposed § 933.5(b)(1) may be incorporated by reference into the disclosure document chosen by the Bank, provided the information being incorporated is contained in an annual or quarterly Bank or Bank System report, or in information filed with the Finance Board as a part of the capital plan approval process, and the disclosure document identifies the information being incorporated by reference. *See* § 933.5(b)(1)(E) of the proposed rule. If the Bank is incorporating financial or business information by reference from the Bank's or the System's annual or quarterly financial reports or from information filed with the Finance Board along with the capital plan, the Bank also must provide a name, address and telephone number to which members must make requests to obtain the incorporated information without charge to them upon written or oral request. Similarly, the Bank is required by proposed § 933.5(b)(3) to state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. Section 933.5(b)(2) of the proposed rule requires a Bank to fully describe any amendments anticipated to be made to its by-laws, policies or other governance documents as a result of the implementation of the capital plan, and § 933.5(b)(4) of the proposed rule requires a Bank to include a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the transaction. This information is all required to be provided to the members without charge to them.

The Finance Board is not prescribing a form to be used by the Banks in providing the required disclosure to members. The full range of possible formats is available—proxy statements (if the Bank is choosing to seek a member vote), information statements, letters, brochures—and the Bank is free to make use of whatever format it believes is appropriate.

The Finance Board is also proposing that members be provided all disclosures that would be required under § 933.5 of the proposed rule at least 20 days prior to the intended effective date of a Bank's capital plan. In thinking about models for a suitable timeframe, the Finance Board once again looked to the securities laws for help, and specifically to the proxy statement analog. Many state corporate codes impose a meeting notice or proxy statement delivery requirement minimum of ten days on state-chartered business corporations. For example, the Delaware General Corporate Code states that written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each security holder entitled to vote at the meeting. *See* 8 Del. C. Section 222 (1999). This notice typically is transmitted with the proxy statement. Furthermore, under Regulation 14C of the SEC's proxy rules, in connection with a meeting or action for which proxies are not being solicited, delivery of an information statement is required at least 20 calendar days prior to the meeting or prior to the earliest date on which the action may be taken. *See* 17 CFR 240.14c–2(a) and (b).

The reason for a minimum information delivery requirement is to allow shareholders adequate time to consider the issues involved in the actions being taken. Generally speaking, the more complex or essential to the life of the corporation the action is, the longer the prior delivery period would be to be deemed reasonable. So, while ten days would be adequate time for shareholders to consider a slate of directors for an uncontested election, shareholders are required to be given a minimum of 20 days to study the implications of a corporate acquisition under the SEC's proxy rules, even if no vote is required. *Id.* § 240.14c–2(b).

The Finance Board believes that the implementation of the new capital structures for the Banks would generally be considered an issue of importance to Bank members. The Finance Board also believes that delivery of the required disclosure at least 20 days prior to the effective date of a capital plan, would provide a member with reasonable opportunity to opt out of the ''conversion'' under the capital plan if the member so desired while not unreasonably delaying the Bank's implementation of the capital plan once the capital plan had been approved by the Finance Board. It should be noted that the proposed rule provides that all required disclosure ''shall be transmitted, sent, or given to members'' at least 20 days prior to the effective date of a Bank's capital plan; therefore, the disclosure material does not have to be in members hands 20 days prior to the capital plan's effective date. However, it is the Finance Board's intent that the Banks choose a reasonably expeditious form of transmission for the disclosure material so as not to render the 20-day period a nullity. Regular, first class mail is presumed, but other reasonably prompt methods of distribution may be used instead of mailing. The Finance Board requests comment on whether a longer or shorter time period may be more reasonable than the 20 days now proposed in § 933.5(a).

Finally, the Finance Board wishes to stress that these provisions are being proposed primarily to add consistency, clarity and precision to the regulations. It is not the Finance Board's intention to impose liability under the federal securities laws on the Banks, nor to create any private right of action. Therefore, the Finance Board has included proposed § 933.5(c) to make clear that nothing in § 933.5 would create or be deemed to create any rights in any third party.

Conforming changes. The Finance Board is also proposing several conforming changes. It is proposing to amend the heading in 12 CFR 932.4(d) to conform to other paragraph headings in that section and is proposing to correct in 12 CFR 932.4(e)(2)(ii)(E) a reference to another section of its rules. The Finance Board is also proposing to revise 12 CFR 925.27(c), to make clear that an involuntarily terminated member may continue to receive dividends on its stock until the stock is either redeemed or repurchased. The term ''repurchased'' was inadvertently omitted from this provision as adopted.

III. Discussion of Other Issues

Out-of-district assets. In the ANPR, the Finance Board specifically requested comment on how the Banks could capitalize investments in the assets of another Bank (*e.g.*, the purchase of a participation interest) or in assets acquired from the member of another Bank (*e.g.*, Acquired Member Assets (AMA)). The Finance Board noted that such ''out-of-district'' assets may present special problems for capitalization, especially with regard to the risk-based capital requirements, because the GLB Act and the Finance Board rules required a Bank to sell its stock only to its members. *See* 66 FR at 14094.

Three Banks and one member institution commented on this matter.[4]

[4] One national and several state trade associations submitted comments urging the Finance Board to amend 12 CFR 933.2(b) to require all Banks to adopt activity-based stock purchase requirements that would apply to AMA acquired from the Bank's members. These comments did not specifically concern the question of capitalizing out-of-district assets but involved the question of the Finance

Two of the Banks believed that no action needed to be taken to address capitalizing out-of-district assets. One of these two Banks noted that a Bank could capitalize out-of-district assets in the same manner as it capitalized other investments that did not have a nexus with a member, and the other Bank stated that it had no problem capitalizing the out-of-district assets on its books. The third Bank suggested that a change to the Finance Board's rule be made to allow a Bank that purchased assets from a member of another Bank to sell Class B stock to that member even though the membership resided in another district. The commenter believed that the stock should be non-voting and that its sale should be allowed only upon the approval of the Bank in which the membership of the seller-institution resided.

The member institution generally opposed allowing a Bank to acquire out-of-district assets arguing that such investments shifted risks from the out-of-district seller to the Bank members. The member also opposed capitalizing out-of-district assets through voluntary stock purchases because these purchases could create distinctions between owners and users of the Bank System, and ultimately raise safety and soundness concerns because non-user owners would be more likely to leave the system in times of financial stress.

Based on these comments, the question of capitalizing out-of-district assets does not appear to raise issues that are immediately pressing. As the two commenters noted, out-of-district assets are similar to, and can be capitalized in the same manner as, any other Bank investment that does not have a direct nexus with a Bank member. Further, it does not appear that the Banks' current investments in out-of-district assets are raising safety and soundness concerns or changing the nature of the Bank System along the lines described by the member institution in its comments. The Finance Board also believes that it is at best unclear whether the suggestion that it allow the conditioned sale of Class B stock to members of another district would be consistent with the statutory dictates that a Bank's stock only be held by members of that Bank. *See*, 12 U.S.C. 1426(a)(4)(D) and 1426(c)(5)A). Because there appears to be no immediate concern with regard to capitalizing out-of-district assets, however, the Finance Board has determined that no action on this matter need be taken at this time.

Computation of voting rights. Four Banks sought clarification about how the computation of the maximum number of votes that a member may cast in an election of directors is conducted, particularly if a Bank has issued both Class A and Class B stock. Under section 7(b) of the Bank Act, in an election of directors for a particular state, each member in that state is permitted to cast one vote for each share of Bank stock that it owned as of the record date, subject to a statutory cap. *Id.* Section 1427(b). The cap is calculated as being equivalent to the average number of shares of stock that each member in that state was required to own as of the record date. If a Bank has issued both Class A and Class B stock, the current regulations require that the Bank calculate the statutory cap separately for each class of outstanding Bank stock. 12 CFR 915.5(b).

Because it is possible that some members of a Bank that has issued both Class A and Class B stock might not own both classes of stock as of the record date, the commenters questioned whether the Bank should calculate the average number of shares outstanding by using as the denominator all of the members that are located within a particular state or just the total number of members within that state that own the particular class of stock as of the record date. The Finance Board believes that the statutory language, which refers to the amount of stock ''required * * * to be held'' by the ''members of such bank located in such State,'' requires that the calculation of the state averages be done based on the total number of members located in the particular state, regardless of whether certain of those members own both classes of stock. Because the Bank Act gives each Bank considerable latitude in establishing the minimum stock purchase requirements to be imposed on each of its members, it is possible that a capital plan could impose a stock purchase requirement of ''zero shares'' on certain of its members for one class of stock. For example, if a capital plan were to require a member to purchase Class A stock for membership purposes and to purchase Class B stock for activity purposes, any member that had no outstanding advances or other business activities as of the record date would have a stock purchase requirement for the Class B stock of ''zero shares''. Under section 7(b) of the Bank Act, the Banks must use the amount of stock ''required to be held'' by each member in calculating the average stock holdings for each state. Even though the new capital provisions adopted by the GLB Act allow for the possibility that the amount of a particular class of stock that is ''required to be held'' by a particular member may be zero in certain circumstances, that possibility alone does not justify disregarding the ''required to be held'' language in the Bank Act. Accordingly, the Finance Board is not proposing to amend its regulations to exclude from the calculation members who happen to own no shares of a particular class of stock as of the record date. In order to avoid any uncertainty on this issue, however, the Finance Board is taking this opportunity to make clear that the state-by-state calculation of the average stock ownership is to be conducted using in the denominator the number of members that were located in the particular state as of the record date.

The following example illustrates how the voting rights should be computed in an election of directors for a Bank that has issued both Class A and Class B stock but where some members do not own both classes of stock. Assume that a Bank were to have 100 members located in a particular state, each of which each owned various amounts of Class A stock, but only 60 of which also owned shares of Class B stock. Assume further, that the amount of Class B stock required to be held by those 60 members varies from member to member, but in the aggregate totals 800 shares. When computing the average number of Class B shares required to be held by the members in that state, the denominator would be 100 (representing the 100 members located in that state) and the numerator would be the aggregate amount of Class B stock required to be held as of the record date, which would be 800 shares. Thus, the maximum number of votes that any one of the 60 members from that state could cast based on its Class B stock ownership would be 8 votes (800 shares ÷ 100 members = 8 shares). Any member required to hold 8 or fewer shares of Class B stock as of the record date would be unaffected by the cap, but any other members required to hold more than 8 shares of Class B stock could cast no more than 8 votes in the election of directors, based on their Class B stock ownership. To the extent that those 60 members also were required to hold shares of Class A stock as of the record date, they could cast a number of votes based on their Class A

Board mandating specific activity stock purchase requirements. In the **SUPPLEMENTARY INFORMATION** section of the adopting release for the final capital rule, the Finance Board stated that while a Bank had to require its members to purchase stock as a condition of conducting business with it, the determination of how to structure the minimum investment requirement was to be left to the Banks. *See* 66 FR at 8275–76. Thus, in considering the final capital rule, the Finance Board decided not to require mandatory activity-based stock purchase for AMA and sees no reason to reconsider the issue at this time.

stock, up to the average amount of Class A stock required to be held by all of the members in that state. Each of the other 40 members in that state that own no Class B stock could participate in the election based on the amount of Class A stock that each was required to hold, subject to the statutory cap for the average amount of Class A stock required to be held, which would be calculated as of the record date in the manner described above.

Discretionary redemption of a member's excess stock. Five Banks requested clarification of the requirements for redemption of excess stock. *See* 12 CFR 931.7(a). These commenters stated that § 931.7(a) could be read to prevent a Bank from repurchasing a member's excess stock prior to the end of the applicable notice period (*i.e.,* six months for Class A stock and five years for Class B stock) if a member has filed a notice to redeem the excess stock. They believed such an interpretation was contrary to the provisions of the Bank Act. One commenter also stated that § 931.7(a) should be revised to permit a Bank to redeem stock held as a membership requirement prior to the expiration of the required notice period upon the member's filing of a notice to withdraw from membership.

The commenters also stated that § 931.7(a) appeared to require a Bank to redeem a member's excess stock at the end of the required notice period. They believed that such an interpretation was contrary to section 6(e)(1) of the Bank Act, 12 U.S.C. 1426(e)(1), which they interpreted as providing a Bank with discretion to decline to redeem excess stock. Several of the commenters expressed concern that a mandatory redemption requirement would undermine the reasoning of the Internal Revenue Service's ruling allowing tax deferred treatment of dividends paid out as Bank stock, and would result in the loss of tax deferred treatment for these stock dividends *See* I.R.S. Rev. Rul. 90–98 (Nov. 26, 1990).

After considering these comments, the Finance Board believes that it should provide additional explanation concerning the redemption and repurchase provisions of the Bank Act and the Finance Board rules.[5] The Finance Board also has concluded, however, that no changes to § 931.7(a) are needed.

First, the redemption and repurchase rules do not prohibit a Bank from repurchasing excess stock for which a member has already filed a redemption notice as some commenters seem to fear. Section 6(e)(1) of the Bank Act states that ''a Bank, in its sole discretion, may redeem or repurchase, any shares of Class A or Class B stock issued by [it] and held by a member that are in excess of the minimum stock investment required of that member.'' In the Finance Board's view, this provision provides a Bank with the discretion either to repurchase a member's excess stock or to wait for the end of the applicable notice period to redeem such excess stock. This discretion is fully captured in § 931.7(b) of the Finance Board's rules, which states that a ''Bank, in its discretion and without regard to the applicable redemption periods, may repurchase from a member any outstanding Class A or Class B capital stock that is in excess [of the member's minimum investment requirement].'' 12 CFR 931.7(b). Section 931.7(b) does not limit the Bank's right to repurchase stock only to those shares of excess stock for which a member has not filed a notice of redemption. Thus, a Bank already has the discretion to repurchase any excess shares of stock without regard to the notice period, whether or not a member has filed a notice to redeem such stock, and no further changes need to be made to § 931.7(a) to provide this right. The right to repurchase excess stock, however, would be subject to other applicable limitations in the Bank Act, the capital regulations and a Bank's capital plan, including those in §§ 931.7(c) and 931.8 of the Finance Board rules, 12 CFR 931.7(c) and 931.8.

Second, the Finance Board wishes to reiterate that § 931.7(a) requires that a Bank redeem stock at the end of the statutory redemption, except if the limitations set forth in §§ 931.7(c) and 931.8 of the Finance Board rules apply. Before adopting the final capital rule, the Finance Board considered the question of whether the Bank Act provided a Bank with the discretion to deny a redemption request. The Finance Board concluded that:

> [i]t is not apparent from the GLB Act that a Bank would have the authority to deny a redemption request if the capital of the Bank would not become impaired by the redemption or if the Bank would remain in compliance with its regulatory capital requirements.

66 FR at 8279. Moreover, as discussed above, section 6(e)(1) of the Bank Act appears to provide the Bank with the discretion to choose between either repurchasing a member's excess stock or waiting to redeem the excess stock at the end of the statutory notice period, which begins to run only if a member files a notice to redeem the excess stock. In addition, the Finance Board notes that under the pre-GLB Act regulations and procedures, the term ''redemption'' as used in the I.R.S. Rev. Rul. 90–98 and relevant court cases dealing with the tax status of Bank stock dividends, *see e.g., Colonial Sav. Ass'n* v. *IRS*, 854 F.2d 1001 (7th Cir. Aug. 1988) and *Western Sav. Fed. Sav. and Loan Ass'n* v. *IRS*, 880 F.2d 1005 (8th Cir. July 27, 1989), could refer to either the immediate acquisition by the Bank of excess stock at the request of the member or the acquisition of the required stock that was held by members at the end of the statutory waiting period after a member withdrew from the Bank System. As already discussed, under the GLB Act amendment and the rules adopted to implement those amendments, these acquisitions are now each separately identified, with the former transaction similar to what is now called a repurchase, and the latter transaction falling into the category of a redemption, of Bank stock. *See*, note 5, *supra*. Repurchase of excess stock remains solely at the discretion of the Bank, and, unlike under the pre-GLB Act procedures, redemption of purely excess stock at the request of the member is now subject to a mandatory waiting period of six-months for Class A stock or five-years for Class B stock. It is unclear whether the imposition of a mandatory waiting period would mean that the member's right to redeem its stock as set forth in 931.7(a) provides the member with a meaningful election to receive stock dividends in either cash or stock form, as appears to be necessary for Bank stock dividends to be taxable. Given these considerations, the Finance Board declines to make changes to § 931.7(a) to allow redemption of excess Bank stock to be at the discretion of a Bank.

The Finance Board also declines to adopt the commenter's suggestion to revise § 931.7(a) to allow a Bank to repurchase stock held pursuant to a membership requirement upon the filing of a notice to withdraw from membership and prior to the expiration of the required notice period, because this change appears to be contrary to the statute. The GLB Act allows only excess stock to be repurchased prior to the end of the statutorily imposed notice periods. Under the statutory scheme as implemented by the Finance Board

[5] While § 6 of the Bank Act, 12 U.S.C. 1426, does not specifically define the terms redemption and repurchase, § 930.1 of the Finance Board rules defines redemption to mean a Bank acquisition of its outstanding Class A or Class B stock at par value following the expiration of the six-month or five-year statutory redemption period, respectively for the stock, and defines repurchase to mean the acquisition by a Bank of excess stock prior to the expiration of the six-month or five-year redemption period for the stock. 12 CFR 930.1.

rules, only stock held above levels required by a capital plan's minimum membership and activity based stock purchase requirements would be excess. *See* 12 CFR 930.1 (defining excess stock). More importantly, the statute clearly states that a member's submission of a notice of intent to withdraw from membership or its termination of membership in any other manner shall not, in and of itself cause any Bank stock to be deemed excess. *See* 12 U.S.C. 1426(e)(2). To adopt the suggested rule change, the Finance Board would in effect have to deem stock held as a requirement of membership as excess upon the member's filing of a notice to withdraw, an assertion that is contrary to the clear requirements of the Bank Act as amended by the GLB Act.

The Finance Board also has received inquiries about whether stock held by a member of one Bank may be considered to be excess stock (and thus eligible for repurchase) whenever that institution merges into a member of another Bank. As noted above, the Bank Act expressly provides that the submission of a notice of withdrawal from membership or the termination of membership in any other manner (such as through a merger into a member of another Bank) do not cause the stock of the member to become excess stock. Accordingly, such a merger, in and of itself, cannot cause the disappearing member's Bank stock to become excess stock. As a practical matter, however, some or all of the Bank stock owned by a member that has merged into a nonmember of that Bank could become excess stock as a result of the Bank's next calculation of each member's minimum stock purchase requirement. In the normal course, each Bank likely will adjust periodically the amount of Bank stock that each member is required to own as a condition of membership; under the current capital structure, such calculations are done at least annually. If a member were to merge out of existence during the course of the year, its membership will have terminated. As of the next annual calculation of that institution's minimum stock purchase requirement, the amount of stock required as a condition of membership may well be zero (depending on the terms of that Bank's capital structure plan) and the amount of the activity-based stock purchase requirement will depend on what portion of the prior member's business activities were assumed by the surviving institution. If the annual recalculation were to reduce the membership component of the stock purchase requirement to zero, all Bank stock formerly held as a condition of membership would at that time become excess stock, and thus would be eligible for repurchase at the discretion of the Bank. Because a Bank can only calculate membership requirements under the conditions set forth in its capital plan, a Bank wishing to provide itself with the flexibility to recalculate membership requirements more frequently than annually, such as upon the completion of a merger, would have to include in its capital plan a provision allowing for more frequent calculation of the membership stock purchase requirements.

Rolling redemption. One Bank expressed concern that § 931.7(a) could permit a member to file a redemption notice against all of its stock, even while such stock is needed to support membership or activity requirements, allowing what the commenter described as a rolling redemption. *See* 12 CFR 931.7(a). In addressing this concern, the Bank proposed amending § 931.7 in one of three ways: (1) To deem a request to redeem all required membership stock as equivalent to a notice of withdrawal from membership; (2) to permit a Bank to require that the member cancel any redemption notice with respect to the amount of stock that would be needed to support a new advance, if the member had requested to redeem all of its activity-based stock but then seeks to obtain new advances or other activities that would mature beyond the final redemption date; or (3) to permit a Bank to require that all advances or other obligations always be supported by activity-based stock that will not become ''fully redeemable'' until after the maturity date of the advance. The Finance Board, however, believes the language in § 931.7(a) is appropriate and does not require any of the changes suggested by the Bank.

The Finance Board does not believe that a Bank should be able to deem a notice of redemption to be a notice of withdrawal, even if the member is requesting redemption of all of its required membership stock. Section 6(d) of the Bank Act sets forth the conditions for a member's withdrawal from a Bank or for the involuntary termination of its membership. 12 U.S.C. 1426(d). It would appear inconsistent with the statutory provision requiring a member to file a notice to withdraw before it may voluntarily terminate its membership in a Bank to allow the Bank to deem a redemption notice to be the equivalent of a withdrawal notice in the absence of some affirmative member action to signify its intent to withdraw.

Further, because the Bank cannot actually redeem any required membership or activity-based stock until the member's withdrawal is effective or the activity in question is no longer on the Bank's balance sheet, the Finance Board does not think that members have as great an incentive to engage in rolling redemptions as the commenter may fear, especially if the Bank intends to actively manage its excess stock position. Additionally, § 931.7(a) permits a Bank to impose a fee, to be specified in its capital plan, on a member that cancels a pending notice of redemption, which could be used to further reduce the incentive to engage in rolling redemptions. Thus, the Finance Board is not proposing any changes to its rules in response to the comments on this issue.

Accounting issue with regard to the calculation of total capital. One Bank urged the Finance Board to consider following guidance issued by the Federal Financial Institutions Examinations Council (FFIEC) in early 1999 requiring financial institutions to exclude from the calculation of regulatory capital any changes in the fair value of derivatives used for certain risk management purposes that are recorded in Other Comprehensive Income and Loss (OCI) on the balance sheet. *See* OCC Bulletin 99–1, FAS 133 Accounting for Derivatives (Jan. 4, 1999). The commenter believed that to ensure consistency within the Bank System as well as with other financial institutions in regulatory capital calculations, the Finance Board should adopt a similar rule for the Banks. OCI, however, is not included in the calculation of permanent and total capital, as those terms are defined in the Bank Act and the Finance Board regulations, so that changes in the value of OCI have no effect on the value of the Banks' regulatory capital. *See* 12 U.S.C. 1426(a)(5) and 12 CFR 930.1. Thus, no change is needed to the capital rule to address this comment. The Finance Board, however, does wish to clarify the meaning of the definitions of total and permanent capital, to avoid the possibility of confusion about these terms.

Permanent capital, as defined in the statute and the Finance Board regulations, equals retained earnings determined in accordance with GAAP plus the amounts paid in for Class B stock. Total capital, as defined in the statute and the Finance Board regulations, equals permanent capital plus amounts paid in for Class A stock plus, consistent with GAAP, any general allowance for losses plus the amount of any other appropriate instruments that the Finance Board has determined to be available to absorb losses. Thus by

definition, OCI is not an element of total and permanent capital as defined by statute and regulation, and therefore should not be included in the calculation of total or permanent capital.

The Finance Board emphasizes, however, that the regulatory definition for total and permanent capital differs in its meaning and calculation from the item ''total capital'' (which is also known as GAAP capital or GAAP total capital), which appears on the Statements of Condition for the Bank System and the individual Banks as published in their Annual and Quarterly Reports. The commenter appears to have interpreted total capital, as defined in the statute and the Finance Board's regulations, to be the same as the balance sheet GAAP total capital, which is not the case.

Operations risk. One Bank urged the Finance Board to reconsider the operations risk capital charge in light of the approach proposed by the Basel Committee on Banking Supervision (Basel Committee) in the recently released consultative document on the New Basel Capital Accord. *See* 12 CFR 932.6. The commenter contended that the Basel Committee had set its operations charge at 20 percent of an institution's credit and market risk, and therefore, that the Finance Board should consider reducing its basic operations risk charge. Contrary to the Bank's understanding, however, in developing its proposed framework for an operations risk capital charge, the Basel Committee assumed that operations risk accounts for 20 percent of current minimum total regulatory capital and calibrated the calculations of proposed operations risk capital charges accordingly.[6] *See* Basel Committee, *Operational Risk, Supporting Document to the New Basel Capital Accord,* 5 (Jan. 2001). By comparison, under § 932.6, the basic operations risk capital charge—equal to 30 percent of a Bank's credit and market risk capital charges—would account for about 23 percent of the total minimum risk-based capital requirement. Moreover, because of potential differences in the operations of the Banks and the institutions reviewed by the Basel Committee[7] and the fact that the Banks' regulatory capital is not now, nor will it be under the Finance Board's capital regulations, calculated under the current Basel Accord, the Basel Committee's conclusions are not directly applicable to the Banks.

More importantly, the Basel Committee recently reported that ''the target proportion of regulatory capital related to operational risk (i.e., 20%) will be reduced in line with the view that this reflects too large an allocation * * * to this risk as the Basel Committee has defined it.'' Basel Committee Press Release, ''Update on New Basel Capital Accord'' (June 25, 2001) (available at *www.bis.org/press*). It also stated that it was considering other comments and suggestions related to operations risk. *Id.* It is not yet clear what proportion of regulatory capital that the Basel Committee will allocate to operations risk or what other changes it may make to its operations risk proposal.

Thus, given the difficulties in directly applying the Basel approach to the Banks and current uncertainties surrounding the Basel Committee's operations risk proposal, the Finance Board continues to believe that the statutory charge imposed on the other housing GSEs, the Federal National Mortgage Association (FannieMae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), remains the best basis for assessing an operations risk capital charge for the Banks. *See* 12 U.S.C. 4611(c)(2). Further, the Finance Board's operations risk provision provides the Banks with the flexibility to demonstrate that a lower charge should be applied to them, subject to a minimum operations risk charge equal to ten percent of the sum of the credit and market risk charges. *See* 12 CFR 932.6(b) and 66 FR at 8299–8300 (discussing operations risk charge). This flexibility allows the Banks to use recent theoretical and regulatory advances concerning operations risk to develop their own rigorous and comprehensive analysis to support a request for a lower operations risk charge. *Id.*

Use of excess stock to meet capital requirements. Four Banks submitted comments expressing concern about the meaning of the language in section 933.2(a)(4) of the Finance Board's rules that the minimum investment requirement established by the capital plans ''shall be set at a level that, * * * provides sufficient capital for the Bank to comply with its minimum capital requirements * * *.'' 12 CFR 933.2(a)(4). They questioned whether this language prevented excess stock from being counted toward meeting a Bank's total and risk-based capital requirements.

This language generally requires a Bank to set its minimum investment requirement at levels that provide enough capital for it to meet its regulatory capital requirements and that provide a sound and stable capitalization base after considering conditions at the Bank. The provision does not mean that excess stock may not be counted toward meeting the regulatory capital requirements. The statute provides no basis for making distinction between excess and required capital stock in calculating levels of permanent and total capital. Thus, the paid-in value of all capital stock, regardless of whether the capital stock is considered in excess of a member's minimum stock purchase requirement, counts as total capital, while the paid-in value of all Class B stock outstanding is counted as permanent capital.

The Finance Board believes that the language in section 933.2(a)(4) is accurate and does not require any change. The Finance Board, however, would like to reiterate that while excess capital is included in calculations for purposes of meeting regulatory capital requirements, placing undue reliance on excess stock to fulfill these capital requirements in a proposed capital plan may be viewed as inconsistent with the concept of ''excess stock'', and the capital structure proposed in that capital plan may be viewed as deficient by the Finance Board, requiring additional action by the Bank to address the capital structure's shortcomings.

IV. Regulatory Flexibility Act

The final rule would apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the

[6] The framework proposed by the Basel Committee contemplates ''three methods for calculating operational risk capital charges in a continuum of increasing sophistication and risk sensitivity.'' Basel Committee, *Operational Risk, Supporting Document to the New Basel Capital Accord,* 4 (January 2001). The simplest approach, the Basic Indicator Approach, would establish an operation risk capital charge based on a set percentage of a proxy variable for an entity's operations risk exposure. Under the more sophisticated Standardized Approach, operations risk charges would be calculated for each business line operated by a bank based on a proxy variable particular to that business line and a loss factor. A bank's primary regulator would establish the standardized business lines, proxy variables and loss factors to be used. The more complex Internal Measurement Approach would allow a bank the flexibility to calculate the expected loss from operations risk for each of its business lines. Regulators would provide a standardized factor for each business line that would transform the expected loss into a capital charge. Initially, banks moving to the Internal Measurement Approach would be subject to a minimum operations risk capital charge. To apply the more sophisticated methods of calculating the operations risk charge, a bank would have to demonstrate increased sophistication in the measurement and control of operations risk.

[7] The Basel Committee's assumption concerning operations risk is based on a small sampling of financial institutions which have regulatory capital calculated under the current Basel Capital Accord. *Id.*

RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic effect on a substantial number of small entities.

V. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 et seq. Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Parts 930, 931, 932, and 933

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board proposes to amend title 12, chapter IX of the Code of Federal Regulations as follows:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Amend § 925.26 by revising paragraph (b) to read as follows:

§ 925.26 Voluntary withdrawal from membership.

* * * * *

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to that date.

* * * * *

3. Amend § 925.27 by revising paragraph (c) to read as follows:

§ 925.27 Involuntary termination of membership.

* * * * *

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

4. The authority citation for part 930 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

5. In § 930.1 add, in correct alphabetical order the definitions for *Certain drawdown and Charges against the capital of the Bank*, to read as follows:

§ 930.1 Definitions.

* * * * *

Certain drawdown means a legally binding agreement that commits the Bank to make an advance or acquire a loan, at or by a specified future date.

Charges against the capital of the Bank means an other than temporary decline in the Bank's total equity that causes the value of total equity to fall below the Bank's aggregate capital stock amount.

* * * * *

PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

6. The authority citation for part 931 continues to read:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

7. Amend § 931.4 by revising the first sentence of § 931.4(a) to read as follows:

§ 931.4 Dividends.

(a) A Bank may pay dividends on Class A or Class B stock, including any subclasses of such stock, only out of previously retained earnings or current net earnings, and shall declare and pay dividends only as provided by its capital plan. * * *

* * * * *

8. Amend § 931.6 by revising the first sentence of the section and adding a new sentence at the end of the section to read as follows:

§ 931.6 Transfer of capital stock.

A Bank in its capital plan may allow a member to transfer any excess capital stock of the Bank to another member of that Bank or to an institution that has been approved for membership in that Bank and that has satisfied all conditions for becoming a member, other than the purchase of the minimum amount of Bank stock that it is required to hold as a condition of membership. * * * The Bank may, in its capital plan, require a member to receive the approval of the Bank before a transfer of the Bank's stock, as allowed under this section, is completed.

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

9. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

10. Amend § 932.4 by revising paragraph (d) heading, revising the first sentence in paragraph (e)(2)(ii)(E) and revising Table 2 which follows paragraph (f)(1), to read as follows:

§ 932.4 Credit risk capital requirement.

* * * * *

(d) *Credit risk capital charge for derivative contracts.*

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(E) The credit risk percentage requirement for mortgage assets that are acquired member assets described in § 955.2(a) of this chapter shall be assigned from Table 1.2 of this part based on the rating of those assets after taking into account any credit enhancement required by § 955.3 of this chapter. * * *

* * * * *

(f) * * *

(1) * * *

TABLE 2.—CREDIT CONVERSION FACTORS FOR OFF-BALANCE SHEET ITEMS

Instrument	Credit conversion factor (in percent)
Asset sales with recourse where the credit risk remains with the Bank	100
Commitments to make advances subject to certain drawdown	
Commitments to acquire loans subject to certain drawdown	
Standby letters of credit	50
Other commitments with original maturity of over one year	
Other commitments with original maturity of one year or less	20

* * * * *

PART 933—BANK CAPITAL STRUCTURE PLANS

11. The authority citation for part 933 continues to read:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

12. Amend § 933.2 by redesignating paragraphs (e)(4), (e)(5) and (e)(6) as paragraphs (e)(5), (e)(6) and (e)(7), respectively and by revising paragraph (e)(3) and adding new paragraph (e)(4) to read as follows:

§ 933.2 Contents of plan.

* * * * *

(e) * * *

(3) Shall specify whether the stock of the Bank may be transferred among members, and, if such transfer is allowed, shall specify the procedures that a member should follow to effect such transfer, and that the transfer shall be undertaken only in accordance with § 931.6 of this chapter;

(4) Shall specify that the stock of the Bank may be traded only between the Bank and its members;

* * * * *

13. Add new § 933.5 to read as follows:

§ 933.5 Disclosure to members concerning capital plan and capital stock conversion.

(a) No capital plan shall become effective until disclosure meeting the requirements of Item 11(a) through (d) and Item 12(a) through (e) of Schedule 14A of the Securities and Exchange Commission's (SEC's) rules (17 CFR 240.14a–101, Items 11 and 12) (Proxy Statement Disclosure) and of paragraph (b) of this section has been provided to members. All disclosure required under this section shall be transmitted, sent or given to members at least twenty days prior to the effective date of a Bank's capital plan.

(b) In addition to Proxy Statement Disclosure, the following information shall be provided to members:

(1) The Bank shall disclose financial information as follows:

(i) Audited balance sheets as of the end of the two most recent fiscal years, statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being presented, and interim balance sheets and statements of income and cash flows as of and for appropriate interim dates that are in scope, form and content consistent with the requirements of the SEC's Regulations S–X and S–K (17 CFR parts 210 and 229);

(ii) Quarterly pro forma balance sheets and income statements covering two years from the ''as of'' date (next-to-latest quarter or latest quarter-end prior to submission of the capital plan) or, at a minimum, six quarters from the expected date of conversion to the new capital stock, whichever time period is greater, in detail sufficient to illustrate changes in the Bank's capital structure, dividends, product volumes, investment volumes, and new business lines, and risk profile;

(iii) Pro forma risk-based capital requirement for the ''as of'' date and for the quarterly periods reflected pursuant to § 933.5(b)(1)(ii), if not already included in the pro forma balance sheet;

(iv) Disclosure of the assumptions underlying the pro forma financial information required by paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, and the basis for these assumptions; and

(v) Any of the financial information required by § 933.5(b)(1) may be incorporated by reference, provided the information being incorporated is contained in an annual or quarterly Bank or Bank System report, or in information filed with the Finance Board along with the Bank's capital plan, and the disclosure identifies the information being incorporated by reference.

(2) Any amendments anticipated to be made to the Bank's by-laws, policies or other governance documents as a result of the implementation of the capital plan should be fully described.

(3) The Bank should state the name, address and telephone number where members may direct written or oral requests for a copy of the capital plan and any other instrument or document that defines the rights of the member/stockholders. This information shall be provided to the members without charge to them.

(4) The Bank shall provide a brief statement as to the anticipated accounting treatment and the federal income tax consequences of the transaction.

(c) Nothing in this section shall create or be deemed to create any rights in any third party.

Dated: August 1, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–19852 Filed 8–7–01; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 930 and 932

[No. 2001–16]

RIN 3069–AB11

Unsecured Credit Limits for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend the unsecured credit provision of its rules, which was adopted as part of its capital rule on December 20, 2000 and governs the amount of unsecured credit that a Federal Home Loan Bank (FHLBank) can extend to a particular counterparty. The limits adopted in December were generally stricter than the limits under which the FHLBanks operated with the Finance Board's Financial Management Policy (FMP). The proposed amendments would set the amount of unsecured credit that an FHLBank can extend to a government-sponsored enterprise (GSE) at the level allowed under the FMP, adjust the limits for sales of overnight federal funds and the limits for unsecured credit that can be extended to groups of affiliated counterparties. They also would clarify how an FHLBank should calculate its credit exposures from on- and off-balance sheet items and derivative contracts and make other technical or clarifying changes to the unsecured credit provision. On March 7, 2001, the Finance Board published for comment in the **Federal Register** some of these proposed changes. Based in part on the comments received on that proposal, the Finance Board believes that broader changes to the rule than initially envisioned may be appropriate and is thereby proposing new amendments to the rule.

DATES: The Finance Board will consider written comments on the proposed rulemaking that are received on or before September 7, 2001.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991; or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 20, 2000, in accordance with the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 133 Stat. 1338 (November 12, 1999) (GLB Act), the

Finance Board adopted a final rule to implement the new capital structure that the GLB Act established for the FHLBanks. 66 FR 8262 (January 30, 2001). As part of the final capital rule, the Finance Board adopted new limits on the permitted amounts of an FHLBank's unsecured credit exposures to a single counterparty or a group of affiliated counterparties. *Id.* at 8318–19. *See also* 12 CFR 932.9. These new limits represent a revision and codification of the unsecured credit guidelines of Section VI of the FMP, Finance Board Res. No. 96–45 (July 3, 1996), as amended by Finance Board Res. No. 96–90 (December 6, 1996), Finance Board Res. No. 97–05 (January 14, 1997), and Finance Board Res. No. 97–86 (December 17, 1997), which will remain in effect until the earlier of October 1, 2001 or when the new limits currently being proposed are adopted as a final rule and take effect. *See* Finance Board Res. No. 2001–11 (June 5, 2001).

On March 7, 2001, the Finance Board published a proposed rule requesting comment on potential amendments to certain sections of the unsecured credit requirements. Specifically, the Finance Board requested comment on adjusting the limit on a Bank's unsecured extensions of credit to a GSE, including supporting analysis concerning the appropriate level for the new limit; and on excluding from the unsecured credit limits sales of federal funds with a maturity of one day or less, or federal funds sold under a continuing contract. These changes were proposed after FHLBanks indicated that, given the magnitude of the reduction in the allowable credit exposure to a GSE under § 932.9, they would experience difficulty in developing new investment strategies to conform to the new limits.

In conjunction with the Finance Board's approval of the proposed rule, the Finance Board also adopted a resolution waiving FHLBank compliance with the unsecured credit limits of § 932.9 and, because they are related to the unsecured credit limits, the liquidity requirements of § 932.8 of the Finance Board's rules, until July 2, 2001. *See* Finance Board Res. No. 2001–04 (February 28, 2001). The resolution also stipulated that the unsecured credit guidelines of Section VI of the FMP would remain in effect until the new effective date for §§ 932.8 and 932.9 of July 2, 2001. On June 5, 2001, the Finance Board adopted another resolution further delaying the implementation of §§ 932.8 and 932.9 until the earlier of October 1, 2001 or the completion of the current rulemaking process amending § 932.9, again subject to the FHLBanks' continuing compliance with Section VI of the FMP.[1] *See* Finance Board Res. No. 2001–11 (June 5, 2001). This further delay was intended to provide additional time for consideration of the issues that were raised in the comments on the proposed rule, as well as to consider other possible amendments to the unsecured credit limits.

The Finance Board is now proposing amendments to the unsecured credit limits that address issues beyond those that were discussed in the proposed rule. Many of these issues were identified as a result of comments received on the proposed rule. Because the amendments now being proposed are more far-reaching, albeit rather technical in nature, than those previously proposed, the Finance Board believes it appropriate to solicit comments on them. Thus, the Finance Board is re-proposing amendments to its rule concerning unsecured credit limits for a 30-day comment period.

II. Discussion of the Comments Received

The Finance Board received nine comment letters on its proposal to amend the unsecured credit limits set forth in § 932.9 of its regulations. Eight of the comments were from FHLBanks, and the ninth was from the Council of Federal Home Loan Banks (Council). In addition to commenting on the proposed changes to the GSE credit limits, the letters also responded to the Finance Board's request for comments on excluding sales of federal funds with a maturity of one day or less or subject to a continuing contract[2] (together, ''overnight federal funds'') from the unsecured credit limits, as well as raising issues that had not been addressed by the proposal. The Finance Board carefully considered all of the comments received in drafting its new proposal, and discusses the most important comments below.

Credit Limits for GSEs. In its proposed rule, the Finance Board indicated that it intended to raise the unsecured credit limits applicable to GSEs. Eight of the nine commenters supported raising the limits on unsecured extensions of credit to GSEs, and most, though not all of these commenters, indicated a specific limit that should be adopted. Five of the commenters urged the Finance Board to raise the limit to 100 percent of the lesser of the GSE's or an FHLBank's total capital, which is the equivalent of the current limit in the FMP.[3] One commenter contended that a limit equal to 50 percent of an FHLBank's total capital would be sufficient. Another commenter recommended that a provision be added to make a GSE subject to the same unsecured credit limits that would apply to a non-GSE counterparty if the GSE's long-term debt were downgraded to less than the highest investment grade by any Nationally Recognized Statistical Rating Organization (NRSRO). These commenters noted that GSEs were highly-rated by NRSROs and viewed as better credit risks by the markets than even the highest rated non-GSE counterparties. They also argued that extensions of unsecured credit to GSEs provided a more liquid investment than most other investments available to the FHLBanks.

The Finance Board generally agrees with these commenters' observations and, as discussed more fully in the next section, is proposing to change the limits on unsecured extensions of credit to a GSE to the lesser of the FHLBank's total capital or the GSE's total capital. However, because the Finance Board's support for the proposed higher GSE limit is based in large part on the fact that GSEs have historically been viewed in debt markets more favorably than even the highest-rated corporate debt issuers, the Finance Board is also proposing to adopt the commenter's suggestion that the preferential unsecured credit limit for GSEs automatically ceases to apply if any NRSRO rates a GSE's senior unsecured obligations, or downgrades such obligations to a rating, less than the highest investment grade or if any NRSRO places a GSE on a credit watch for a potential downgrade. This provision would help ensure that the preferential unsecured credit limit would not be applied to any GSE undergoing obvious financial difficulties.

[1] The unsecured credit guidelines contained in § 932.9 of the Finance Board's rules are intended to replace Section VI of the VMP upon becoming effective, and delaying the implementation of § 932.9 requires that the FMP guidelines remain in place.

[2] Sales of federal funds subject to a continuing contract are overnight federal funds loans that are automatically renewed each day unless terminated by either the lender or the borrower. *See* Marvin Goodfriend and William Whelpley, *Federal Funds* in *Instruments of the Money Market* 10 (Federal Reserve Bank of Richmond 1998) (available at *www.rich.frb.org/pubs/instruments*).

[3] Under Section VI of the FMP, unsecured extension of credit to a GSE may not exceed an FHL Bank's capital. Because the total capital of the Federal National Mortgage Association (FannieMae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), the two major GSEs to which the FHLBanks extend unsecured credit, is larger than that of any single FHLBank, the limit proposed by commenters on unsecured credit to GSEs as applied to these two entities, and thus, as applied to almost all of the FHLBanks' lending to GSEs, would equal an FHLBank's total capital.

A commenter also suggested that the Finance Board make explicit that the unsecured credit limits applied to GSEs by § 932.9 also applied to unsecured extensions of credit from one FHLBank to another. The FMP currently excludes unsecured extensions of credit from one FHLBank to another from its credit limits. This exclusion was adopted in recognition of a long-standing business practice of inter-FHLBank lending. In adopting current § 932.9 of its regulations, the Finance Board did not incorporate the FMP's exclusion for inter-FHLBank extensions of unsecured credit, but it also did not explicitly address whether that exclusion was being removed. However, the Finance Board believes that inter-FHLBank lending does not raise any safety and soundness concerns and that the practice can be supervised without establishing specific limits. Thus, the Finance Board does not find a strong reason to disrupt a long-standing FHLBank practice, and is proposing to incorporate the FMP's exclusion for inter-FHLBank unsecured extensions of credit into the rule.

One commenter did not comment directly on the GSE limits but instead urged the Finance Board to adopt a different approach to setting the unsecured credit limits. Specifically, the commenter recommended that the limits be based on the lesser of some percentage of the FHLBank's capital or the counterparty's assets, and include an FHLBank System-wide limit on exposures at each credit rating level stated as a percentage of the counterparty's assets. Further, the commenter believed that each FHLBank should be allocated a *pro rata* share of this System-wide limit, and should be allowed to trade unused portions of that share with the other FHLBanks, subject to an overall limit on an FHLBank's unsecured credit exposure based upon a percentage of the FHLBank's capital.

The Finance Board believes that the approach suggested by this commenter would be very complex to implement and monitor. Furthermore, the general approach underlying the current and proposed versions of § 932.9 addresses the Finance Board's concerns with the potential concentration of unsecured credit with a limited number of counterparties, *see* 66 FR at 8302, but remains relatively straightforward to implement. Therefore, the Finance Board is not convinced that it need amend its basic approach to calculating the unsecured credit limits.

Overnight Federal Funds Transactions. In the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Finance Board also requested comment as to whether it should exclude sales of overnight federal funds from the unsecured credit limit, as do other federal banking regulators. 66 FR at 13689. Seven commenters urged the Finance Board to exclude sales of overnight federal funds. Of these commenters, one also suggested that in the alternative, the Finance Board could adopt more lenient limits for these transactions. These commenters generally believed that excluding overnight federal funds transactions from the unsecured credit limits added relatively little risk to the FHLBank System and allowed the FHLBanks to undertake larger transactions with a group of known, highly-creditworthy counterparties. Another commenter urged the Finance Board to exclude only overnight federal funds transactions with GSEs. The final commenter did not support excluding specific types of transactions from the unsecured credit limits, indicating that the primary means for prudent risk diversification was the adoption of appropriate counterparty and concentration limits for each FHLBank and for the FHLBank System as a whole.

The Finance Board carefully considered these comments. The FHLBanks' sales of overnight federal funds, however, currently are included in the amount of unsecured credit that is subject to the FMP limits. In adopting the unsecured credit limits set forth in § 932.9, the Finance Board intended to implement stronger safeguards against undue concentrations of unsecured credit in individual or affiliated counterparties. Exempting all overnight federal funds transactions from these new unsecured credit limits would represent a significant loosening of current practices and would be inconsistent with the goal of implementing more rigorous limits.

The Finance Board has also considered the fact that other federal bank regulators exclude overnight federal funds transactions from their credit limits. See 12 CFR part 32 (Office of the Comptroller of the Currency (OCC)) and 12 CFR 560.93 (Office of Thrift Supervision (OTS)). However, the Finance Board also recognizes that commercial depository institutions and the FHLBanks have different incentives to lend in the federal funds markets. The FHLBanks can benefit from the funding advantage afforded by their GSE-status to borrow in the consolidated obligation (CO) market and then profitably lend those funds in the federal funds market. Commercial depository institutions, on the other hand, do not enjoy the same funding advantage as GSEs and generally lend excess reserves that are on-hand in order to earn interest on such reserves. Because of the GSE funding advantage, adopting the same exclusion for overnight federal funds transactions as applies to commercial depository institutions would provide the FHLBanks with an incentive, not available to commercial institutions, to borrow in the CO market and expand their lending in the federal funds market. This type of arbitrage activity could create safety and soundness concerns if significant concentrations of unsecured credit were created because of unchecked, short-term lending to a limited number of counterparties.

The Finance Board, therefore, is not proposing to exclude sales of overnight federal funds from the unsecured credit limits, but is proposing more lenient limits for these transactions. The Finance Board believes that the proposed limits, which are described in more detail below, will provide the FHLBanks sufficient leeway to prudently invest funds to meet both their liquidity needs and to counter cyclical fluctuations in their business but still limit incentives to create undue concentrations of credit in a few counterparties.

Treatment of Affiliated Counterparties. The Finance Board did not propose amending, nor did it solicit comments on, the aggregate unsecured credit limits imposed on groups of affiliated counterparties by § 932.9(b) of its rules.[4] Nevertheless, three commenters objected to this provision. In general, the commenters believed that the unsecured credit limits on affiliated counterparties severely restricted the FHLBanks' lending to large, creditworthy financial groups. They also contended that affiliated institutions that were separately chartered, capitalized and regulated should be treated as separate counterparties subject only to individual unsecured credit limits. Two of the commenters argued that it was particularly appropriate to treat regulated financial institutions as separate counterparties because the rules governing these entities mitigate the risks of cross-defaults. One commenter stated that the

[4] Under § 932.9(b), the aggregate amount of unsecured credit that an FHL Bank may extend to a group of affiliated counterparties can not exceed the product of the maximum capital exposure limit applicable to the counterparty with the highest NRSRO credit rating multiplied by the lesser of the sum of total capital of all the affiliated counterparties or the total capital of the FHL Bank. *See* 12 CFR 932.9(b). In addition, an FHLBank's extensions of unsecured credit to each counterparty within a group of affiliated counterparties can not exceed the unsecured credit limit applicable to a particular counterparty.

OCC applied fairly restrictive tests to determine when a commercial bank must deem affiliated institutions to be a single institution for the purpose of applying the combined general limit on credit, with the result that aggregation was only infrequently required, see 12 CFR 32.5(a), and that the Finance Board should adopt a similar approach. This commenter also stated that special, bankruptcy-remote subsidiaries should not be considered affiliates for the purposes of applying the unsecured credit limitations.

The Finance Board has considered these comments but continues to believe that conservative, aggregate limits on the unsecured extensions of credit to affiliated counterparties are needed to prevent undue concentrations of credit in a limited number of counterparties at both the FHLBank level and the FHLBank System level. See 66 FR at 8302. Concentrations of credit in affiliated counterparties raise safety and soundness concerns because the financial difficulties or default of one party significantly raises the potential that affiliated entities will experience a deteriorating credit situation or default. These spillover effects would raise the potential for loss at an FHLBank if it had a significant unsecured credit exposure to a group of affiliated entities of which one or more were experiencing severe financial difficulties.

Moreover, other federal banking regulators recognize the safety and soundness problems raised by excessive concentrations of credit in affiliated entities and limit extensions of credit to groups of affiliated counterparties. The OCC's rules restrict a commercial bank's aggregate extensions of secured and unsecured credit to a corporate group to an amount not to exceed 50 percent of the bank's capital and surplus.[5] *See* 12 CFR 32.5(d). The OTS, which has generally adopted the OCC's regulations on credit limits, albeit subject to certain specific changes, would also apply this limit. *See* 12 CFR 560.93(c). Applying credit exposure limits to groups of affiliated counterparties is also consistent with principles for sound management of credit risk as articulated by the Basel Committee on Banking Supervision (Basel Committee). *See*, Basel Committee, ''Principles for the Management of Credit Risk'' 10 (September 2000) (''An important element of credit risk management is the establishment of exposure limits on single counterparties and groups of connected counterparties.'')

Further, depository institutions are not necessarily immune from spill-over effects caused by the default of one of their affiliated institutions. For example, by law, depository institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) may be held liable for the losses (or anticipated losses) to the FDIC caused by the default of affiliated, FDIC-insured institutions. *See* 12 U.S.C. 1815(e) and 12 CFR 308.165. More importantly, it would be inconsistent with the Finance Board's conservative approach to credit limits to assume that a default by one affiliated counterparty could not have a negative effect on other entities in that group. The Finance Board is persuaded, however, that the limit on an FHLBank's unsecured credit exposure to a group of affiliated counterparties adopted in § 932.9(b) may be too restrictive and, therefore, as discussed more fully below, is proposing a new limit equal to 30 percent of the FHLBank's total capital.

Application of Part 980. In the **SUPPLEMENTARY INFORMATION** section of the March proposing release, the Finance Board noted that:

> [b]efore a [FHL]Bank may extend unsecured credit to any counterparty (or affiliated counterparties) to which a [FHL]Bank could not previously lend because the credit rating restrictions or maturity limitations in the FMP, the [FHL]Bank must obtain the Finance Board's approval for the lending activity as a new business activity pursuant to 12 CFR part 980.

66 FR at 13688. Five commenters objected to this application of the Finance Board's part 980 regulations. In general, the commenters believed that other Finance Board regulations, including the restrictions in § 932.9, adequately addressed the risks created by the FHLBanks' unsecured lending and that expansion of unsecured lending activities did not involve risks not previously undertaken or managed by the FHLBanks, as required by the part 980 regulations. Some commenters also noted that it was unclear how the part 980 requirements would be applied to unsecured lending activities.

The purpose of the part 980 regulations is to provide the Finance Board with prior notice that an FHLBank is undertaking an activity that among other things involves a risk not previously and regularly managed by the FHLBank so that the Finance Board may disapprove, examine, or restrict such activity as necessary on a case-by-case basis. See 65 FR 44414, 44420 (July 18, 2000) (discussing part 980 regulations). Prior notice, therefore, provides the Finance Board with a needed opportunity to verify that the new activity will be executed in a safe and sound manner, regardless of whether the activity in question is authorized or otherwise addressed by other provisions in the Finance Board's regulations. *Id.*

In this respect, as investment and lending restrictions imposed by the FMP are lifted, the FHLBanks will be able to take on exposures to different types of counterparties and for much longer maturities than was allowed under the FMP. Such authority could allow an FHLBank to develop new investment strategies that would alter its risk profile and involve new risks for the FHLBank. The Finance Board continues to believe, therefore, that approval under the part 980 regulations is proper before the FHLBanks undertake significant lending or investing activities that were not permitted under the FMP.

Given the comments received on this matter, however, the Finance Board wishes to clarify when a notice filing under part 980 may be required for new unsecured lending activities. The FHLBanks will not be required to provide notice under part 980 each time they intend to lend to a new counterparty, or to purchase a new class of debt instrument or to take on a credit exposure that would have been prohibited under the FMP, if such activity involves only marginal changes in the FHLBank's investment portfolio.[6] However, should an FHLBank adopt strategies that would require it to take on, or should the FHLBank begin to take on, more significant unsecured credit exposures to classes of counterparties to which lending was previously prohibited by the FMP or for maturities not allowed under the FMP, the Finance Board would expect the FHLBank to file a new business activity notice covering the change to the FHLBank's lending or investing strategy.

Other Issues. Five commenters requested that the Finance Board add a provision to § 932.9 to grandfather any investments that were made before the effective date of § 932.9 and conformed with the controlling FMP provisions whether or not these positions conformed to § 932.9. In general, a regulation does not have retroactive effect, and as the Finance Board previously stated, there is nothing in § 932.9 to suggest that an FHLBank must unwind positions that do not conform to the new limits provided that the credit

[5] This requirement is distinct from the OCC regulation cited by the commenter, 12 CFR 32.5(a), that governs when a commercial bank must deem affiliated persons to be a single person for the purposes of applying the combined general limit.

[6] Such activity would have to be authorized by and comply with applicable Finance Board regulations.

was extended in accordance with the FMP before the effective date of the new rule. 66 FR at 13688. The Finance Board does not believe that additional changes need to be made to the rule to make this point any more explicit. Furthermore, the FHLBanks should have sufficient time to adjust overnight extensions of unsecured credit, including sales of federal funds subject to a continuing contract, so as to be in compliance with the new limits on these transactions on the effective date of the rule.

Two commenters asked the Finance Board to delay the effective date of § 932.9 until after the capital plans have been approved and implemented. The safety and soundness concerns, however, raised by undue concentrations of credit in a limited number of counterparties are not related to the implementation of the FHLBanks' new capital structures required by the GLB Act. While the Finance Board has been willing to delay the effective date of § 932.9 to assure that the rule can be implemented with the least disruption possible, it still believes that its concerns with concentrations of credit should be addressed in as timely a fashion as possible. Therefore, it would not be prudent to delay the effective date of § 932.9 until the FHLBanks' capital plans are implemented.

One commenter noted that sections of the FMP, other than the section controlling unsecured extensions of credit, impose counterparty and maturity limitations on the FHLBanks' lending activities, and the commenter specifically requested that the Finance Board rescind certain investment restrictions set forth in Section II.B of the FMP. In this respect, the Finance Board's investment regulation states that investments authorized thereunder are subject to among other things, the FMP. *See* 12 CFR 956.2. In adopting the investment regulation, the Finance Board addressed the continued applicability of the FMP's investment restrictions. *See* 65 FR 43969, 43980 (July 17, 2000). The Finance Board sees no reason to reconsider this issue as part of this rulemaking.

III. Proposed Changes to the Rule

Change in GSE Limit. As already noted, the Finance Board agrees with commenters on the amendments proposed in March 2001 that the reduction of the unsecured limits for GSEs that would be implemented under § 932.9 could be disruptive to the FHLBanks investment strategies and programs, and that, historically, GSEs have been viewed more favorably by debt markets than even the highest-rated corporate debt issuers. In addition, the Finance Board believes that the limit contained in the FMP does not raise any safety and soundness concerns. Thus, the Finance Board is now proposing a limit on unsecured credit exposure to GSEs of 100 percent of the lesser of FHLBank capital or the counterparty's capital.

In addition, proposed § 932.9(c)(2) would treat GSEs like other private counterparties in the event any NRSRO assigns a credit rating to, or downgrades the credit rating of, any long-term, senior unsecured debt obligation issued by a GSE to below the highest investment grade, or places the GSE on a credit watch for a potential downgrade. In this case, the FHLBank would be required to calculate the maximum amount of its unsecured extensions of credit to that GSE in accordance with paragraph (a)(1) of the proposed rule.

Further, proposed § 932.9(c)(3) would incorporate the FMP exclusion for inter-FHLBank credit exposure, as discussed above. Under this proposal, extensions of credit to another FHLBank would still be subject to the reporting requirements of § 932.9, which have been redesignated as paragraph (e) in the proposed rule.

Overnight Fed Funds. In the proposed rule, the Finance Board requested comments on whether it should exclude from the unsecured credit limits, the sale of federal funds with a maturity of one day or less, or federal funds sold under a continuing contract, given that other commercial bank regulators have adopted such an exclusion from the limits they impose on regulated institutions. As already discussed, the Finance Board sees merit in commenters' arguments supporting such an exclusion, but believes that because the FHLBanks could potentially have very large positions in overnight federal funds transactions, not retaining some limit on exposure from these federal funds transactions could raise safety and soundness concerns. Thus, the Finance Board is proposing to retain a limit on sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, but increase the limit applicable to a counterparty on such sales. Specifically, the proposal would require an FHLBank always to meet two limits. The first limit, the term limit set forth in proposed § 932.9(a)(1), would apply to all unsecured extensions of credit except overnight federal funds transactions, and the second limit, the overall limit set forth in proposed 932.9(a)(2), would be twice the term limit, and would apply to all unsecured extensions of credit including overnight federal funds transactions.

Under proposed § 932.9(a)(1), an FHLBank would not include sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract in its calculation of unsecured extensions of credit to a specific counterparty. Such overnight federal funds transactions would therefore not be subject to the term limit on unsecured extensions of credit that would be imposed under this proposed provision. However, under proposed § 932.9(a)(2), an FHLBank would add into its calculation of total extensions of unsecured credit all sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract with the counterparty. The resulting total amount of unsecured credit including these overnight sales of federal funds could not exceed an overall limit equal to twice the term limit.

For example, if a counterparty's applicable credit rating was determined to be the highest investment grade category, the term limit that would apply under proposed § 932.9(a)(1) would equal 15 percent of the lesser of the FHLBank's total capital, or the counterparty's Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by the counterparty's principal regulator) or some similar comparable measure identified by the FHLBank. The overall limit under proposed § 932.9(a)(2) would apply when sales of overnight federal funds are added into the total extensions of unsecured credit to the counterparty. The overall limit would equal 30 percent of the lesser of the FHLBank's total capital or the counterparty's applicable capital measurement but, because the term limit would also apply, an FHLBank's extensions of unsecured extensions of credit, other than overnight federal funds transactions, could not exceed 15 percent of the FHLBank's total capital or the counterparty's applicable capital measurement.

In addition, the Finance Board is proposing to define ''sales of federal funds subject to a continuing contract'' as an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower. This definition is consistent with the generally understood meaning of the term. See Goodfriend and Whelpley, n.2, *supra.*

Maximum capital exposure limits. The Finance Board is proposing to change the maximum capital exposure limits listed in Table 4. The Finance Board is also proposing to simplify the FHLBanks' monitoring of a

counterparty's credit rating by changing the rule to require that the applicable maximum exposure limit in Table 4 be determined based on a counterparty's long-term credit rating, and that a short-term credit rating be used only if the counterparty has a short-term, but no long-term, rating from an NRSRO. These changes are discussed in more detail below.

The general approach adopted in § 932.9, however, of imposing more restrictive maximum capital exposure limits on lower-rated, and therefore potentially riskier, counterparties is not altered by the proposed rule amendments. This general approach is consistent with principles for sound management of credit risk articulated by the Basel Committee on Banking Supervision (Basel Committee), which has stated that:

> [a]n important element of credit risk management is the establishment of exposure limits on single counterparties and groups of connected counterparties. Such limits are frequently based in part on internal risk rating assigned to the borrower with counterparties assigned better risk ratings having potentially higher exposure limits.

Basel Committee, ''Principles for the Management of Credit Risk'' 10–11 (September 2000). It is also consistent with the approach adopted in § 932.4 of the Finance Board's rules with regard to the credit risk percentage requirements, which are used to calculate the risk-based capital charges for credit risk and which vary with the potential risk of an asset, as evidenced by the asset's applicable NRSRO long-term credit rating.

As proposed, the applicable maximum capital exposure limit for a counterparty rated at the highest investment grade by an NRSRO would remain 15 percent. This level is broadly consistent with federal lending limits pertaining to commercial banks as set forth by statute and regulation, although the fifteen-percent limit for commercial banks remains the same regardless of the credit rating of the borrower. *See* 12 U.S.C. 84, and 12 CFR part 32. The proposed maximum capital exposure limits corresponding to credit ratings below the highest investment grade, however, are calibrated to the 15 percent maximum capital exposure limit based upon the ratio of the average credit risk percentage requirement (over all maturity bucket groupings) for the highest investment grade to the average credit risk percentage requirement for each investment grade.[7] The logic of this approach is that as credit risk, as captured in the credit risk percentage requirements, increases, the unsecured credit limit proportionately decreases. Further, because the credit risk percentage requirements were derived from actual corporate bond default data, the relative differences among the proposed maximum capital exposure limits more closely reflect historic credit loss experiences than do the differences among the current maximum capital exposure limits set forth in § 932.9. *See* 66 FR 8287–88 (explaining the derivation of the credit risk percentage requirements in Table 1.3).

To perform the required calculation, the Finance Board first averaged the credit risk percentage requirements for each credit rating category across all maturity buckets provided in Table 1.3. The average credit risk percentage requirement corresponding to the highest investment grade was then divided by the average credit risk percentage requirement corresponding to each of the other investment grades. The result of this calculation for each investment grade, and for the highest below-investment grade rating category, was then multiplied by 15 percent—the maximum capital exposure limit corresponding to the highest investment grade—and the product was rounded to the nearest whole percentage point. The result of the calculation, as rounded, for each investment grade equals the proposed maximum capital exposure limit with the result of the calculation for the highest below-investment grade rating category being used to set the proposed maximum capital exposure limit for the category, ''Below Investment Grade or Other,'' in Table 4.

Section 932.9(a)(3) of the proposed rule also would require an FHLBank to determine the maximum capital exposure limit applicable to a counterparty based primarily on the counterparty's long-term credit rating. Under this proposed change, a short-term credit rating would be used only in the rare circumstance that an NRSRO has provided a short-term credit rating for a counterparty but has not provided a long-term rating for that counterparty. Further, the Finance Board is proposing that where a short-term credit rating is used, the highest short-term investment grade rating would correspond to the maximum capital exposure limit assigned to the third highest long-term investment grade rating in proposed Table 4 (*i.e.,* nine percent), and the second and third highest short-term investment grade ratings would correspond to the maximum capital exposure limit assigned to the fourth highest long-term investment grade rating in proposed Table 4 (*i.e.,* 3 percent).

The proposed approach for determining the applicable maximum capital exposure limit is the same as the approach already adopted in § 932.4 of the Finance Board's capital rule for determining the credit risk percentage requirement applicable to a particular asset. *See* 12 CFR 932.4(e)(2)(ii)(C). Reliance on long-term NRSRO credit ratings as an approximation of credit risk is also consistent with the approach for assigning risk weightings for assets suggested by the Basel Committee under its standardized approach in the proposed New Basel Capital Accord. *See* Basel Committee, ''Overview of the New Basel Capital Accord'' 13–14 (January 2001) and Basel Committee, ''A New Capital Adequacy Framework'' 26–36 (June 1999).

Moreover, the Finance Board believes that the proposed use of long-term credit ratings to determine the maximum capital exposure limit would more accurately reflect the relative default risks among counterparties. Based on Moody's default data from 1970 to 2000, counterparties that are rated in the highest short-term investment grade or third highest long-term investment grade categories have a significantly higher 30-day maximum default rate than those rated in the highest or second highest investment grade long-term credit rating.[8] Similarly,

[7] The credit risk percentage requirements are set forth in § 932.4, Table 1.3 of Part 932 of the Finance Board rules. 12 CFR 932.4.

[8] Generally, NRSROs use three short-term credit ratings that are considered investment grade. Counterparties with different long-term ratings may be grouped in the same short-term credit rating category, however. For example, in rating short-term commercial paper, Moody's assigns the highest category, however. For example, in rating short-term commercial paper, Moody's assigns the highest short-term investment grade credit rating to issuers that would have long-term credit ratings ranging from the highest investment grade to the third highest investment grade and assigns the second highest short-term investment grade rating to issuers that would have long-term credit ratings of either the third highest investment grade or the fourth highest investment grade. *See* ''Commercial Paper Defaults and Rating Transitions,'' 1972–2000, Moody's Investors Service (October 2000); ''Moody's Credit Opinions: Financial Institutions,'' Moody's Investors Service (December 1999). The lowest short-term investment grade rating is assigned solely to issuers that also have the fourth highest long-term investment grade credit rating. *Id.* A comparison of U.S. financial institutions' short-term ratings by Moody's also shows that the highest short-term investment grade credit rating is more commonly associated with the third highest long-term investment grade credit rating than with the highest or second highest long-term investment grade credit ratings. *See* ''Moody's Credit Opinions: Financial Institutions,'' Moody's Investors Service (March 2000). The maximum 30-day default rate for commercial paper rated at the highest short-term investment grade (i.e., P–1), based on Moody's data for the period 1972–2000, is 0.08 percent. However, the maximum 30 day default rate for the third highest long-term rating (i.e., A) is 0.24%, but is

Continued

counterparties rated in the second highest short-term investment grade and the fourth highest long-term investment grade category have the same 30-day maximum default rate of 0.32 percent. These differences indicate that use of the short-term ratings alone to set the unsecured credit limitations may not reflect the true rates of default among counterparties, and that despite having the same short-term credit ratings, counterparties with a lower long-term credit rating may display a significantly higher maximum 30-day default rate. Thus, use of long-term ratings as a basis for determining the applicable maximum capital exposure limit would assure that a more restrictive unsecured credit limit is imposed on counterparties with the higher default rate, even when applied to short-term credit exposures.

Relying primarily on long-term credit ratings to determine the applicable maximum capital exposure limit also would simplify the FHLBanks' monitoring of counterparties credit ratings. Currently, § 932.9 requires that the maximum capital exposure limit corresponding to the higher of a counterparty's short-term or long-term credit rating be used to calculate the total unsecured credit limit for the counterparty, while the lower of the two ratings be used to calculate the limit applicable to any unsecured credit with a maturity corresponding to the ratings. *See* 12 CFR 932.9(a)(3)(iii). To implement the rule, the FHLBanks, therefore, would be required to track the long- and short-term credit ratings assigned to each counterparty by each NRSRO. The proposed rule change would allow the FHLBanks to monitor a counterparty's long-term credit ratings only, except in rare circumstances.

The proposed rule still would allow the use of short-term ratings to determine the maximum capital exposure limit when an NRSRO has not provided a long-term rating to a counterparty. For this purpose, however, the proposed rule, in effect, deems the highest short-term investment grade credit rating to be the equivalent of the third highest long-term investment grade credit rating and the second and third highest short-term investment grade ratings to be the equivalent of the fourth highest long-term investment grade rating.

This approach is consistent with the approach adopted in § 932.4 for determining the credit risk percentage requirement where an NRSRO has assigned a short-term rating to an asset but not a long-term rating. *See* 12 CFR 932.4(e)(2)(ii)(C). *See also* 66 FR 8291–92 (discussing reason for adopting 12 CFR 932.4(e)(2)(ii)(C)). This treatment of the short-term investment grade credit ratings also reflects the fact that, as discussed above, a counterparty with the highest short term credit rating would be rated in at least the third highest long-term investment grade category, and a counterparty receiving the second or third highest short-term investment grade ratings would be rated in at least the fourth highest long-term investment grade category. *See* note 8, *supra*. Deeming a short-term rating to be equivalent to the lowest potential long-term investment grade credit rating that a counterparty could have is also consistent with the conservative approach proposed by the Finance Board for setting unsecured credit limits.

Affiliated counterparties. As already discussed, the Finance Board has considered comments received on this provision and has decided to propose an amendment to the affiliated counterparty limit. Under proposed § 932.9(b), the aggregate limit on the extension of unsecured credit to a group of affiliated counterparties would equal 30 percent of the FHLBank's total capital. In calculating the amounts of unsecured credit extended to a group of affiliated counterparties, the proposed rule would require an FHLBank to include the amounts of sales of overnight federal funds to those affiliated counterparties. The proposed rule also makes clear that unsecured credit limitations on individual counterparties continue to apply to each counterparty within a group of affiliated counterparties.

The proposed aggregate limit on extensions of credit to affiliated counterparties would provide the FHLBanks with more flexibility to extend somewhat larger amounts of unsecured credit to large financial groups than does the current aggregate limit in § 932.9. Given historic FHLBank lending patterns and the FHLBank's current counterparties that would benefit from this additional lending flexibility, the Finance Board does not believe that the proposed change in the aggregate limit, if adopted, would result in a build-up of unsecured credit exposures of questionable quality. Furthermore, the Finance Board believes that the proposed aggregate limit on lending to affiliated counterparties remains sufficiently restrictive, especially when coupled with the proposed individual counterparty limits, to keep unsecured credit exposure concentrations to affiliated counterparties from raising safety and soundness concerns.

The Finance Board also is proposing to amend the definition of affiliated counterparty in § 930.1 to read as follows:

> *Affiliated counterparty* means a counterparty of a Bank that controls, is controlled by or is under common control with another counterparty of the Bank. For the purposes of this definition only, direct or indirect ownership (including beneficial ownership) of more than 50 percent of the voting securities or voting interests of an entity constitutes control.

The proposed definition would generally raise the threshold for control from ownership (either direct or indirect) of 25 percent of the voting securities or voting interests of an entity to ownership (either direct or indirect) to 50 percent of the voting securities or voting interests of an entity. This change, however would not significantly alter the number or groupings of counterparties that would be covered by the proposed affiliated counterparty limitations because traditionally most groups of affiliated counterparties to which the FHLBanks have lent have consisted of groups of wholly-owned, or nearly wholly-owned, subsidiaries of a parent corporation. Furthermore, the proposed definition is more consistent with the meaning of corporate group, as that phrase is used in OCC's rules limiting extensions of credit, *see* 12 CFR 32.5(d), than is the current definition of affiliated counterparty in § 930.1 of the Finance Board rules. The Finance Board also believes that the proposed definition is more easily understood than the current definition.

Addition of Transition Provision for Downgrades. The proposed rule contains transition provisions for FHLBanks that have extended unsecured credit to counterparties that are downgraded or placed on credit watch. Proposed § 932.9(d) provides that in the event a lower maximum credit limit is imposed on a counterparty because an NRSRO has downgraded the credit rating applicable to a counterparty or has placed a counterparty on a credit watch for a potential downgrade, an FHLBank is not required to unwind or liquidate any transaction or position that was entered into prior to the date of the downgrade or the placement on credit watch so long as the transaction or position complied with the limits at the time it was entered. However, any new unsecured extensions of credit to the counterparty would have to comply with the new lower maximum exposure limit. A similar transition provision is

zero percent for the highest (i.e., AAA) or second highest (i.e., AA) long-term rating.

contained in the FMP. Because an FHLBank might have to accept less than the remaining balance on a debt if it were required to liquidate or unwind a position within a particular timeframe, especially if the counterparty in question were undergoing financial stress, the Finance Board believes that it is appropriate to maintain such a provision in the unsecured credit regulation.

In addition, the proposed rule makes clear that a renewal of an existing unsecured extension of credit, including any decision not to terminate a sale of federal funds subject to a continuing contract, would be considered a new extension of unsecured credit.

Addition of provision for calculating extensions of credit. Neither the final capital rule nor the proposed rule published on March 7, 2001 contained specific requirements for how to measure unsecured extensions of credit. Proposed § 932.9(f) would now specify how the FHLBanks would measure unsecured extensions of credit. Consistent with the requirements of the FMP, the proposed rule would require the amount of unsecured credit exposure arising from on-balance sheet transactions be equal to the sum of the book value of the item plus net payments due the Bank. For off-balance sheet and derivative transactions, the Finance Board is proposing that the measurement conform to the measurement under § 932.4 for the purpose of calculating the required credit risk-based capital charge. Thus, the proposed rule specifies that unsecured credit exposures arising from off-balance sheet and derivatives transactions be measured in accordance with §§ 932.4(f) and 932.4(g) or § 932.4(h) of the Finance Board's regulations, respectively.

Other technical changes. The reporting requirements now contained in § 932.9(c) of the Finance Board rules are found in paragraph (e) of the proposed rule, but have not been altered in substance. Similarly, the provisions concerning the FHLBanks' determination of a counterparty's applicable credit ratings have been redesignated as § 932.9(a)(4) in the proposed rule, and would be substantively altered only to remove the provision that required an FHLBank to use different maximum capital exposure limits for short-and long-term unsecured extensions of credit, because that provision would not conform to the proposed approach for determining these limits, as discussed above.

The Finance Board also is proposing to change the wording in § 932.9 so that derivative contracts are identified as items distinct from on-or off-balance sheet items. The wording change is being proposed because of changes required by Statement of Financial Accounting Standards (SFAS) No. 133, *Accounting for Derivative Instruments and Hedging Activities*, and would conform the wording of § 932.9 to changes made to other provisions of part 932 when the Finance Board adopted the final capital rule. *See* 66 FR at 8281 (discussing reference to derivative contracts in final capital rule). This proposed change would not affect the substance of how derivatives contracts would be treated under the proposed rule.

The Finance Board also is proposing to add new paragraph (g) to § 932.9 to make clear that obligations of, or guaranteed by, the United States would not be subject to any of the requirements of § 932.9 (including the reporting requirements that are contained in proposed § 932.9(e)). This exclusion is contained in the FMP limitations on unsecured credit but was not included in § 932.9 when the rule was adopted. The Finance Board, however, has stated that § 932.9 does not apply to obligations backed by the full faith and credit of the United States, *see* 66 FR at 13688, and the proposed change would merely codify this position.

IV. Regulatory Flexibility Act

The final rule would apply only to the FHLBanks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic effect on a substantial number of small entities.

V. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

Lists of Subjects in 12 CFR Parts 930 and 932

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board proposes to amend title 12, chapter IX, Code of Federal Regulations as follows:

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

1. The authority citation for part 930 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

2. In § 930.1 revise the definition of *Affiliated counterparty,* and add, in correct alphabetical order the definition for *Sales of federal funds subject to a continuing contract,* to read as follows:

§ 930.1 Definitions.

* * * * *

Affiliated counterparty means a counterparty of a Bank that controls, is controlled by or is under common control with another counterparty of the Bank. For the purposes of this definition only, direct or indirect ownership (including beneficial ownership) of more than 50 percent of the voting securities or voting interests of an entity constitutes control.

* * * * *

Sales of federal funds subject to a continuing contract means an overnight federal funds loan that is automatically renewed each day unless terminated by either the lender or the borrower.

* * * * *

PART 932—FEDERAL HOME LOAN BANK CAPITAL REQUIREMENTS

3. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, 1446.

4. Revise § 932.9, to read as follows:

§ 932.9 Limits on unsecured extensions of credit to one counterparty or affiliated counterparties; reporting requirements for total extensions of credit to one counterparty or affiliated counterparties.

(a) *Unsecured extensions of credit to a single counterparty.* A Bank shall not extend unsecured credit to any single counterparty (other than a GSE) in an amount that would exceed the limits of this paragraph. A Bank shall not extend unsecured credit to a GSE in an amount that would exceed the limits set forth in paragraph (c) of this section.

(1) *Term limits.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on-and off-balance sheet and derivative transactions (but excluding the amount of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract) shall not exceed the product of the maximum capital exposure limit applicable to such counterparty, as determined in

accordance with paragraph (a)(3) and Table 4 of this part, multiplied by the lesser of:

(i) The Bank's total capital; or

(ii) The counterparty's Tier 1 capital, or if Tier 1capital is not available, total capital (as defined by the counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Overall limits including sales of overnight federal funds.* All unsecured extensions of credit by a Bank to a single counterparty that arise from the Bank's on-and off-balance sheet and derivative transactions, including the amounts of sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed twice the limit calculated pursuant to paragraph (a)(1) of this section.

(3) *Bank determination of applicable maximum capital exposure limits.* (i) Except as set forth in paragraph (a)(3)(ii) of this section, the applicable maximum capital exposure limits for specific counterparties are assigned to each counterparty based upon the long-term credit rating of the counterparty, as determined in accordance with paragraph (a)(4) of this section, and are provided in the following Table 4 of this part:

TABLE 4.—MAXIMUM LIMITS ON UNSECURED EXTENSIONS OF CREDIT TO A SINGLE COUNTERPARTY BY COUNTERPARTY LONG-TERM CREDIT RATING CATEGORY

Long-term credit rating of counterparty category	Maximum capital exposure limit (in percent)
Highest Investment Grade	15
Second Highest Investment Grade	14
Third Highest Investment Grade	9
Fourth Highest Investment Grade	3
Below Investment Grade or Other	1

(ii) If a counterparty does not have a long-term credit rating but has received a short-term credit rating from an NRSRO, the maximum capital exposure limit applicable to that counterparty shall be based upon the short-term credit rating, as determined in accordance with paragraph (a)(4) of this section, as follows:

(A) The highest short-term investment grade credit rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the third highest long-term investment grade rating;

(B) The second highest short-term investment grade rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the fourth highest long-term investment grade rating; and

(C) The third highest short-term investment grade rating shall correspond to the maximum capital exposure limit provided in Table 4 of this part for the fourth highest long-term investment grade rating.

(4) *Bank determination of applicable credit ratings.* The following criteria shall be applied to determine a counterparty's credit rating:

(i) The counterparty's most recent credit rating from a given NRSRO shall be considered;

(ii) If only one NRSRO has rated the counterparty, that NRSRO's rating shall be used. If a counterparty has received credit ratings from more than one NRSRO, the lowest credit rating from among those NRSROs shall be used;

(iii) Where a credit rating has a modifier, the credit rating is deemed to be the credit rating without the modifier;

(iv) If a counterparty is placed on a credit watch for a potential downgrade by an NRSRO, the credit rating from that NRSRO at the next lower grade shall be used; and

(v) If a counterparty is not rated by an NRSRO, the Bank shall determine the applicable credit rating by using credit rating standards available from an NRSRO or other similar standards.

(b) *Unsecured extensions of credit to affiliated counterparties.* (1) *In general.* The total amount of unsecured extensions of credit by a Bank to a group of affiliated counterparties that arise from the Bank's on-and off-balance sheet and derivative transactions, including sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed thirty percent of the Bank's total capital.

(2) *Relation to individual limits.* The aggregate limits calculated under this paragraph shall apply in addition to the limits on extensions of unsecured credit to a single counterparty imposed by paragraph (a) of this section.

(c) *Special limits for GSEs.* (1) *In general.* Unsecured extensions of credit by a Bank to a GSE that arise from the Bank's on-and off-balance sheet and derivative transactions, including any sales of federal funds with a maturity of one day or less and sales of federal funds subject to a continuing contract, shall not exceed the lesser of:

(i) The Bank's total capital; or

(ii) The GSE's total capital (as defined by the GSE's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Limits applying to a GSE after a downgrade.* If any NRSRO assigns a credit rating to any senior unsecured obligation issued (or to be issued) by a GSE that is below the highest investment grade or downgrades, or places on a credit watch for a potential downgrade of, the credit rating on any senior unsecured obligation issued by a GSE to below the highest investment grade, the special limits on unsecured extensions of credit under paragraph (c)(1) of this section shall cease to apply, and instead, the Bank shall calculate the maximum amount of its unsecured extensions of credit to that GSE in accordance with paragraphs (a)(1) and (a)(2) of this section.

(3) *Extensions of unsecured credit to other Banks.* The limits of this section do not apply to unsecured credit extended by one Bank to another Bank.

(d) *Extensions of unsecured credit after downgrade or placement on credit watch.* If an NRSRO downgrades the credit rating applicable to any counterparty or places any counterparty on a credit watch for a potential downgrade, a Bank need not unwind or liquidate any existing transaction or position with that counterparty that complied with the limits of this section at the time it was entered. In such a case, however, a Bank may extend any additional unsecured credit to such a counterparty only in compliance with the limitations that are calculated using the lower maximum exposure limits. For the purposes of this section, the renewal of an existing unsecured extension of credit, including any decision not to terminate any sales of federal funds subject to a continuing contract, shall be considered an additional extension of unsecured credit that can be undertaken only in accordance with the lower limit.

(e) *Reporting requirements.* (1) *Total unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total unsecured extensions of credit arising from on-and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of:

(i) The Bank's total capital; or

(ii) The counterparty's, or affiliated counterparties' combined, Tier 1 capital, or if Tier 1 capital is not available, total capital (as defined by each counterparty's principal regulator) or some similar comparable measure identified by the Bank.

(2) *Total secured and unsecured extensions of credit.* Each Bank shall report monthly to the Finance Board the amount of the Bank's total secured and unsecured extensions of credit arising from on-and off-balance sheet and derivative transactions to any single counterparty or group of affiliated counterparties that exceeds 5 percent of the Bank's total assets.

(f) *Measurement of unsecured extensions of credit.* For purposes of this section, unsecured extensions of credit will be measured as follows:

(1) For on-balance sheet transactions, an amount equal to sum of the book value of the item plus net payments due the Bank;

(2) For off-balance sheet transactions, an amount equal to the credit equivalent amount of such item, calculated in accordance with § 932.4(f) of this part; and

(3) For derivative transactions, an amount equal to the sum of the current credit exposure and the potential future exposure for the derivative contract, where the current credit exposure and potential future credit exposure are calculated in accordance with §§ 932.4(g) or 932.4(h) of this part, as applicable.

(g) *Obligations of the United States.* Obligations of, or guaranteed by, the United States are not subject to the requirements of this section.

Dated: August 1, 2001.

By the Board of Directors of the Federal Housing Finance Board.

J. Timothy O'Neill,

Chairman.

[FR Doc. 01–19851 Filed 8–7–01; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK64

Diseases Specific to Radiation-Exposed Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning presumptive service connection for certain diseases for veterans who participated in radiation-risk activities during active service or while members of reserve components during active duty for training or inactive duty training. This proposed amendment would add cancers of the bone, brain, colon, lung, and ovary to the list of diseases which may be presumptively service connected and amend the definition of the term ''radiation-risk activity.'' The intended effect of this amendment is to ensure that veterans who may have been exposed to radiation during military service have the same burden of proof as civilians exposed to ionizing radiation who may be entitled to compensation for these cancers under comparable Federal statutes.

DATES: Comments must be received on or before October 9, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK64.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bill Russo, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Under the provisions of the Radiation-Exposed Veterans Compensation Act of 1988, Pub. L. 100–321, § 2(a), 102 Stat. 485 (codified as amended at 38 U.S.C. 1112(c)), if a veteran who participated in a radiation-risk activity while serving on active duty or as a member of a reserve component while on active duty for training or inactive duty training subsequently develops leukemia (other than chronic lymphocytic leukemia), cancer of the thyroid, breast, pharynx, esophagus, stomach, small intestine, pancreas, gall bladder, bile ducts, salivary gland, or urinary tract, multiple myeloma, lymphomas (except Hodgkin's disease), primary cancer of the liver (except if cirrhosis or hepatitis B is indicated), or bronchiolo-alveolar carcinoma, the disease is presumed to be service connected. Section 1112(c)(3)(B) of title 38, United States Code defines ''radiation-risk activity'' to mean onsite participation in a test involving the atmospheric detonation of a nuclear device; the occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946; or internment as a prisoner of war in Japan or service on active duty in Japan following such internment during World War II which resulted in an opportunity for exposure to ionizing radiation.

The Radiation Exposure Compensation Act (RECA), Pub. L. No. 101–426, 104 Stat. 920 (1990) (codified as amended at 42 U.S.C. 2210 note), authorizes compensation for certain residents of Nevada, Utah, and Arizona who lived downwind from the Government's above-ground nuclear tests, for underground uranium miners, and for persons who participated onsite in a test involving the atmospheric detonation of a nuclear device and contracted a specified disease, including all cancers included in 38 U.S.C. 1112(c)(2). On July 10, 2000, the President signed into law the RECA Amendments of 2000, Pub. L. No. 106–245, § 3, 114 Stat. 501, 502, which expanded the definition of persons eligible to receive compensation to include above-ground uranium miners, millers and persons who transported ore. The RECA Amendments also expanded the list of specified diseases for which compensation is payable to include lung, colon, brain, and ovarian cancers. Other than bronchiolo-alveolar carcinoma (a rare type of lung cancer), No no presumption of service connection currently exists for these four cancers under 38 U.S.C. 1112(c).

Note: Section 1112(c)(2) is slightly broader in that it includes urinary tract cancer not just bladder cancer as RECA does.

On October 30, 2000, the President signed into law the Floyd D. Spence National Defense Authorization Act for FY 2001, Pub. L. No. 106–398, 114 Stat. 1654. Title XXXVI of Pub. L. No. 106–398, the Energy Employees Occupational Illness Compensation Act Amendments of 2000, authorizes compensation and benefits for certain Department of Energy (DOE) employees and persons employed by DOE contractors, subcontractors, and vendors who were involved in DOE nuclear weapons-related programs. Under the Act, if a member of a Special Exposure Cohort develops a ''specified cancer'' after beginning employment at a DOE facility for a DOE contractor, or at an atomic weapons facility for an atomic weapons contractor, the cancer is presumed to have been sustained in the performance of duty and is compensable. The term ''Special Exposure Cohort'' refers to employees of DOE or DOE contractors or subcontractors on Amchitka Island, Alaska prior to January 1, 1974, who were exposed to ionizing radiation in

the performance of duty related to certain underground nuclear tests. The term also includes persons employed by DOE, DOE contractors or subcontractors, or an atomic weapons employer for at least 250 work days before February 1, 1992, at gaseous diffusion plants in Paducah, Kentucky, Portsmouth, Ohio, and Oak Ridge, Tennessee. ''Specified cancers'' means a ''specified disease'' as defined by RECA as well as bone cancer.

Section 501(a)(1) of title 38, United States Code, provides that the Secretary of Veterans Affairs has the authority to promulgate regulations regarding the nature and extent of proof and evidence in order to establish entitlement to veterans' benefits. Pursuant to this authority, VA proposes to amend 38 CFR 3.309(d)(2) to add bone, brain, colon, lung, and ovarian cancers, which are covered under the Energy Employees Occupational Illness Compensation Program Act or are covered under the RECA Amendments but are currently not included in the list of diseases in 38 U.S.C. 1112(c)(2) that are presumed to be service connected for radiation-exposed veterans. While veterans may establish service connection for these five cancers under 38 U.S.C. 1110 or 1131, or the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. No. 98–542, 98 Stat. 2725 (1984), doing so is difficult because, inter alia, it requires sound scientific and medical evidence establishing that it is at least as likely as not the veteran's disease resulted from exposure to radiation in service based in part on an assessment of the amount of radiation to which a veteran was exposed. 38 CFR 3.311.

VA believes that public policy and equity dictate that veterans are entitled to the reduced burden of proof for these five cancers available to persons covered under RECA and Pub. L. No. 106–398 for purposes of establishing that their same cancers are attributable to radiation to which they may have been exposed while serving our Nation. Congress has found that nuclear weapons testing involves ''unique dangers, including . . . recurring exposures to radioactive substances that, even in small amounts, can cause medical harm.'' Pub. L. No. 106–398, § 3602(a)(1). Congress has also found that scientific data resulting from the enactment of the Radiation-Exposed Veterans Compensation Act of 1988, Pub. L. 100–321, and obtained from the Committee on the Biological Effects of Ionizing Radiation and the President's Advisory Committee on Human Radiation Experiments, ''provide medical validation for the extension of compensable radiogenic pathologies.'' RECA Amendments of 2000, § 2(4), 114 Stat. 501. Based upon these findings, Congress passed the RECA Amendments of 2000 and the Energy Employees Occupational Illness Compensation Program Act of 2000. Public policy favors consistent, nationwide application of rules in federal benefits programs, *see Butler Co. Mem'l Hosp.* v. *Heckler,* 780 F.2d 352, 357 (3d Cir. 1985), and these congressional findings are equally applicable to veterans who participated in a radiation-risk activity during which they were involuntarily subjected to increased risk of injury and disease. Veterans should not carry a greater burden of proof to establish the relatedness of their cancer to their military service than persons covered under RECA and members of the Special Exposure Cohort covered under the Energy Employees Act. We therefore propose to amend VA's regulations at 38 CFR 3.309(b)(2) to add bone, lung, brain, colon, and ovarian cancer to the list of diseases presumed to be the result of a radiation-risk activity during active duty, active duty training, or inactive duty for training.

To further ensure that veterans exposed to radiation during military service receive the same consideration for the risks of radiation exposure as the employees of DOE, DOE contractors and subcontractors, and atomic energy employers with whom they worked, we also propose to revise the definition of ''radiation-risk activity'' in 38 CFR 3.309(d)(3)(ii) by adding service at Amchitka Island, Alaska, prior to January 1, 1974, if exposed to ionizing radiation in performance of duty related to certain underground nuclear tests. ''Radiation-risk activity'' would also include service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if during such service, the veteran was monitored through the use of dosimetry badges for exposure at the plant of the external parts of the veteran's body to radiation or served in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges. We have defined the term ''day'' as all or any portion of a calendar day. This definition is appropriate since military personnel are on duty 24 hours per day and do not always have a fixed, limited work shift. DOE has advised us that the facilities at Paducah, Kentucky, and Portsmouth, Ohio, were gaseous diffusion plants, while the gaseous diffusion plant at Oak Ridge, Tennessee, was restricted to one area of the campus identified as K25.

Compliance With the Congressional Review Act, the Regulatory Flexibility Act, and Executive Order 12866

We estimate that the 10-year benefits cost of this proposed rule from appropriated funds would be $769 million in benefits costs. We estimate that during several of these years, the annual benefits costs would be more than $100 million. We also estimate that the 10-year cost in Government operating expenses would be $34 million. Since we estimate that the adoption of the proposed rule would have an annual effect on the economy of $100 million of more, the Office of Management and Budget has designated this rule as a major rule under the Congressional Review Act, 5 U.S.C. 802, and a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. The following information is provided pursuant to E.O. 12866.

As explained above, the Secretary has proposed this regulatory amendment to ensure that veterans exposed to radiation during military service receive the same consideration for the risks of this exposure as DOE employees, contractors, and subcontractors. There are no feasible alternatives to this proposed rule, since it is needed to provide fairness and equity for veterans and their survivors. This rule would not interfere with State, local, or tribal governments in the exercise of their governmental functions.

Benefits Costs

Over the next 10 years, VA expects to process 91,567 service-connected disability compensation claims (living veterans) and 48,050 Dependency and Indemnity Compensation (DIC) claims (veterans' survivors claims for service connection for cause of death) filed as a result of this proposed rule. Historically, about 12% of all radiation related claims have been granted. If past experience proves a reliable indicator of future events, VA expects to grant 10,988 of those disability compensation claims and 5,766 of those DIC claims.

We estimate that the cumulative totals of benefits awards to claimants over the next 10 years would be as follows: $8,040,630, $26,248,947, $44,265,910, $61,126,347, $76,565,137, $90,329,734, $102,328,198, $112,436,560, $120,555,709, and $126,704,527, for a total benefits cost of $768,601,698 over 10 years.

Administrative Costs

Based on the administrative workload projected to result from this proposed rule (discussed above), VA estimates that full time employee (FTE) resources devoted to processing claims in years 1 through 10 would be 77, 113, 69, 64, 51, 40, 39, 35, 35, and 33 respectively. Estimated Government operating expenses (GOE) costs for the next 10 years are as follows: $3,910,578, $5,047,838, $3,584,683, $4,127,798, $3,419,862, $2,817,402, $2,825,825, $2,669,755, $2,780,414 and $2,750,142, for a total GOE cost of $33,934,297 over 10 years.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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

List of Subjects in 38 CFR Part 3

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

Approved: March 20, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

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

PART 3—ADJUDICATION

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

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

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

2. Section 3.309 is amended by:

A. Adding new paragraphs (d)(2)(xvii) through (d)(2)(xxi).

B. Adding new paragraph (d)(3)(ii)(D).

The additions read as follows:

§ 3.309 Diseases subject to presumptive service connection.

* * * * *

(d) *Diseases specific to radiation-exposed veterans.* * * *

(2) * * *

(xvii) Cancer of the bone.

(xviii) Cancer of the brain.

(xix) Cancer of the colon.

(xx) Cancer of the lung.

(xxi) Cancer of the ovary.

(3) * * *

(ii) * * *

(D)(*1*) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

(*i*) Was monitored for each of the 250 days of such service through the use of dosimetry badges for exposure at the plant of the external parts of veteran's body to radiation; or

(*ii*) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or

(*2*) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(*3*) For purposes of paragraph (d)(3)(ii)(D)(*1*) of this section, the term ''day'' refers to all or any portion of a calendar day.

* * * * *

[FR Doc. 01–19916 Filed 8–7–01; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Revision to the 5% Error Limit for Sequenced Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is seeking comments on the following proposed rule change to the Domestic Mail Manual (DMM). Under this proposal, the 5% error limit for carrier route walk-sequenced mail is clarified to include line-of-travel (LOT)-sequenced mail. For all sequenced mail, no more than 5% of the total pieces in the entire carrier route mailing may be found out of sequence or sorted to the wrong carrier route.

DATES: Comments must be received on or before September 7, 2001.

ADDRESSES: Send written comments to the Manager, Business Mail Acceptance, U.S. Postal Service, 1735 North Lynn Street, Room 3011, Arlington, VA 22209–6030. Written comments may be submitted via fax to 703–292–3738. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 3011 at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Bronson, 703–292–3539.

SUPPLEMENTARY INFORMATION: The Postal Service requires all mail claimed at the Periodicals basic carrier route rate or the Standard Mail Enhanced Carrier Route rate to be sequenced in either walk-sequence or line-of-travel (LOT) order. Current standards state that for each carrier route receiving mail, no more than 5% of the total pieces may be found out of sequence or sorted to the wrong carrier route. The 5% limitation for missorted or missequenced mail is applied to an individual carrier route because, until recently, the Postal Service was able to detect such errors only at the delivery unit and could not easily determine an error percentage for the entire mailing.

Due to technological innovations, the Postal Service now can detect missequenced carrier route pieces at and prior to acceptance, where the entire mailing can be evaluated. Therefore, the Postal Service proposes to amend the current standards to apply the 5% limit for walk-sequence and LOT errors to the entire mailing, and not to an individual carrier route. This change will make how the Postal Service determines eligibility for carrier route rates consistent with how it determines eligibility for other postage discounts. The Postal Service will use the established statistically valid sampling methods for business mail entry unit (BMEU) acceptance procedures to determine whether the 5% error limit is exceeded for the carrier route mailing.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the

Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M050 Delivery Sequence

* * * * *

2.0 ACCURACY

2.1 Error Rate—Walk Sequence

For carrier routes sequenced in walk-sequence order, no more than 5% of the total pieces in the mailing may be found out of sequence or sorted to the wrong carrier route.

2.2 Error Rate—Line-of-Travel Sequence

For carrier routes sequenced in line-of-travel (LOT) order, no more than 5% of the total pieces in the mailing may be found out of sequence or sorted to the wrong carrier route.

2.3 Pieces in Error

For this standard, pieces are not considered missorted or missequenced because of USPS scheme changes not yet incorporated in the scheme that the mailer was authorized to use to prepare the mailing. When sortation or sequencing errors over the applicable 5% limit in 2.1 and 2.2 are detected, the mailer is notified that they must re-sequence the mail or pay the next higher rate for which the mail qualifies. The percent of mail determined to be missorted or missequenced within the mailing is subject to additional postage for the difference between the carrier route rate claimed and the next higher rate for which the mail qualifies.

* * * * *

If this proposal is adopted, an appropriate amendment to 39 CFR 111.3 will be published to reflect this change.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 01–19806 Filed 8–7–01; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0038, CO–001–0065; FRL–7028–5]

Clean Air Act Determination of Attainment for PM_{10} Nonattainment Areas; Montana and Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make determinations of attainment for the particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) National Ambient Air Quality Standards (NAAQS) for the Whitefish, Montana, Thompson Falls, Montana and Steamboat Springs, Colorado moderate PM_{10} nonattainment areas. The Whitefish, Montana nonattainment area was required by the Clean Air Act Amendments (CAAA) of 1990 to attain the PM_{10} NAAQS by December 31, 1999. This proposed determination is based on complete, quality assured ambient air quality monitoring data for the years 1997, 1998, and 1999. The Thompson Falls, Montana and Steamboat Springs, Colorado nonattainment areas were required by the Clean Air Act Amendments (CAAA) of 1990 to attain the PM_{10} NAAQS as of December 31, 2000. These proposed determinations are based on complete, quality assured ambient air quality monitoring data for the years 1998, 1999, and 2000.

DATES: Written comments must be received on or before September 7, 2001.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'', or ''our'' are used, we mean the Environmental Protection Agency (EPA).

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I. Background

A. Designation and Classification of PM_{10} Nonattainment Areas

The Whitefish and Thompson Falls areas were designated nonattainment for PM_{10} and classified as moderate under section 107(d)(3) of the Clean Air Act, on October 19, 1993 and December 21, 1993 respectively.[1] See 58 FR 36907 (July 9, 1993), 58 FR 53886 (October 19, 1993) and 40 CFR 81.327 (Flathead County (part)) in regards to Whitefish. See 57 FR 43846 (September 22, 1992), 58 FR 67334 (December 21, 1993) and 40 CFR 81.306 (Sanders County (part)) in regards to Thompson Falls. The Whitefish designation became effective on November 18, 1993 and the Thompson Falls designation became effective on January 20, 1994. The Steamboat Springs, Colorado area was designated nonattainment for PM_{10} and classified as moderate under section 107(d)(3) of the CAA, on December 21, 1993. See 57 FR 43846 (September 22, 1992), 58 FR 67334 (December 21, 1993) and 40 CFR 81.306 (Routt County (part)). The Steamboat Springs

[2] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended (''the Act''). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. Sections 7401, *et seq.*

designation became effective on January 20, 1994. The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in Subparts 1 and 4 of Title I of the Act.[2]

B. How Does EPA Make Attainment Determinations?

All PM_{10} nonattainment areas are initially classified "'moderate'" by operation of law when they are designated nonattainment. See section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM_{10} nonattainment areas attained the NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon an area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement.

Generally, we will determine whether an area's air quality is meeting the PM_{10} NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring sites (NAMS) in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined to meet federal monitoring requirements (see 40 CFR 50.6, 40 CFR part 50 appendix J, 40 CFR part 53, 40 CFR part 58 appendix A & B) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the federal monitoring requirements for SLAMS. We review all data to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

As described in 40 CFR part 50 and appendix K, attainment of the annual PM_{10} standard is achieved when the annual arithmetic mean PM_{10} concentration over a three year period (for example, 1998, 1999, 2000 for areas with a December 31, 2000 attainment date) is equal to or less than 50 micrograms per cubic meter ($\mu g/m^3$). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM_{10} concentrations greater than 150 $\mu g/m^3$. The 24-hour standard is attained when the expected number of days with levels above 150 $\mu g/m^3$ (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data is generally necessary to show attainment of the 24-hour and annual standard for PM_{10}. Appendix K, of 40 CFR part 50, addresses procedures for calculating expected annual averages and expected annual exceedances that are used for PM_{10} attainment determinations. The expected annual average is calculated as the average of the three annual means. The expected number of annual exceedances is calculated as the average of the number of exceedances for three years; if data in a given year are incomplete, but meet the minimum requirements specified in appendix K, the annual exceedance rate is estimated from the observed exceedance rate. Prior to 1998, the required sampling frequency for PM_{10} was one 24-hour sample every six days, every two days, or every day, depending on the probability of nonattainment of the PM_{10} standards. According to a revision to 40 CFR 58.13 that was effective starting in 1998, the required sampling frequency is a minimum of one 24-hour sample taken every third day, except during periods or seasons exempted by the Regional Administrator. We recognize that data from some scheduled sampling days may be missing for any number of reasons, (e.g. damaged filters, miscalibrated equipment, or other equipment failure) therefore, exceptions have been made to the required sampling frequencies. Appendix K specifies a minimum 75% data capture rate of required PM_{10} samples, but states that: "Data not meeting these criteria may also suffice to show attainment, however, such exceptions will have to be approved by the Regional Administrator in accordance with established guidelines." *See* 40 CFR part 50 and appendix K. Our April 1987 "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" provides eligibility requirements and guidance on exceptions to the data requirements, but was not intended to list all possible situations in which data may be acceptable. The guidance states that other procedures besides those described may be used if approved by the Regional Administrator.

II. EPA's Proposed Action

Based on quality-assured data meeting the requirements of 40 CFR 50, appendix K, we are proposing to find that Whitefish, Montana attained the PM_{10} NAAQS as of December 31, 1999 and that Thompson Falls, Montana and Steamboat Springs, Colorado attained the PM_{10} NAAQS as of December 31, 2000. This proposed action to determine attainment for Whitefish, Montana is based on monitored air quality data for the national ambient air quality standard (NAAQS) for PM_{10} from the years 1997–99, and the actions for Thompson Falls, Montana and Steamboat Springs, Colorado are based on data from the years 1998–2000. If we finalize this proposal, consistent with CAA section 188, the areas will remain moderate PM_{10} nonattainment areas and avoid the additional planning requirements that apply to serious PM_{10} nonattainment areas.

This action should not be confused with a redesignation to attainment under CAA section 107(d) because neither Montana nor Colorado have submitted a maintenance plan as required under section 175(A) of the CAA or met the other CAA requirements for redesignation. The designation status in 40 CFR part 81 will remain moderate nonattainment for all three areas until such time as Montana and Colorado meet the CAA requirements for redesignations to attainment.

We are soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Basis for EPA's Proposed Action

A. Whitefish, Montana

1. Determination that the Whitefish PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 1999.

Whether an area has attained the PM_{10} NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period. *See* 40 CFR part 50 and 40 CFR part 50, appendix K. Since the attainment date for Whitefish was December 31, 1999, the three year period covers calendar years 1997, 1998, and 1999. Samples were collected on an every day schedule for Whitefish during this time period.

The PM_{10} concentrations reported at the monitoring site showed one measured exceedance of the 24-hour PM_{10} NAAQS in 1997 with a value of 178 $\mu g/m^3$; the expected exceedances for this year also calculated to 1. For 1998 and 1999, the number of exceedances and expected exceedances were 0.0.

[2] Subpart 1 applies to nonattainment areas generally and Subpart 4 applies to PM_{10} nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. We have attempted to clarify the relationship among these provision in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990." (See 57 FR 13498, April 16, 1992.

Thus, the three-year average was less than 1.0, which indicates that Whitefish attained the 24-hour PM_{10} NAAQS as of December 31, 1999. The second highest value recorded between 1997 and 1999 at the Whitefish monitoring site was 138 μg/m³ which is below the standard of 150 μg/m³.

Review of the annual standard for calendar years 1997, 1998 and 1999 reveals that Whitefish also attained the annual PM_{10} NAAQS by December 31, 1999. There was no violation of the annual standard for the three year period from 1997 through 1999. The expected annual average value for the three year period was 29 μg/m³, which is below the standard of 50 μg/m³.

B. Thompson Falls

1. Determination that the Thompson Falls PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 2000.

Since the attainment date for Thompson Falls was December 31, 2000, the three year period covers calendar years 1998, 1999, and 2000. The PM_{10} concentrations reported at the two monitoring sites showed no measured exceedances of the 24-hour PM_{10} NAAQS between 1998 and 2000. Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that Thompson Falls also attained the annual PM_{10} NAAQS by December 31, 2000. No monitoring sites showed a violation of the annual standard in the three year period from 1998 through 2000 and the expected annual average value for the three year period was 26 μg/m³, which is below the standard of 50 μg/m³. The sampling frequency at the Thompson Falls monitoring site during the first and fourth quarters of 1998 and 1999 was every two days and every sixth day for the second and third quarters. During 2000, the sampling frequency was every two days for the first quarter, every sixth day for second and third quarters and every third day for the fourth quarter.

As described above, the 1987 Guideline provides eligibility requirements and example situations in which data may be substituted. For Thompson Falls, there were two quarters during this three year attainment period (1998–2000), which had less than 75% data capture, but greater than 50% data capture and thus qualified for data substitution under our guidelines. The first quarter of 1999 had 12 values substituted, and used an 89 μg/m³ value from February 25, 1997 for substitution, bringing the quarterly average to 39.3 μg/m³, and the 1999 annual average to 35.1 μg/m³. The third quarter of 2000 had 4 values substituted, and used a 75 μg/m³ value from August 10, 2000 as the substitution value, bringing the quarterly average to 40.7 μg/m³, and the 2000 annual average to 20.5 μg/m³.

In 1999, the data recovery for Thompson Falls was incomplete due to extenuating circumstances at the monitoring site. The Courthouse on which the monitoring site had been located was being re-roofed and therefore, MDEQ was forced to find a new site on short notice, without enough time to set up a new monitoring site before the existing site was shut down. This forced MDEQ to miss all the monitoring days for the entire 3rd quarter of 1999. A new monitoring site was set up on the grounds of the local high school for the fourth quarter of 1999. The Region used 40 CFR part 50 appendix K and our April 1987 ''Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards'' to address the missing data from 1999. The Region decided to substitute third quarter data from 1998 for 1999 because we believe that it is representative of what third quarter 1999 data would have looked like had the monitoring site continued to operate. We believe this is an acceptable method because the exceedances that Thompson Falls experienced in the early 1990's were during winter months, not during the third quarter of the year. In addition, the particulate problem in Thompson Falls is related to road dust and that problem has been resolved since street sweeping measures were adopted by Montana and implemented in 1998. Therefore, we don't expect that there would have been any recorded exceedances during the third quarter of 1999 had the monitor been operating.

Since MDEQ was forced to change monitoring sites in the middle of the three year period necessary for Thompson Falls to show attainment by the area's attainment date, we don't have complete data at any one monitoring site. However, we believe that combining the data from the two separate monitoring sites is acceptable in this situation. We also believe that the location of the replacement monitoring site within the extremely small town of Thompson Falls provides adequate characterization of the community's air. We believe that Thompson Falls' data meets our Guideline and rule requirements. Therefore, with the preceding actions concluded, we believe that the data indicates that Thompson Falls attained the 24-hour and annual PM_{10} NAAQS as of December 31, 2000.

C. Steamboat Springs

1. Determination That the Steamboat Springs PM_{10} Nonattainment Area Attained the PM_{10} NAAQS as of December 31, 2000.

Since the attainment date for Steamboat Springs was December 31, 2000, the three year period covers calendar years 1998, 1999, and 2000. Steamboat Springs was operating on an every day sampling frequency during this time period. The PM_{10} concentrations reported at the monitoring site showed no measured exceedances of the 24-hour PM_{10} NAAQS between 1998 and 2000, which indicates Steamboat Springs attained the 24-hour PM_{10} NAAQS as of December 31, 2000. The highest monitored 24-hour value between 1998 and 2000 was 148 μg/m³. Although this wasn't an exceedance of the NAAQS, we agreed with Colorado that this value should be excluded as a high wind event under our May 30, 1996 ''Areas Affected by PM–10 Natural Events,'' policy. This data was flagged as a natural event in our Aerometric Information Retrieval System (AIRS) and Colorado submitted the proper documentation package to us certifying that this monitored value was due to unusually high winds in the area. Because of this, the highest applicable monitored 24-hour value during the three year period was 121 μg/m³ which is below the standard of 150 μg/m³.

Review of the annual standard for calendar years 1998, 1999 and 2000 reveals that Steamboat Springs also attained the annual PM_{10} NAAQS by December 31, 2000. Data collected at the monitoring site showed no violations of the annual standard in the three year period from 1998 through 2000. The expected annual average value for the three year period was 25 μg/m³, which is below the standard of 50 μg/m³.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This proposed action merely determines that certain States have met federal requirements and imposes no requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule would not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely determines that several nonattainment areas have met federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 30, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 01–19877 Filed 8–7–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1786; MM Docket No. 01–168; RM–10187]

Radio Broadcasting Services; Mendocino, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the proposed substitution of Channel 266A for Channel 224A at station KMBF(FM), Mendocino, California. This channel change will allow Station KMBF to increase its effective radiated power from 3 kilowatts to 6 kilowatts at the existing transmitter site. Coordinates used for this proposal are 39–20–33 NL and 123–46–51 WL.

DATES: Comments must be filed on or before September 17, 2001, and reply comments on or before October 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: George Anderson, 14200 Prairie Way, Mendocino, California 94560.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–168, adopted July 18, 2001, and released July 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 266A at Mendocino and removing Channel 224A at Mendocino.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–19845 Filed 8–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1787, MM Docket No. 01–169, RM–10145]

Radio Broadcasting Services; Danville and Nonesuch, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc. requesting the reallotment of Channel 296A from Danville, Kentucky, to Nonesuch, Kentucky, and modification of the license for Station WHIR–FM to specify operation on Channel 296A at Nonesuch, Kentucky, as its community of license. The coordinates for Channel 296A at Nonesuch are 37–50–12 and 84–38–15. In accordance with section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 296A at Nonesuch.

DATES: Comments must be filed on or before September 17, 2001, and reply comments on or before October 2, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC,

interested parties should serve the petitioner's counsel, as follows: F. William LeBeau, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–169, adopted July 18, 2001, and released July 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Danville, Channel 296A and adding Nonesuch, Channel 296A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–19846 Filed 8–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1804; MM Docket No. 01–170; RM–10190]

Radio Broadcasting Services; Pittsburg, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Pittsburg Broadcasting Company, requesting the allotment of Channel 246A to Pittsburg, New Hampshire, as that community's first local aural transmission service. Coordinates used for this proposal are 45–02–25 NL and 71–21–17 WL. Pittsburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border and will result in a short-spacing to the proposed allotment of Channel 247C1 at Thetford Mines, Quebec at coordinates 46–03–28 NL and 71–36–06 WL. Therefore, concurrence in the requested allotment by the Canadian government as a specially negotiated short-spaced allotment, must be obtained. Although the Pittsburg proposal is also short-spaced to a proposed allotment on Channel 247C2 at Sherbrooke, Quebec, at coordinates 45–24–00 NL and 71–54–00, the Sherbrooke proposal has been scheduled for deletion.

DATES: Comments must be filed on or before September 17, 2001, and reply comments on or before October 2, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Shook Hardy & Bacon, L.L.P., 600 14th Street, NW., Suite 800, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–170, adopted July 18, 2001, and released July 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Pittsburg, Channel 246A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–19847 Filed 8–7–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA–01–10292 (HM–206E)]

RIN 2137–AD50

Hazardous Materials: Hazardous Waste Manifest Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to revise its regulations on the use of the Uniform Hazardous Waste Manifest for shipments of hazardous wastes to

parallel some changes proposed by the Environmental Protection Agency (EPA). RSPA is proposing to require that, if the generator of a hazardous waste prepares an electronic manifest, either a physical copy of the electronic manifest or another document containing the information required for a shipping paper must accompany the hazardous waste in transportation. The intended effect of this proposed rule is to maintain consistency between EPA's and RSPA's requirements.

DATES: Submit comments by October 4, 2001. To the extent practicable, we will consider comments received after this date in making our decision on a final rule.

ADDRESSES: Address your comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. You must identify the docket number, RSPA–01–10292 (HM–206E) at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that your comments are received, include a self-addressed stamped postcard. You may also submit your comments and review all comments by accessing the Docket Management System website at *http://dms.dot.gov.* Click on ''Help and Information'' to obtain instructions for filing a document electronically.

The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You may view public dockets between the hours of 10 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. An electronic copy of this document may be downloaded from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/nara/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/su—docs* or the Office of Hazardous Materials Safety at *http://rspa.dot.gov/rulemake.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Johnsen, Office of Hazardous Materials Standards, telephone (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901, et seq.) and regulations of the Environmental Protection Agency (EPA) at 40 CFR Parts 262–264, hazardous wastes are tracked from their producer (generator) to their final disposal sites. The central tracking element of this system is the Uniform Hazardous Waste Manifest (uniform manifest), which accompanies a hazardous waste shipment from its point of origin to its destination. In 42 U.S.C. 6923, RCRA directs EPA to consult with DOT and issue regulations on the transportation of hazardous wastes that are ''consistent with'' requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180).

In coordinated rulemakings that followed joint EPA-DOT public hearings, EPA and RSPA issued final rules in 1980 requiring that a manifest accompany each shipment of hazardous waste during transportation. See 45 *FR* 12272 (Feb. 26, 1980) (EPA), 34560 (May 22, 1980) (RSPA). In 49 CFR 172.205, RSPA provided that the uniform manifest ''may be used as the shipping paper required by'' the HMR, so long as it contained all the required information. Four years later, EPA and RSPA concurrently amended their regulations to adopt the current uniform manifest form in order to address the problems resulting from ''a proliferation of manifests as States decided to develop and print their own forms.'' 49 *FR* 10490 (EPA), 10507 (RSPA) (March 20, 1984). Under the current regulations, a generator may use the uniform manifest form for wastes regulated solely by a State, but a State may not ''impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include preprinted information or optional State information items.'' 40 CFR 271.10(h)(2).

EPA has recently proposed to revise its uniform manifest regulations (66 *FR* 28239; May 22, 2001). One of EPA's proposed changes would allow the uniform manifest to be prepared and transmitted electronically from the generator to the disposal facility, rather than requiring it to accompany the shipment. On the electronic manifest, the required signatures would be done electronically, rather than in handwriting on a paper form. In addition, EPA is proposing to: (1) Align the definitions of ''bulk packaging'' and ''non-bulk packaging'' in its regulations to be consistent with those definitions in 49 CFR 171.8; (2) provide space on the uniform manifest for information currently required by the HMR on a shipping paper, including an emergency response phone number and the Packing Group of the material; and (3) revise the text of the certification statement by the generator to match the language required in 49 CFR 172.204(a).

II. Proposed Changes to the HMR

A uniform manifest that is prepared and transmitted electronically, from the generator to the transporter, the disposal facility, and the monitoring governmental agencies, can provide all the information necessary to track a shipment of hazardous waste. However, an electronic manifest cannot serve the purpose of a shipping paper to alert emergency responders as to the nature and hazards of materials in a transport vehicle or freight container, in the event of an incident during transportation of those materials, when electronic translators or readers may not be available. Accordingly, EPA has proposed that a paper copy of the manifest or other shipping paper must accompany the shipment.

In order to parallel EPA's proposal for an electronic manifest, RSPA proposes to modify 49 CFR 172.205 to provide that, when an electronic manifest is used, the hazardous waste must be accompanied by a physical shipping paper that can be either (1) a print-out (paper copy) of the electronic manifest or (2) a separate shipping paper that meets all of the shipping paper requirements in 49 CFR, subpart C of part 172. In addition, to prevent confusion by enforcement officials, if an electronic manifest is being used in the transportation of a hazardous waste, the shipping paper or copy of the electronic manifest must indicate on the document that an electronic manifest is being used.

Because § 172.204(d)(2) allows for a shipping paper to be ''signed manually, by typewriter, or by other mechanical means,'' no change to the HMR is needed when a paper copy of the electronic manifest is used as the shipping paper accompanying hazardous waste during transportation. The signature of the generator on the electronic manifest, as printed out on a physical copy, would satisfy the requirement in § 172.204(d). Other changes to the uniform manifest proposed by EPA that relate to requirements in the HMR would not require changes in the HMR.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the

Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The intent of the changes in this notice is to clarify that shipping paper information must still accompany every shipment of hazardous waste, even those for which electronic manifests are authorized. The net effect of these changes is to maintain current shipping paper requirements for hazardous wastes. Since there is no change in the shipping paper requirements other than the inclusion of an indication on the shipping documentation that an electronic manifest is being used, the costs and benefits would be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. This determination may be revised as a result of public comment.

B. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law (Federal law), 49 U.S.C. 5101–5127, contains an express preemption provision in 49 U.S.C. 5125(b)(1) that a State, local, or Indian tribe requirement about any of the following subjects is preempted if the non-Federal requirement is not substantively the same as a provision in the Federal law or the HMR:

(A) The designation, description, and classification of hazardous material;

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses the preparation and use of shipping documents, and Federal law would preempt State, local, and Indian tribe written incident reporting requirements that are not ''substantively the same as'' the requirements in this proposed rule HMR.

Federal law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption would be 180 days from publication of a final rule in this matter in the **Federal Register**.

C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule, if adopted, would not significantly or uniquely affect the Indian tribal communities, and would not impose substantial direct compliance costs, the funding and consultation requirements of the Executive Order do not apply.

D. Regulatory Flexibility Act

The intent of the changes in this notice is to clarify that shipping paper information must still accompany every shipment of hazardous waste, even those for which electronic manifests are authorized. The net effect of these changes is to maintain current shipping paper requirements for hazardous wastes. Since there is no change in the shipping paper requirements other than the inclusion of an indication on the shipping documentation that an electronic manifest is being used, the impacts of this rule, if adopted, are anticipated to be so minimal as to not warrant preparation of a regulatory impact analysis. Therefore, I certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. This proposed rule does not propose any change in information collection burdens. The information collection associated with the proposal is currently reported and has been approved by OMB under control number 2137–0034.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

H. Environmental Assessment

The intent of the changes in this notice is to clarify that shipping paper information must still accompany every shipment of hazardous waste, even those for which electronic manifests are authorized. The net effect of these changes is to maintain current shipping paper requirements for hazardous wastes. Since there is no change in the shipping paper requirements other than the inclusion of an indication on the shipping documentation that an electronic manifest is being used, we find that there are no significant environmental impacts associated with this proposed rule.

List of Subjects in 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 172 is proposed to be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.205, paragraphs (a), (b), (c), (d) and the introductory text of paragraph (f) would be revised, paragraph (e) would be removed and reserved, paragraph (g) would be

redesignated as paragraph (f)(6), and paragraph (h) would be removed to read as follows:

§ 172.205 Hazardous waste manifest.

(a) No person may offer, transport, transfer, or deliver a hazardous waste (waste) unless a hazardous waste manifest (manifest) is prepared in accordance with 40 CFR 262.20 and the manifest is signed, carried, and given in accordance with this section.

(b) When a generator prepares an electronic manifest in accordance with 40 CFR 262.20(a)(3)—

(1) Either a physical copy of the electronic manifest bearing the signature of the generator or a shipping paper meeting the requirements of §§ 172.200 through 172.204 must accompany the waste during transportation; and

(2) The copy of the electronic manifest or the shipping paper must include a statement indicating that an electronic manifest is being used, such as ''electronic manifest.''

(c) When a generator prepares a paper manifest on Form 8700–22 (and 8700–22A when necessary) in accordance with 40 CFR 262.20(a)(2) and the instructions in the appendix to 40 CFR part 262—

(1) The original copy of the manifest must be dated by, and bear the handwritten signatures of, the person representing:

(i) The generator of the hazardous waste at the time that the hazardous waste is offered for transportation, and

(ii) The initial carrier accepting the hazardous waste for transportation;

(2) A copy of the manifest must be dated by, and bear the handwritten signatures of the person representing:

(i) Each subsequent carrier accepting the hazardous waste for transportation at the time of acceptance, and

(ii) The designated facility receiving the hazardous waste, upon receipt; and

(3) A copy of the manifest bearing all required dates and signatures must be:

(i) Given to a person representing each carrier accepting the hazardous waste for transportation;

(ii) Given to a person representing the designated facility receiving the hazardous waste;

(iii) Returned to the generator by the carrier that transported hazardous waste from the United States; and

(iv) Retained by the generator and by the initial and each subsequent carrier for three years from the date the waste was accepted by the initial carrier. Each retained copy must bear all required signatures and dates up to and including those entered by the next person who received the hazardous waste from the person retaining the copy.

(d) A physical copy of an electronic manifest or a paper manifest may be used as a shipping paper if it contains all the information required by this subpart. When used as a shipping paper, the physical copy of an electronic manifest or the paper manifest must be carried during transportation in the same manner as required by this subchapter for shipping papers.

(e) [Reserved]

(f) *Transportation by rail.* When a generator of a hazardous waste shipment by rail prepares a paper manifest on Form 8700–22 (and 8700–22A when necessary) in accordance with 40 CFR 262.20(a)(2) and the instructions in the appendix to 40 CFR part 262, the following requirements apply instead of the requirements in paragraphs (c)(2) and (c)(3) of this section:

* * * * *

Issued in Washington, DC, on July 31, 2001, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–19647 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 66, No. 153

Wednesday, August 8, 2001

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

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Public Land Uses and Values

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new information collection associated with an agency research project to study social and economic impacts of public land and resource management in general terms. This study requires administration of a survey to a statistical sample of the general public.

DATES: Comments must be received in writing on or before October 9, 2001 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to Dr. Daniel W. McCollum, USDA Forest Service, Rocky Mountain Research Station, 2150–A Centre Ave., Suite 350, Fort Collins, CO 80526–1891. Comments also may be submitted by e-mail to *dmccollum@fs.fed.us* or by facsimile to (970) 295–5959. The public may inspect comments received at the address given previously. Visitors are urged to call ahead to (970) 295–5962 to facilitate entrance into the office.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. McCollum, Rocky Mountain Research Station at (970) 295–5962, *dmccollum@fs.fed.us* or Mary Ann Ball, Forest Service Information Collection Coordinator at (703) 605–4572, or *maryball@fs.fed.us.* Individuals who use telecommunication devices 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 Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Public Land Uses and Values.

OMB Number: 0596–New.

Type of Request: New.

Abstract: As part of a continuing research effort to develop and evaluate alternative approaches and methods for obtaining and incorporating public input into land and resource management decisions, this information collection will be focused mainly on people and their use of public lands. The information collected will help Forest Service and public land managers better understand how and why members of the general public do or do not use public lands for recreation or other purposes. It will contribute to the assessment of economic and social impacts of public land management in general terms and to the evaluation of the efficiency, effectiveness, and public acceptability of public land management.

This collection of information will include three aspects of public preferences, which are: (1) Objectives (comprised of values and desired outcomes) and preferences related to public land and public land management, (2) land attributes and people's behaviors and perceived consequences that can be linked to policy and management alternatives (in particular, measurable indicators of changes caused or prevented by policy and management actions), and (3) identification of how people evaluate the measured indicators of policy and management outcomes and consequences.

Surveys will be administered primarily by mail, although some telephone contacts and some very brief in-person contacts may be used in particular instances or case studies. Administration of surveys via the World Wide Web/Internet will be considered if and when appropriate. Respondents will be asked to complete an optional questionnaire containing questions about how, why, and where they use public land, how they think public land should be managed, and their preferences related to management tradeoffs. Both those who use public land and members of the general public who do not use these lands will be surveyed to provide a broad base of information.

Forest Service researchers and researchers at cooperating agencies and institutions who are specialists in economics, social science, outdoor recreation, survey research, and statistics will design and develop the surveys and collect and analyze the information.

This survey is necessary to provide land managers with reliable information on the public they serve. With the results of this survey, managers and planners will broaden and deepen their understanding of the public perceptions of various land management practices and impacts of those practices.

Estimate of Annual Burden: 30 minutes per respondent.

Type of Respondents: Individuals visiting or using public lands and randomly selected members of the general public.

Estimated Annual Number of Respondents: 8,000.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 4,000 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: July 30, 2001.

Robert Lewis, Jr.,

Deputy Chief for Research & Development.

[FR Doc. 01–19804 Filed 8–7–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Sewee Purchase Unit, Charleston County, SC

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On December 20, 1999, the Deputy Under Secretary of Natural Resources and Environment created the Sewee Purchase Unit. This purchase unit comprises 3000 acres, more or less, within Charleston County, South Carolina. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATES: Establishment of this purchase unit was effective December 20, 1999.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington, D.C. 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the map are encouraged to call ahead to (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Director, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, telephone: (202) 205–1248.

Dated: July 30, 2001.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

ESTABLISHMENT OF THE SEWEE PURCHASE UNIT
Charleston County, State of South Carolina

The following described lands lying adjacent or proximate to the Francis Marion National Forest are determined to be suitable for the protection of the watersheds of navigable streams and for other purposes in accordance with section 6 of the Weeks Act of 1911 (16 U.S.C. 515). Therefore, in furtherance of the authority of the Secretary of Agriculture pursuant to the Weeks Act of 1911, as amended, including section 17 of the National Forest Management Act of 1976 (Pub. L. 94-588; 90 Stat. 2961), these lands are hereby designated and established as the Sewee Purchase Unit.

All bearings recited herein are taken from bearings of record and all distances are in feet or miles and are approximate. The courses and land ownerships recited herein are based upon information secured from plats of record and/or the Charleston County, South Carolina Tax Records and such owners should be considered as "now or formerly".

All that certain tract of land lying on the waters of Palmetto Point Creek and other unnamed creeks, tributaries of the Atlantic Intercoastal Waterway described as follows:

BEGINNING at the northeasterly corner of the Sewee Purchase Unit at the intersection of Sewee Road with Sewee Bluff Road and lying on the southeastern boundary of the existing Proclamation Boundary of the Francis Marion National Forest. Thence, with (so as to include) lands of I.P. Timberlands Operating Company Limited Partnership common to (bounded by) Sewee Bluff Road (Bonny S. McConnell), then Amy T. White, then Sewee Bluff Road, then Barney G. Thomas, in a southeasterly direction, 1700' to a point at the southwest corner of the Barney G. Thomas parcel. Thence, with lands of I.P. Timberlands Operating Company, across the marsh in a southwest direction,
500' to a point at the northwest corner of the Romain Retreat Subdivision. Thence, continuing with lands of I.P. Timberlands Operating Company common to the northwestern boundary of the Romain Retreat Subdivision, in a southwesterly direction,
8500' to a point. Thence, with lands of Amy T. White common to other lands of Amy T. White, then Charles F. White, then James L. White, then U.S. Fish & Wildlife Service Cape Romain Wildlife Refuge, in a southwest direction,
2300 feet to a point at Bulls Island Road. Thence, two courses (From Plat Bk. ED, Pg. 307) with lands of Gail R. Thorn Tract 5 common to Gail R. Thorn Tract 4,
S50 26'39"W, 1837.3' to an iron pin. Thence, with Gail R. Thorn Tract 5, then Marsh Tract 4 common to the Gail R. Thorn Tract 4, then Tract 3,
S33 32'39"E, 4056.19' to a point on the edge of the Atlantic Intracoastal Waterway. Thence, with marsh lands of Gail R. Thorn, then John O. Bradsher, then Susan L. Drew common to the inland boundary of the Atlantic Intracoastal Waterway, in a general southwesterly direction,
2 miles to the intersection of the Intracoastal Waterway with Palmetto Point Creek. Thence, up and with the meanders of Palmetto Point Creek common to marsh lands of Susan L. Drew, in a general northerly direction,
5300' to a point at the intersection of the creek with the south boundary of lands of Susan L. Drew. Thence, with lands of Susan L. Drew common to marsh lands of Susan L. Drew, in a westerly direction,
1300' to a point at the southwest corner of the Drew tract. Thence, with lands of Susan L. Drew common to other lands of Susan L. Drew, in a northwesterly direction,
4200' to a point at the southwest corner of lands of Frederick C. Winchmann. Thence, continuing with lands of Susan L. Drew common to the Frederick C. Wichmann parcel, in an easterly direction,

734' to a point at the southeast corner of the Wichmann parcel. Thence, continuing with lands of Susan L. Drew common to lands of Frederick C. Wichmann, in a north direction,
1600' to a point at the southwest corner of lands of Frank Jackson. Thence, continuing with lands of Susan L. Drew common to lands of Frank Jackson, then Eugene Jackson, then Anne Colleton, then lands of unknown or uncertain ownership, in a northeasterly direction a total of,
3600' to a point. Thence, continuing with lands of Susan L. Drew common to lands of unknown or uncertain ownership, then Edwin Goodwine, Jr. Trust, then James Goodwine, Jr., then Anna Mae Goodwine, then Sarah Capers, in a northwesterly direction,
2250, to a concrete monument stamped "254-1934" on the southeasterly boundary of the existing Proclamation Boundary of the Francis Marion National Forest being Corner 17 of United States (Forest Service) Tract F-113r. Thence, with lands of Susan L. Drew, John O. Bradsher, William Dean and Dianne Seabrook, Rosalee Robinson, Gail R. Thorn, Amy T. White, and I.P. Timberlands Operating Company Limited Partnership common to the southeastern boundary of the existing Proclamation Boundary of the Francis Marion National Forest, in a general northeasterly direction,
3.7 miles to the place of BEGINNING, containing 3000 acres, more or less, and being delineated on the map which is attached hereto and made a part hereof.

Executed in Washington, D.C. this 20 day of December, 1999.

ANNE KEYS KENNEDY
Deputy Under Secretary
Natural Resources and Environment

[FR Doc. 01–19802 Filed 8–7–01; 8:45 am]
BILLING CODE 3410–11–C

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction: Santa Ana River Flood Control Project Interchange, San Bernardino National Forest, California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On July 12, 1999, and January 16, 2001, respectively, the Secretary of the Army and the Secretary of Agriculture signed a joint interchange order that authorizes the transfer of administrative jurisdiction from the Department of Agriculture to the Department of the Army for approximately 943 acres, consisting of 108 acres of fee lands and 835 acres of perpetual flowage easement rights, lying within the San Bernardino National Forest, San Bernardino County, California. Furthermore, the order transfers from the Department of the Army to the Department of Agriculture for inclusion in the San Bernardino National Forest approximately 773 acres lying within the San Bernardino National Forest, San Bernardino County, California. A copy of the joint order, as signed, is set out at the end of this notice.

DATES: This order is effective August 8, 2001. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b) has been met.

ADDRESSES: The joint interchange order signed by the Secretary of the Army and the Secretary of Agriculture and the accompanying exhibits, which contain maps showing the lands being conveyed and descriptions of the lands and interests being conveyed, are on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW, Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the documents are encouraged to call ahead to (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: David M. Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, Telephone (202) 205–1248.

Dated: July 30, 2001.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

DEPARTMENT OF THE ARMY
DEPARTMENT OF AGRICULTURE

SANTA ANA RIVER, CALIFORNIA

JOINT ORDER INTERCHANGING ADMINISTERATIVE JURISDICTION OF DEPARTMENT OF THE ARMY LANDS AND NATIONAL FOREST LANDS

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956, (70 Stat. 656; 16 U.S.C. 505a, 505b) it is ordered as follows:

(1) The lands under jurisdiction of the Department of the Army, described in Exhibits H, I, and K and shown in Exhibits A and J (maps are on file and available for public inspection in the Office of the Chief, USDA Forest Service, Washington, D.C.), which lie within and adjacent to the San Bernardino National Forest, California, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture subject to outstanding rights or interests of record and to such flooding as may occur from the operation of the Santa Ana River Project.

(2) The land under the jurisdiction of the USDA Forest Service, described Exhibits B, C, and E and shown on Exhibits A and D (maps are on file and available for public inspection in the Office of the Chief, USDA Forest, Washington, D.C.), which lie within and adjacent to the Santa Ana River Project, Seven Oaks Dam, California, are hereby transferred from the Secretary of Agriculture to the jurisdiction of the Secretary of the Army.

(3) Pursuant to Section 2 of the aforementioned Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Santa Ana River Project, California. The Department of the Army Lands transferred to the Secretary of Agriculture by this order are hereafter subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of the date of publication in the FEDERAL REGISTER.

/s/ LOUIS CALDERA	/s/ DAN GLICKMAN
SECRETARY OF THE ARMY	SECRETARY OF AGRICULTURE
July 12, 1999	Jan 16, 2001
DATE	DATE

[FR Doc. 01–19803 Filed 8–7–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank, USDA

Staff Briefing for the Board of Directors

TIME AND DATE: 2 p.m., Thursday, August 16, 2001.

PLACE: Conference 0204, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Contract for business advisor to the Privatization Committee.
2. Retirement of Class A stock in FY 2001.
3. Annual Class C stock dividend rate.
4. Amendment to bylaw section 2.2(c).
5. Allowance for loan losses reserve.
6. Current telecommunications industry issues.
7. Administrative issues.

ACTION: Stockholders' Meeting.

TIME AND DATE: 9 a.m., Friday, August 17, 2001.

PLACE: Conference Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the stockholders' meeting.

1. Call to order.
2. Establishment of a quorum.
3. Action on Minutes of the August 6, 1999, stockholders' meeting.
4. Secretary's report on loans approved.
5. Treasurer's report.
6. Privatization Committee report.
7. New business.
8. Adjournment.

ACTION: Board of Directors Meeting.

TIME AND DATE: Following the stockholders' meeting, Friday, August 17, 2001.

PLACE: Conference Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the May 11, 2001, board meeting.
3. Report on the allowance for loan losses reserve.
4. Consideration of resolution to retire Class A stock in FY 2001.
5. Consideration of resolution to set annual Class C stock dividend rate.
6. Action on amendment to bylaw section 2.2(c).
7. Ajournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: August 2, 2001.

Blaine D. Stockton,

Acting Governor, Rural Telephone Bank.

[FR Doc. 01–19994 Filed 8–6–01; 12:46 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–99]

Withdrawal of Application for Subzone Status for J. Baker, Inc.; (Distribution of Apparel, Footwear and Accessories) Foreign-Trade Zone 27—Boston, MA (Canton, MA)

Notice is hereby given of the withdrawal of the application submitted by the Massachusetts Port Authority, grantee of FTZ 27, Boston, MA, requesting special-purpose subzone status for the apparel, footwear and accessories warehousing/distribution facilities of J. Baker, Inc., located in Canton, MA. The application was filed on September 13, 1999 (64 FR 49440, 9/13/99).

The withdrawal was requested because of changed circumstances, and the case has been closed without prejudice.

Dated: July 31, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–19912 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–2001]

Foreign-Trade Zone 40—Cleveland, Ohio; Request for Manufacturing Authority; HMI Industries Inc. (High Filtration Vacuum and Air Cleaners)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, on behalf of HMI Industries Inc. (HMI), requesting authority to manufacture vacuum and air cleaners under FTZ procedures within FTZ 40—Site 8. The application was formally filed on July 31, 2001.

The application requests authority on behalf of HMI to manufacture high filtration vacuum and air cleaners under zone procedures within FTZ 40—Site 8, Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville, Ohio. The HMI facility (117 employees) is located at 13325 Darice Parkway, Unit A (1 bldg., 80,000 sq. ft.).

HMI is currently using FTZ procedures for the warehouse and distribution operations at this facility. The facility is also used for the manufacture of high filtration vacuum surface and air cleaning devices (HTS 8509 and 8421, duty free). Components and materials sourced from abroad (representing about 30% of all parts consumed in manufacturing) include: AC/DC motors; paper sacks and bags; insulated copper conductors and other insulated conductors; flexible plastic tubes, pipes and hoses and their plastic fittings; metal casters; aluminum casting articles; and vacuum cleaners, housings and parts (HTS 8501.2060, 8501.2040, 8509.9015, 8509.1000, 4819.4000, 8544.5190, 8544.5920, 3917.3900, 3917.4000, 8302.2000, 7616.9950, 8509.9005, duty rates range from duty-free to 5.7%, weighted average—1%).

FTZ procedures would exempt HMI from Customs duty payments on the foreign components used in export production. Nearly 70 percent of the plant's shipments are exported. On its domestic sales, HMI would be able to choose the duty rates during Customs entry procedures that apply to finished vacuum and air cleaners (duty-free) for the foreign inputs noted above. The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste. The application indicates that savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below.

The closing period of their receipt is October 9, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted

during the subsequent 15-day period to October 24, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 600 Superior Avenue, East #700, Cleveland, OH 44114.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 2, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–19913 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2001]

Foreign-Trade Zone 147—Reading, Pennsylvania; Application for Subzone Status; Amendment of Application—C&J Clark America, Inc. (Distribution of Footwear)

Notice is hereby given that the application of the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, requesting special-purpose subzone status for the footwear warehousing/distribution facility of C&J Clark America, Inc. (Clark), in Hanover, Pennsylvania (66 FR 12459, 2/27/01), has been amended to include an additional building (71,153 sq. ft.) within the subzone. The building will be used for receiving, storage, handling, packaging, distributing and shipping footwear.

The application remains otherwise unchanged.

The comment period is reopened until September 7, 2001.

Dated: August 2, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–19914 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Preliminary Results of Antidumping Duty Administrative Review of the Suspension Agreement

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

ACTION: Notice of preliminary results of antidumping duty administrative review of the suspension agreement.

SUMMARY: In response to a request from petitioners, Bethlehem Steel Corporation, Ispat Inland, Inc., LTV Steel Company Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation (collectively domestic producers), the Department of Commerce (the Department) is conducting an administrative review of the Suspension Agreement on hot-rolled flat-rolled carbon quality steel (hot-rolled steel) from Brazil. This review covers three manufacturers and exporters of the subject merchandise, Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais (USIMINAS), and Companhia Siderurgica Paulista (COSIPA) during the period of review (POR) from July 19, 1999 through June 30, 2000. We preliminarily determine that CSN and USIMINAS have made sales below the reference price established by the Suspension Agreement. We also preliminarily determine that the amount by which the estimated normal value exceeds the export price for each entry by CSN and USIMINAS/COSIPA indicates that the dumping margin on certain entries exceeds 15 percent of the weighted average margin for CSN and USIMINAS/COSIPA in the LTV investigation. For reasons stated in this notice, the Department preliminarily determines that CSN and USIMINAS/COSIPA have violated the Agreement. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) a statement of the issues and (2) a brief summary of the arguments.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall (CSN), Michael Ferrier or Dena Aliadinov (USIMINAS/COSIPA), or Nancy Decker, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1398, (202) 482–1394, (202) 482–3362, and (202) 482–0196, 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, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2000).

Background

On July 6, 1999, the Department entered into the Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil produced by CSN, USIMINAS, and COSIPA. *See Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38792, (July 19, 1999) (Suspension Agreement). This agreement was entered into under section 734(c) of the Act and section 351.208 of the Department's regulations. Section 734(c)(1) of the Act requires: (1) that the agreement eliminate completely the injurious effect of exports to the United States of the subject merchandise and (2) that the suppression or undercutting of price levels of domestic products by imports of the merchandise will be prevented; and (2) that for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. To satisfy the statutory criteria, the Suspension Agreement requires all signatories (CSN, USIMINAS, and COSIPA) to sell covered products in the United States at or above established reference prices and to satisfy the requirements of section 734(c)(1)(B) of the Act. The reference prices are set on a quarterly basis and include all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage, and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. *See* the Suspension Agreement, 64 FR 38793.

On July 28, 2000, petitioners requested the Department to conduct an administrative review of the sales and cost of USIMINAS, COSIPA, and CSN to ensure that the parties are in compliance with the terms of the Suspension Agreement. The Suspension Agreement stipulates that the Department may conduct administrative reviews under section 751 of the Act, upon request or upon its own initiative, to ensure that exports of hot-rolled steel from Brazil are at prices consistent with the terms of the agreement. Pursuant to petitioners' request, the Department initiated this administrative review on August 25, 2000 (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000)).

On October 24, 2000, the Department issued the antidumping questionnaire. On November 28, 2000, the respondents submitted section A of the questionnaire. On December 22, 2000, the respondents submitted sections B–D of the questionnaire. On January 25, 2001, the Department issued the first supplemental questionnaire. On February 7, 2001, the Department issued a second supplemental questionnaire. On February 12, 2001, the respondents submitted their responses to the first supplemental questionnaire. On February 16, 2001, the Department issued the third supplemental questionnaire, and on March 2, 2001 the respondents submitted their responses to the second and third supplemental questionnaires. On May 11, 2001 and May 18, 2001, the Department issued the fourth and fifth supplemental questionnaires. On June 6, 2001, the respondents submitted their responses to the fourth and fifth supplemental questionnaires.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing the preliminary results in an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days. On March 8, 2001, the Department published a notice of extension of the time limit for the completion of the preliminary results by 120 days, until July 31, 2001. *See* Administrative Review of the Suspension Agreement on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13891 (March 8, 2001).

Period of Review

The review covers the period July 19, 1999 through June 30, 2000. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.30–0.50%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	070–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.30–0.50%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 150,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10% Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	A1
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0,005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this agreement is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this agreement is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information using standard verification procedures, including the examination of the relevant sales and financial records.

Our verification results are outlined in the public versions of the verification reports. See COSIPA Sales Verification Report dated May 9, 2001 and July 31, 2001, USIMINAS Sales Verification Report dated May 9, 2001 and July 31, 2001, CSN Sales Verification Report dated May 9, 2001 and July 31, 2001 and other U.S. sales verification reports dated May 9, 2001 and May 11, 2001.

Use of 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.

The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent

practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong. 2nd Sess. (1994), at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' See Antidumping Duties, Countervailing Duties Final Rule, 62 FR 27340. The statute notes, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

USIMINAS/COSIPA

The Department's questionnaire of October 24, 2000 instructed the respondents to report all home market sales of the merchandise under review. In a letter dated November 1, 2000, from USIMINAS/COSIPA and CSN commenting on the Department's October 24, 2000 questionnaire, respondents requested not to report cut-to-length hot-rolled merchandise in the home market. In the letter, respondents asserted that given the restrictions in the Suspension Agreement for what respondents can export to the United States, home market sales of cut-to-length sheet are an example of a hot-rolled product that ''cannot be deemed identical and would unlikely ever be deemed most similar to the products exported to the United States.'' The respondents had argued that the Suspension Agreement stipulates that the respondents can only sell coil products in the U.S. market. CSN and COSIPA reported sales of cut-to-length hot-rolled merchandise in the home market; however, in USIMINAS' December 22, 2000 Section B submission, USIMINAS only reported home market sales of coil. In supplemental questionnaires dated February 7, 2001 and May 11, 2001 the Department requested USIMINAS to report home market sales of cut-to-length hot-rolled merchandise and elaborated in the May 11, 2001 questionnaire that if this merchandise is not reported, ''the Department will apply adverse facts available to any non-identical matches that could have matches to cut-to-length products.'' In both instances, USIMINAS stated that it would not report cut-to-length merchandise in the home market. USIMINAS asserted that there is no possibility for the Department to compare a U.S. sale of USIMINAS coil to a home market sale of cut-to-length material, as it has sufficient sales of identical or similar hot-rolled coil in the home market for comparison to all U.S. sales.

Within the model match hierarchy, all characteristics preceding the coil/cut-to-length characteristic are more defining. For instance, the characteristic immediately preceding the coil/cut-to-length characteristic is width. If the widths differ between a U.S. market coil sale and a home market coil sale, then a more suitable home market match for this U.S. observation would be a cut-to-length product with the same width (all other characteristics being equal), not a home market coil with a different width. In this instance, we have found certain U.S. sales that do not have an identical match at the width characteristic (but all other characteristics were equal). Therefore, a cut-to-length product of the same width (with all other characteristics being equal) as the U.S. sale would be a better match than the coil product with a different width. Since USIMINAS has not reported its home market cut-to-length sales, we have no way of determining if one of these sales would provide a better match.

USIMINAS did not report cut-to-length sales, even though it had the ability to do so. Therefore, pursuant to section 776(a) of the Act, since USIMINAS failed to cooperate by not acting to the best of its ability in reporting cut-to-length sales, we are applying adverse facts available. We are assigning USIMINAS, as adverse facts available, the highest calculated margin for any USIMINAS/COSIPA U.S. sale observation, where a home market cut-to-length product is a potentially more suitable match than a home market coil product. See USIMINAS/COSIPA Preliminary Analysis Memorandum, dated July 31, 2001.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope Review'' section above and sold in Brazil during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 24, 2000, antidumping questionnaire. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Affiliated Respondents

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of the other, such parties are considered to be affiliated for purposes of the antidumping law. Furthermore, it is the Department's practice to collapse affiliated producers for purposes of calculating a margin when they have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and the facts demonstrate that there is significant potential for manipulation of pricing or production. In the final determination of the investigation underlying this suspension agreement, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Notice of Final Determination of Sales at Less Than Fair Value Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; 64 FR 38756, 38759) (Final Determination). In response to our questions concerning this issue, USIMINAS/COSIPA have indicated that there have been no major changes in the corporate structure and

affiliates. Moreover, USIMINAS/COSIPA has indicated that the Department should follow it's prior final determination on this issue. We preliminary determine that there are no facts on the record to indicate that the relationship between the parties has changed, nor that the Department's basis for collapsing these entities has changed in any way. Therefore, we have preliminarily determined to collapse these entities for purposes of this review.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, the Department determines Normal Value based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or constructed export price (CEP) transaction. The NV LOT is that of the starting price of sales in the comparison market or, when NV is based on CV, that of the sales from which the Department derives selling, general, and administrative expenses (SG&A) and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the LOT 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, the Department examines 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, the Department makes a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. 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, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See, e.g., 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).

CSN

CSN claims to sell directly to trading companies, as well as to end-users and distributors through an agent (see further discussion of agency sales below) in the U.S. market. CSN also claims to sell to service center/distributors and end-users in the home market. CSN states that it provides warranties, technical assistance, returns, and freight arrangements equally to service centers/distributors and end-users. Thus, the selling functions provided to different classes of home market customers do not vary significantly. CSN provides the same selling functions for U.S. sales except for technical assistance. Technical assistance is only provided with respect to home market sales. However, CSN notes that this assistance is mainly provided in connection with warranty claims which are available to all customers. We preliminarily find that the varying levels of technical assistance provided in this case do not establish a significant difference between the services provided to home market and U.S. customers. Consequently, the Department preliminarily determines that there is only one LOT in the home market and that it is at the same level as the single LOT in the U.S. market.

USIMINAS/COSIPA

In the home market, USIMINAS/COSIPA claims to make sales through two primary channels of distribution: (1) direct sales to distributors and end users and (2) sales through affiliated distributors.

In determining whether separate levels of trade exist in the home market, the Department first examined available information on the record about the company's selling functions for each channel of distribution. USIMINAS/COSIPA claims that the selling functions performed by the affiliated distributors in the second channel of distribution (downstream sales) are much more significant than those performed by USIMINAS/COSIPA in their direct mill sales to end-users and unrelated distributors. To support its claim, the respondent provides the following examples of selling functions provided for downstream sales but not mill direct sales: inventory maintenance for customers, more flexible credit terms, special warehousing, technical services beyond those offered by the mills, special processing (on-site cutting and slitting activities), and more extensive delivery services. Of these selling functions, special processing does not appear to be a traditional selling function relevant to the Department's LOT analysis but, rather, is a production cost. For mill direct sales, USIMINAS/COSIPA provides only limited after-sales services/warranties, freight and delivery arrangements, and technical advice.

In addition, we have combined two selling functions, inventory maintenance and special warehousing (which, together, we refer to as ''warehousing'') because we find that they were not sufficiently distinct to warrant being treated as unique selling functions.

Based on these types of services performed by the affiliated distributors and the greater number of services provided by the affiliated distributors compared with the mills, we preliminary determine that the selling functions of the affiliates for downstream sales were significantly different than those for mill direct sales, and therefore, we have determined that downstream sales by affiliates were made at a different LOT than other HM sales. Thus, we preliminarily determine that downstream sales and mill direct sales represent two different home market LOTs.

In the U.S. market, COSIPA sold directly to unaffiliated trading companies, while USIMINAS stated that it sold directly to U.S. customers (service centers and large-volume steel consumers) using unrelated trading companies as its agents. USIMINAS/COSIPA noted that although the channels of distribution used by each company are slightly different, there is no difference between the types of services offered to each group of customers. USIMINAS/COSIPA claim that all U.S. sales are made at the same level of trade as USIMINAS/COSIPA's direct home market sales to end users and distributors. Both USIMINAS and COSIPA provided very few services to its U.S. customers. The limited selling functions associated with U.S. sales include warranties only for merchandise that conforms to the specifications ordered and freight and delivery arrangements. As noted above, these services are also provided to home market mill direct customers. The only additional selling function offered for home market mill direct sales is a limited amount of technical advice. Both home market mill direct sales and U.S. sales involve sales to large customers, including service centers/distributors that resell steel and end-users. The Department finds the limited type of selling functions for mill direct sales in the home market to be similar to U.S. sales. Therefore, based on our analysis of selling functions, the Department finds U.S. sales to be at the same LOT as home market mill direct sales.

Sales Involving Trading Companies

USIMINAS indicated that all its sales to the United States were made through

trading companies acting as its agent; CSN makes the same claim for some of its sales to the United States. For these sales, USIMINAS and CSN invoice the trading companies, then the trading companies issue an invoice marked ''as agents on behalf of USIMINAS'or ''as agent on behalf of CSN'' to the end customers. (See Preliminary Analysis Memoranda, dated July 31, 2001, for a full description of the transaction flow). Both CSN and USIMINAS claim that the end customer is their customer and the trading companies are merely acting as an ''agent.'' CSN and USIMINAS claim that since the trading companies are acting as ''agent,'' the title to the merchandise does not pass to the trading companies. Furthermore, for any merchandise currently held in inventory, the trading companies would have already sold this merchandise if not for their obligation to sell such merchandise at prices above the reference price established under the Suspension Agreement. Additionally, the trading companies paid duty on ''commissions'' earned as agents. Since CSN and USIMINAS are using trading companies as ''agents,'' they argue that the sale to the first unaffiliated party in the United States is the sale to the end customer, not the trading company.

During verification, we were able to confirm that the trading companies solicit and interact directly with the U.S. customers. Both CSN and USIMINAS negotiate a price that they charge the trading companies. Although both CSN and USIMINAS claim that the end customer is their customer, we found that the trading companies have the power to negotiate and set the price and terms of the sale to the U.S. customer with few restrictions (*e.g.,* it must be above the reference price and for USIMINAS, the trading company does not have unlimited freedom to raise the DDP price to any level). CSN and USIMINAS have indicated that the trading companies are compensated by a commission. However, the commission they refer to is simply the difference between the price charged to the end customer by the trading company and the sum of the price charged to the trading company by the mills plus any expenses that the trading company pays (*e.g.,* duty, U.S. brokerage and handling, *etc.*). Both companies have indicated that there is no set formula or method for determining this difference. In addition, the companies have indicated that the trading company could have a negative commission. Therefore, we find that this claimed commission reflects the profit on the subsequent sale by the trading company rather than a commission to the trading company.

We also found that both CSN and USIMINAS invoice the trading companies when the merchandise is shipped from the mill, whereas the trading companies do not invoice the end customer until after the end customer receives the merchandise. Consequently, there is often a lengthy gap between these invoices. In cases where the end customer cancels the sale before delivery, we found that the trading companies are responsible for warehousing the merchandise and for selling the merchandise. For these sales, the trading companies would have already paid the mill, and there is no indication that the mill would reimburse the trading companies for the payment it made on a canceled sale. Accordingly, we find that, inconsistent with an agency relationship, the trading companies bear the risk of loss for unpaid sales. While the invoices and sales contracts indicate that the trading companies are holding themselves out as agents on behalf of the mill (CSN or USIMINAS), we found no other documentation supporting this fact. In addition, neither company had a written agreement with their trading companies to act as their agents. While the absence of a written agreement is not dispositive of an agency relationship, we find that nothing in the record supports the conclusion that either CSN or USIMINAS controls or directs the trading companies in their transactions with end users.

Based upon the facts outlined above, we preliminarily determine that for these sales and for purposes of this suspension agreement, the first sale to an unaffiliated party in the United States is the sale from the exporter to the trading companies. Therefore, for these sales we have compared the prices to the trading companies (plus any other charges, not included in the price to the trading company, incurred in bringing the steel to the first customs port of discharge in the U.S. market) to the applicable reference prices. We have also used the price to the trading companies in calculating export price.

Date of Sale

As stated in 19 CFR 351.401(i), the Department normally will use invoice date as the date of sale unless another date better reflects the date on which the exporter or producer establishes the material terms of sale. Both CSN and USIMINAS/COSIPA reported the date of the nota fiscal (*i.e.,* the date the product leaves the factory) as the home market date of sale, and the date of the order confirmation as the date of the U.S. sale.

CSN maintains that it uses the date of the nota fiscal for home market sales in its accounting records because this is the date on which material terms of sale are finalized. The Department used the nota fiscal date in the investigation (see Final Determination at 38768). CSN states that there have been no significant changes to CSN's sales process since the investigation.

For its U.S. sales, CSN reported the order confirmation date, stating that it is the date of sale defined in the Suspension Agreement even though CSN uses the commercial invoice date in its normal accounting records. The Suspension Agreement defines the date of sale as the date on which a signatory confirms an order for a fixed quantity of hot-rolled steel at a fixed price (see Suspension Agreement, 64 FR 38793).

USIMINAS and COSIPA maintain that for their home market sales, the nota fiscal is the date on which the material terms of sale are first finalized. The nota fiscal is also used by both companies' accounting systems to register home market sales.

For their U.S. sales, USIMINAS and COSIPA also reported the order confirmation date as date of sale stating that it is the date of sale defined in the Suspension Agreement.

Based upon the respondent's arguments for these preliminary results, we have used the dates of sale as reported for all three companies.

Fair Value Comparisons

To determine the amount by which estimated normal value exceeds export price, the Department compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with sections 777A(d)(2) and 734(c)(1)(B)of the Act, the Department calculated monthly weighted-average prices for NV and compared these to individual U.S. entries of each exporter.

Downstream Sales

In a letter dated November 1, 2000, USIMINAS, COSIPA and CSN informed the Department of their intent not to report resales by their affiliated companies as part of their questionnaire responses.

CSN

On November 28, 2000 and revised on March 8, 2001, CSN provided aggregate sales information of its affiliated reseller. According to CSN, its reseller's sales of products made from hot-rolled steel are non-subject merchandise and/or would not match to the U.S. sales. The remaining sales by the reseller account for a small percentage of CSN's

total home market sales. We have not required CSN to report resales by their affiliates.

USIMINAS/COSIPA

In the USIMINAS/COSIPA response to the Department's questionnaire, these companies did not report their downstream sales. They cited the following reasons: (1) USIMINAS/ COSIPA sales to their affiliated distributors represent a relatively small portion of the total sales of USIMINAS/ COSIPA; (2) most of the merchandise the affiliated distributors resell is different from what the mills export to the United States; (3) the Department's determination from the investigation that the sales by the distributors are at different levels of trade from those by the mills. USIMINAS' and COSIPA's sales to affiliated resellers in the home market accounted for more than 5% of total sales, and the Department's supplemental questionnaire dated February 7, 2001 asked USIMINAS and COSIPA to provide aggregate sales data for each of their affiliated resellers. In the March 2, 2001 response, USIMINAS and COSIPA provided aggregate sales information of their affiliated resellers.

Based upon the information on the record, we preliminarily find that sales by the affiliated resellers are at a separate level of trade from the direct sales by the mills. Numerous direct mill sales are identical to or very similar to U.S. sales and are at the same LOT, and are available for matching to the U.S. sales. Therefore, we have preliminarily determined that the sales by affiliated resellers would likely be used to match to few, if any, U.S. sales, and we have not required respondents to report resales by their affiliates.

Export Price/Constructed Export Price

The Department based its calculations on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. Furthermore, the Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

The Department made company-specific adjustments as follows.

CSN

The Department made deductions from the starting price, where appropriate, for international freight, foreign inland freight, and foreign brokerage and handling incurred by CSN on its U.S. sales, in accordance with section 772(c)(2)(A) of the Act.

USIMINAS/COSIPA

The Department made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, international freight, and foreign brokerage and handling expenses.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, the Department calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

In order to determine whether there was 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), the Department compared each of 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. Since each of 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, the Department determined that the home market was viable for all respondents. Therefore, the Department has based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because the Department 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, the Department 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 unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, the Department was unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our less than fair value analysis. See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, the Department made a comparison to the next most similar product.

Cost of Production Analysis

The Department initiated an investigation to determine in fact whether the respondents made home market sales during the POR at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. Based on the fact that the Department had disregarded sales in the less than fair value investigation (the most recently completed investigation/ review of CSN and USIMINAS/ COSIPA at the time of initiation in this review) because they were made below the COP, the Department has reasonable grounds, in accordance with section 773(b)(2)(A)(ii) of the Act, to believe or suspect that respondents made home market sales in this review at prices below the cost of producing the merchandise.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of each (CSN and combined USIMINAS/COSIPA) respondent's cost of materials and fabrication for the foreign like product, plus an amount for SG&A, including interest expenses, and packing costs.

We used the information from each respondent's section D questionnaire and supplemental questionnaire responses to calculate COP. We compared the weighted-average COP for each respondent to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of a 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 twenty percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act. In addition, we determined that such below-cost sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product and relied on sales of similar merchandise to match, if available (see CEMEX v. United States, 1998 WL 3626 (Fed. Cir.)).

Our cost test for each respondent revealed that less than twenty percent of each respondent's home market sales of certain products were at prices below their respective COP. Therefore, we retained all such sales in our analysis. For other products, more than twenty percent of each respondent's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Preliminary Analysis Memoranda, July 31, 2001.

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each 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. We used the CV data each respondent supplied in its section D questionnaire and supplemental questionnaire responses.

Price-to-Price Comparisons

We calculated NV based on FOB or delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length prices. Consistent with past practice, we adjusted NV for the full amount of IPI and ICMS taxes collected on the subject merchandise, in accordance with section 773(a)(6)(B)(iii) of the Act, because these are VAT taxes. We made adjustments for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(iii) of the Act and 19 CFR 351.410. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and(B) of the Act.

CSN

For CSN, we based NV on prices of home market sales that passed the cost test. We made deductions for applicable billing adjustments, and certain taxes as discussed above. We made deductions, where appropriate, for inland freight pursuant to section 773(a)(6)(B) of the Act. We made COS adjustments for differences in credit, interest revenue, and warranty expenses, where appropriate.

USIMINAS/COSIPA

For USIMINAS/COSIPA we based NV on prices of home market sales that passed the cost test. We made deductions for applicable billing adjustments, discounts, and taxes. We made deductions, where appropriate, for inland freight, warehousing, and inland insurance, pursuant to section 773(a)(6)(B) of the Act. We made COS adjustments for imputed credit expense, interest revenue, and warranties.

Based on verification, we have made adjustments to home market warehousing, U.S. warranties and U.S. and home market imputed credit expenses. We have also disallowed COSIPA's home market technical services expenses as a direct selling expense. *See* USIMINAS/COSIPA Preliminary Analysis Memorandum, dated July 31, 2001.

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 identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(a)(2)(A) of the Act, we based SG&A expense 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 Brazil. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, 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. 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. (For an explanation of this method, *see* Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).)

Preliminary Results of the Review

The purpose of the review is to review the current status of, and compliance with, the terms of the Suspension Agreement.

Compliance With Section IV(E) of the Agreement

Under the statute, the Department is required to review sales made under the Agreement to determine whether the terms of the Agreement are being complied with. Specifically, section IV(E) of the Agreement requires that for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed a specified amount. That limit is 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

We examined the extent to which CSN or USIMINAS/COSIPA may have made sales that were not in compliance with this provision of the Agreement. To this end, we examined the number of sales which had margins that exceeded the limit established by the Agreement and the amount by which these sales exceeded this limit. As a result, we found that at least one company made sales at dumping margins that exceeded the limit

established by the Agreement and that neither the number of sales nor the amount by which they exceeded the limit was insignificant. On this basis, we cannot conclude that these sales inconsistent with the Agreement are inconsequential or inadvertent. See USIMINAS/COSIPA and CSN Preliminary Analysis Memoranda, dated July 31, 2001.

We note that the respondents have taken issue with some aspects of our approach in analyzing these sales. Specifically, the respondents argue that they are affiliated with the trading companies through which they sold to the United States and therefore the appropriate basis for our analysis are the sales by the trading companies. However, even if the Department were to determine that the trading companies acted as agents and that the first unaffiliated U.S. customers are the trading companies' customers, as respondents have argued, the extent to which the dumping margins for entries from CSN and USIMINAS/COSIPA would exceed 15 percent of the weighted average margin for CSN and USIMINAS/COSIPA in the LTFV investigation would not be insignificant. Therefore, we would still have found that there were sales in violation of the Agreement.

Compliance With Section IV(A) of the Agreement

Section IV(A) of the agreement contains the reference price requirements for merchandise subject to the agreement. We compared the price charged by the mill to the first unaffiliated customer in the United States to the reference price for the applicable period for that sale (based upon the order confirmation date). The Suspension Agreement states that the reference price includes all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. In addition, the Suspension Agreement stipulates that if the sale for export is on terms that do not include these expenses, the Signatories will ensure that the actual terms are equivalent to a price that is not lower than the reference price. Therefore, we have added to the price to the first unaffiliated U.S. customer any of these charges that were not included in the price terms to that first unaffiliated U.S. customer, and we compared this total to the applicable reference price.

In our analysis, we examined the number of sales and the amount by which they were made at prices below the reference price established by the Suspension Agreement. As a result, we found that for at least one company, neither the number of sales made below the reference price established by the Suspension Agreement nor the amount by which they were below the reference price was insignificant. On this basis, we cannot conclude that these sales inconsistent with the Agreement are inconsequential or inadvertent. See USIMINAS/COSIPA and CSN's Preliminary Analysis Memoranda, dated July 31, 2001.

Therefore, we preliminarily determine that CSN and USIMINAS/COSIPA have made sales in violation of these terms of the Agreement. Pursuant to Article X of the Agreement, the Department may engage in consultations with any Signatory to the Agreement regarding this determination. In the event that this determination is confirmed in the final results of this review, we will take whatever action we deem appropriate under section 734(i) of the Act, the Department regulations and Article XI of the Agreement.

Disclosure/Briefing Schedule

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument (no longer that five pages including footnotes) and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

This administrative review and this notice are in accordance with Section 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19911 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d), we are initiating this new shipper review.

EFFECTIVE DATE: August 7, 2001.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–4052 or (202) 482–3020, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (2001).

Background

On June 28, 2001, the Department received a timely request from Groupstars Chemical Company, Ltd. (Groupstars), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on silicon metal from the PRC. This order has a June anniversary month. The period of review is, therefore, June 1, 2000 through May 31, 2001.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Groupstars' June 28, 2001 request for a review certified that Groupstars had not exported the subject merchandise to the United States during the period of investigation (POI) and that it had not been affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214, Groupstars also certified that its export activities are not controlled by the central government of the PRC. In addition, pursuant to 19 CFR 351.214(b)(2)(iv), Groupstars' request contained documentation establishing: the date the subject merchandise was first shipped to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on silicon metal from the PRC.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking eligibility for a separate rate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review,* 65 FR 17257 (March 31, 2000). Accordingly, we will issue a separate rates questionnaire to Groupstars. If Groupstars provides sufficient evidence that it is not subject to *de jure* or *de facto* government control with respect to its exports of silicon metal, this review will proceed. If, on the other hand, Groupstars does not meet its burden to demonstrate its eligibility for a separate rate, then Groupstars will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(B).

Pursuant to 19 CFR 351.214 (g)(1)(i)(A) of the Department's regulations, the POR for a new shipper review initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this review is June 1, 2000 through May 31, 2001.

Concurrent with the publication of this initiation notice, and in accordance with 19 CFR 351.214(e), effective on the date of publication of this notice, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise exported by the company named above, until the completion of the review.

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: July 31, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary AD/CVD Enforcement Group III.

[FR Doc. 01–19778 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coils From Taiwan.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from Taiwan in response to requests from respondents Yieh United Steel Corporation (YUSCO), Tung Mung Development Co., Ltd. (Tung Mung) and Chia Far Industries Co., Ltd. (Chia Far), and petitioners [1] who requested a review of YUSCO, Tung Mung, and Ta Chen Stainless Pipe Company Ltd. (Ta Chen), and any of its affiliates within the meaning of section 771(33) of the Tariff Act of 1930, as amended (''the Act''). This review covers imports of subject merchandise from YUSCO, Tung Mung, Ta Chen, and Chia Far. The period of review (''POR'') is June 8, 1999 through June 30, 2000.

Our preliminary results of review indicate that Chia Far has sold subject merchandise at less than normal value (''NV'') during the POR, and that YUSCO and Tung Mung did not make any sales below normal value during the POR. In addition, we have preliminarily determined to rescind the review with respect to Ta Chen because it had no shipments of subject merchandise to the United States during the period of review. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld (Ta Chen); Stephen Shin (Chia Far); Stephen Bailey (YUSCO), Mesbah Motamed (Tung Mung); or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0172, (202) 482–0413, (202) 482–1102, (202) 482–1382 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

Background

On July 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel sheet and strip in coils from Taiwan. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty*

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC.

Order, Finding, or Suspended Investigation, 65 FR 45035 (July 20, 2000). On July 28, 2000, petitioners requested a review of YUSCO, Tung Mung and Ta Chen and its affiliates within the meaning of section 771(33) of the Act. *See Petitioners: Stainless Steel Sheet and Strip in Coils from Taiwan: Request for Administrative Review of Antidumping Duty Order,* July 28, 2000. On July 26, 2000, YUSCO, a producer and exporter of subject merchandise during the POR, in accordance with 19 CFR 351.213(b)(2), requested an administrative review of the antidumping order covering the period June 8, 1999, through June 30, 2000. *See YUSCO: Stainless Steel Sheet and Strip in Coils from Taiwan: Request for Administrative Review of Antidumping Duty Order,* July 26, 2000. On July 31, 2000, Tung Mung and Chia Far, producers and exporters of subject merchandise during the POR, in accordance with 19 CFR 351.213(b)(2), requested an administrative review of the antidumping order covering the period June 8, 1999, through June 30, 2000. *See Chia Far: Stainless Steel Sheet and Strip in Coils from Taiwan: Request for Administrative Review of Antidumping Duty Order,* July 31, 2000; *See Tung Mung: Stainless Steel Sheet and Strip in Coils from Taiwan: Request for Administrative Review of Antidumping Duty Order,* July 31, 2000. On September 6, 2000, the Department published in the **Federal Register** a notice of initiation of administrative review of this order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000). The initiation was amended on November 30, 2000 to include the name of Chia Far. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 65 FR 71299 (November 30, 2000).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On January 8, 2001, the Department extended the time limit for the preliminary results in this review to July 1, 2001. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 66 FR 2884 (January 12, 2001). On May 14, 2001, the Department extended the time limit for the preliminary in this review for an additional 30 days. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 66 FR 28147 (May 22, 2001). The preliminary results are now due for signature on July 31, 2001.

On September 28, 2000, and in subsequent submissions on October 4, 12, and 31, 2000, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the period of review (POR). We have confirmed this with the U.S. Customs Service. *See Memorandum from Michael Panfeld to the File: U.S. Customs Data Query for Entries During the 1999–2000 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils From Taiwan,* July 31, 2001 (''the Customs memo'').

Ta Chen has also stated that its U.S. affiliate (''TCI'') had resales of SSSS from Taiwan during the POR. However, Ta Chen has stated that these sales were from inventory that was entered into the United States prior to the suspension of liquidation. The Department has previously determined that ''(s)ales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department.'' *See Certain Stainless Wire Rods From France: Final Results of Antidumping Duty Administrative Review,* 61 FR 47874, 47875 (September 11, 1996); *see also Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295, 27314 (May 19, 1997).

Ta Chen has certified that of TCI's resales of Taiwanese merchandise from its U.S. warehouse inventory during the POR, all merchandise entered before the POR. The Department's Customs inquiry indicates that such merchandise did not enter the United States after the suspension of liquidation. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding our review for Ta Chen. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by Chia Far, from June 16, 2001 to June 22, 2001, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. In addition, we verified sales information provided by Tung Mung and YUSCO from April 25, 2001 to May 2, 2001 and from June 25, 2001 to June 29, 2001, respectively. Our verification results are outlined in the public version of the verification reports and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81 , 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the

Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department also determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[5] This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

processing, and is supplied as, for example, ''GIN6''.[6]

Partial Rescission of Review

As noted above, Ta Chen informed the Department that it had no shipments of subject merchandise to the United States during the POR. We have confirmed this with the U.S. Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Ta Chen. *See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review,* 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53288 (Oct. 14, 1997).

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination. Pursuant to section 782(d) of the Act, if the Department:

''determines that a response to a request for information under this title does not comply with the request, the administering authority [* * *] shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either (1) the administering authority [* * *] finds that such response is not satisfactory, or (2) such response is not submitted within the applicable time limits, then the administering authority [* * *] may, subject to subsection (e), disregard all or part of the original and subsequent responses.''

As shown below, in the case of Chia Far, the Department gave the respondent several opportunities to correct deficient submissions, however, Chia Far did not adequately correct the significant problems on the record. Thus, for the reasons discussed in more detail below, the Department has determined a dumping margin based on the facts available.

Chia Far

On September 7, 2000, the Department sent Chia Far a questionnaire requesting that it provide information regarding any sales that it made to the United States during the POR. On October 12, 2000 and November 1, 2000, Chia Far submitted its Section A and Section C responses to the Department in which the company claimed that Chia Far was not affiliated with any of its U.S. customers and that all U.S. sales should be classified as EP sales. Based on these responses, the Department had no reason to believe that any affiliation issues existed between Chia Far and its U.S. customers. On May 24, 2001 petitioners submitted an allegation that Chia Far is affiliated by virtue of a principal/agent relationship with one of its U.S. customers. *See Petitioners' Submission Re: Stainless Steel Sheet and Strip in Coils from Taiwan,* May 24, 2001. Based on petitioners' allegation, the Department sent a questionnaire on May 25, 2001 requesting that Chia Far answer questions concerning its relationship with this U.S. customer during the POR and affording Chia Far an additional opportunity to report its sales to this U.S. customer as CEP sales. Chia Far stated that it was not affiliated with the U.S. customer as affiliation is defined in Appendix I of the Department's questionnaire. *See Chia Far's Supplemental Response,* June 4, 2001, at 6—8. On June 18, 2001, petitioners submitted comments on Chia Far's June 4, 2001 supplemental response, documenting a relationship of principal/agent between Chia Far and this certain U.S. customer. *See Petitioners' Submission Re: Stainless Steel Sheet and Strip in Coils from Taiwan,* June 18, 2001, at 13–14.

During the course of verification, Chia Far made verbal claims that it had evidence rebutting the information provided in petitioners' June 18, 2001 submission and that it intended to submit such information on the record. *See Chia Far Sales Verification Report to Edward Yang through Rick Johnson* (''Sales Verification Report''), July 11, 2001 at page 7. However, Chia Far failed to provide the Department with such information. Thus, no information affirmatively refuting Chia Far's principal/agent relationship, as documented in petitioners' submission, was ever placed on the record and pursuant to the time limits specified in section 351.301(c)(1) of the Department's regulations, the deadline for submitting new factual information has passed.

In determining whether a principal/agent relationship exists, the Department first examines whether an explicit agreement exists from the alleged principal, authorizing the agent to act on its behalf in a specified context. This agreement must not only state that such a relationship exists, but the alleged agent must expressly consent to such representation on behalf of the principal. *See Notice of Final Determination of Sales at Less than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan* (''Gas Turbo Compressors''), 62 FR 24392, 24402–24403 (May 5, 1997) (expressing the principal/agent test). However, the Department also recognizes that while agency relationships are ''frequently established by a written contract, this is not essential.'' *See id* at 24403. In the absence of an agency contract, the Department usually examines the following five criteria as outlined in Gas Turbo Compressors in considering whether a principal/agent relationship exists:

1. the foreign producer's role in negotiating price and other terms of sale;
2. the extent of the foreign producer's interaction with the U.S. customer;
3. whether the agent/reseller maintains inventory;
4. whether the agent/reseller takes title to the merchandise and bears the risk of loss; and 5. whether the agent/reseller further processes or otherwise adds value to the merchandise.

See id. As shown in Gas Turbo Compressors, the Department examines these criteria to determine whether the principal company ''effectively controlled the price'' in the transaction with the U.S. customer, whether the principal company's identity ''was disclosed,'' whether the agent ''maintain(s) inventory of, or further processes, the subject merchandise,'' and the extent of contact between the principal and the agent's end-customer. *See id.*

In the case at hand, the Department found correspondence at verification which appears to document that Chia Far's relationship with the U.S. customer satisfies the criteria for a principal/agent relationship. Because of the proprietary nature of this issue, for further discussion, please *see Preliminary Determination in the First Administrative Review of Stainless Steel Sheet and Strip from Taiwan: Adverse*

[6] ''GIN4 Mo,'' ''GIN5'' ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Facts Available Corroboration Memorandum, to Edward Yang through Rick Johnson (''AFA Memo: Chia Far''), July 31, 2001, at 2–4.

Based on the record evidence and facts appearing on the record of this review, the Department therefore considers Chia Far to be affiliated with the U.S. customer in question.

The Department notes that pursuant to the requirements of section 782(d) of the Act, Chia Far was given several opportunities to disclose information concerning its relationship with this U.S. customer (*i.e.,* its Section A, Section B, and June 4, 2001 responses and its rebuttal to petitioners' initial allegation) but did not do so. Because Chia Far withheld this information, which would have allowed the Department to explore this issue in a more timely fashion, the Department was unable to explore the affiliation issue concerning this customer through additional supplemental questionnaires. As noted earlier, after petitioners' initial allegation, the Department again afforded Chia Far the opportunity to report this information. *See Department's Supplemental Questionnaire*, May 25, 2001. Thus, the Department finds that Chia Far possessed opportunities to correct, explain, and refute all the evidence on the record.

As a result, the record evidence and facts of the review show that Chia Far is affiliated with this U.S. customer. However, Chia Far's present database incorrectly reported sales to this customer as EP sales and did not include the first sale to an unaffiliated purchaser from this agent, nor does it contain the necessary data for CEP adjustments. Without this information, the Department is unable to accurately calculate a dumping margin. Moreover, because Chia Far has failed to respond accurately to the Department's initial Section A and Section C questionnaires and supplemental questionnaires, the Department is unable to further explore this issue within the statutory deadlines for completing this review.

Chia Far has reported sales to this agent as EP sales. Thus, the Department does not have Chia Far's sales to the first unaffiliated U.S. customer or the corresponding sales information necessary to calculate U.S. price. Moreover, because EP sales are reported based upon entry date into the United States during the POR while CEP sales are reported based upon a date of sale by the U.S. affiliate during the POR, a change in classification from EP to CEP may well result in a different universes of sales being reported. Consequently, Chia Far's response may be both inaccurate, in terms of reporting appropriate U.S. prices, and incomplete in terms of the sales which were reported.

Furthermore, sales to this agent make up a significant proportion of Chia Far's total reported sales to the United States during the POR. For the remaining sales, the number and volume of sales are insignificant in comparison to the volume of sales through Chia Far's affiliate. Thus, there is no reason to believe that Chia Far's sales to other U.S. customers would significantly reflect Chia Far's U.S. selling practices. Therefore, the Department finds that it is necessary to apply facts available to all of Chia Far's U.S. sales during the POR. For a further discussion, please *see AFA Memo: Chia Far*.

2. Selection of Adverse FA

When the Department finds that a party has not participated in a review to the ''best of its ability,'' it may apply adverse facts available. Section 776(b) of the Act provides:

> ''If the administering authority [* * *] finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority [* * *], the administering authority [* * *], in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.''

See also Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994) (discussing the need to apply adverse facts available when a party does not participate to the ''best of its ability''). Section 776(b) further states that an adverse inference may include reliance on information derived from the petition, the final determinational results of prior reviews, or any other information placed on the record. In addition, the SAA establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870. In employing adverse inferences, the SAA instructs the Department to consider ''the extent to which a party may benefit from its own lack of cooperation.'' The Department is further guided by the CIT decision in *Nippon Steel Corp.* v. *United States,* 118 F. Supp.2d 1366, 1378–79 (Oct. 26, 2000) in which the Court directed that to apply an adverse inference in selecting from the facts available, the Department must find that a respondent did not comply with the agency's information requests in a manner consistent with the behavior of a reasonable respondent.

Chia Far

Chia Far explicitly denied on two occasions that it had a principle/agency relationship with this U.S. customer. In fact, in one response Chia Far stated:

> Chia Far and this customer do not have, did not have in the POR, and did not have prior to the POR a principal/agent relationship, either in fact (via an agency contract) or in theory.

See Chia Far's Reply to Petitioners' Comments Re: CEP Sales, May 17, 2001, at 2. The evidence on the record, however, indicates that several years ago, a principle/agency relationship was formed between Chia Far and this U.S. customer. No evidence on the record refutes that this relationship existed in the past or continues to exist to this day. In fact, information found at verification appeared to further support the argument that such a relationship continued to exist throughout the POR.

Because the Department finds that Chia Far did not supply us with accurate and complete information, and, in fact, provided us with inaccurate and misleading information, we determine that Chia Far did not cooperate by complying with our requests for information and did not provide information on the level of that of a ''reasonable respondent.'' We therefore find that Chia Far did not act to the ''best of its ability'' in responding to the Department's questionnaires, and in order to ensure that it does not benefit from its lack of cooperation, pursuant to section 776(b) of the Act, we find that a total adverse inference is warranted in selecting from among the facts otherwise available.

The Department's practice when selecting an adverse FA rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse so ''as to effectuate the purpose of the FA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value,* 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce cooperation from Chia Far in future reviews, we have assigned to Chia Far, as total adverse FA, the highest margin from the investigation for Taiwan of 34.95 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip from Taiwan,* 64 FR 30592 (June 8, 1999) (''Taiwan SSSS'').

Corroboration

Information from prior segments of the proceeding, such as involved here, constitutes ''secondary information'' under section 776(c) of the Act. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *SAA* at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for FA by reviewing independent sources reasonably at its disposal. The SAA provides that to ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) (''TRBs''), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. Although the investigation rate of 34.95 percent constitutes secondary information, the information has already been corroborated in the LTFV investigation. During the investigation, the Department examined the accuracy and adequacy of the price-to-price information in the petition and corroborated the price-to-price petition comparison. Additionally, during the investigation, the Department examined the accuracy and adequacy of the key elements of middleman dumping calculations on which the middleman dumping petition was based, and corroborated this information. *See Taiwan SSSS* at 30599–30600; *See also Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse FA in a previous segment as the adverse FA in the current review). Nothing on the record of the instant review calls into question the reliability of this rate. Furthermore, although this rate stems from a middleman dumping analysis, we note that it nonetheless represents the facts available regarding the price levels which Chia Far might sell at in competing with other producers of Taiwan in the U.S. and Taiwan markets. Thus, we find the rate is reliable.

With respect to the relevance aspect of corroboration in this review for adverse FA, the Department stated in TRBs that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin.'' *See TRBs* at 57392; *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The Department finds that the administrative record of this review does not contain information which indicates that the application of this rate would be inappropriate in the instant review or that the margin is not relevant. Furthermore, the rate has not been judicially invalidated. Thus, we are applying, as adverse FA, the 34.95 percent margin from the original investigation of sales at LTFV, and have satisfied the corroboration requirements under section 776(c) of the Act. *See AFA Memo: Chia Far* at 5–7.

Normal Value Comparisons

To determine whether respondent's sales of subject merchandise from Taiwan to the United States were made at less than fair value, we compared the export price (''EP'') and constructed export price (''CEP''), as appropriate, to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions. We made corrections to reported U.S. and home market sales data based on the Department's findings at verification, as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by YUSCO and Tung Mung in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Export Price and Constructed Export Price

YUSCO

In accordance with section 772(a) of the Act, export price (''EP'') is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price (''CEP'') is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

For purposes of this review, YUSCO has classified its sales as export price (''EP'') sales. In alleging that its U.S. sales should be considered EP sales, YUSCO stated that ''(it) sold subject merchandise directly to an importer in the United States during the POR. The Department, therefore, should treat YUSCO's U.S. sales as export price sales.'' *See YUSCO's September 28, 2000 Section A Questionnaire Response* (Section A response), at 2.

Based on the information on the record, we are using export price as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, by YUSCO to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. YUSCO identified one channel of distribution for U.S. sales (sales to an unaffiliated U.S. distributor) for its U.S. sales during the POR. We based EP on packed prices to Ta Chen International (''TCI''), a U.S. distributor, for export to the United States. We made deductions for inland freight (from YUSCO's plant to the port of export), international freight, marine insurance, container handling fees, certification handling fees, and foreign brokerage and

handling in accordance with section 772(c) of the Act.

Tung Mung

The Department treated each of Tung Mung's U.S. market transactions as EP sales because the merchandise was sold, prior to importation, by Tung Mung to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. We based EP on the packed prices to unaffiliated purchasers in the United States. We made deductions for domestic inland freight, brokerage and handling, harbor duty, bank charges, international ocean freight, and marine insurance (where applicable). Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. *See Antidumping Duty Administrative Review for Stainless Steel Sheet and Strip in Coils from Taiwan: Analysis Memorandum for Tung Mung, from Edward C. Yang to Joseph Spetrini,* July 31, 2001, for a further discussion of this issue.

Normal Value

For YUSCO and Tung Mung, we compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Taiwan was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of home market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise for all three companies, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the home market sales of the foreign like product. Thus, we used as NV the prices at which the foreign like product was first sold for consumption in Taiwan, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the CEP or NV sales, as appropriate.

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Comparison'' sections of this notice.

Cost of Production (''COP'') Analysis

YUSCO and Tung Mung

Because the Department determined that YUSCO and Tung Mung made sales in the home market at prices below the cost of producing the subject merchandise in the investigation and therefore excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that YUSCO and Tung Mung made sales in the home market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry to determine whether YUSCO and Tung Mung made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act.

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 YUSCO's and Tung Mung's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. We used home market sales and COP information provided by YUSCO and Tung Mung in its questionnaire responses.

B. Test of Home Market Prices

We compared the weighted-average COP from June 8, 1999 through June 30, 2000 (''cost reporting period'') for YUSCO and Tung Mung, adjusted where appropriate, to their home market sales of the foreign like product as required under section 773(b) of the Act. 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.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period are at prices less than the COP, we determine such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C)(i) of the Act. The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act. Because each individual price was compared against the weighted average COP for the cost reporting period, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales from our analysis for YUSCO and Tung Mung. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated YUSCO's and Tung Mung's constructed value (''CV'') based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by YUSCO and Tung Mung in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

YUSCO

We based normal value (''NV'') on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on the home market prices to unaffiliated home market customers. We made adjustments, where applicable, for rebates and for movement expenses (i.e., inland freight from plant to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for warranty expense, where appropriate. At verification, the Department noted inaccuracies in YUSCO's reported date of shipment, and consequently the value of its reported imputed credit expenses. Specifically, YUSCO reported the scheduled date, rather than the actual date of shipment, taken from the company's delivery notice. YUSCO reported that the scheduled date of shipment preceded the actual date of shipment by an average of six days.

YUSCO acknowledged its error at verification and formally withdrew its claim for imputed credit expenses in a letter dated June 29, 2001. (*See Letter from YUSCO to the Department, dated June 29, 2001.*) Therefore, to correct this error, the Department disallowed imputed credit for all sales with reported positive credit expenses. For sales with reported negative credit expense, the Department added six days to the reported shipment date (*i.e.*, scheduled shipment date), and recalculated credit accordingly. *See YUSCO: Analysis Memo.* In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Tung Mung

We based home market prices on the packed, delivered prices to unaffiliated purchasers in the home market. We made adjustments, where applicable, in accordance with section 773(a)(6) of the Act. Such adjustments included adjustments for packing expenses. Where applicable, we made adjustments for movement expenses. To adjust for differences in circumstances of sale between the home market and the United States, we reduced home market prices by the amounts for direct selling expenses (*i.e.,* credit and warranty expenses) and added U.S. credit expenses.

Price-to-CV Comparisons

YUSCO and Tung Mung

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find suitable home market sales of the foreign like product. We did not use CV for YUSCO or Tung Mung for these preliminary results of review.

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 transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, 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 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. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731, 61746 (November 19, 1997).

YUSCO

In the present review, YUSCO did not request a LOT adjustment. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Taiwan markets, including the selling functions, classes of customer, and selling expenses.

For the home market (''HM''), YUSCO reported one level of trade. *See October 30, 2001 Questionnaire Response from YUSCO, at B–32.* YUSCO sold through one channel of distribution in the HM: Directly from its plant to local distributors. For these HM customers, YUSCO provided inland freight and warranty services where appropriate. Because there is only one sales channel, we preliminarily determine that there is one LOT in the home market.

For the U.S. market, YUSCO reported one level of trade. *See October 30, 2001 Questionnaire Response from YUSCO, at C–26.* YUSCO sold through one channel of distribution in the U.S. market: To an unaffiliated local distributor. For U.S. sales, YUSCO provided inland freight from the plant to the port of export. YUSCO also provided for container, certification and document handling fees at the port of export along with marine transportation and insurance. YUSCO did not incur any expenses in the United States for its U.S. sales. Because there is only one sales channel, we preliminarily determine that there is one LOT in the home market.

Based on our analysis of the selling functions performed for sales in the HM and U.S. market, we preliminarily determine that, despite the existence of certain minor additional selling expenses (*i.e.,* container, certification and document handling fees at the port of export) incurred by YUSCO for its U.S. sales, there is not a significant difference in the selling functions performed in the HM and U.S. market and that these sales are made at the same LOT. Therefore, a LOT adjustment is not appropriate.

Tung Mung

In the present review, Tung Mung stated that a LOT adjustment was not applicable. To determine whether an adjustment is necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

In the home market (''HM''), Tung Mung reported two levels of trade. *See November 6, 2000 Questionnaire Response from Tung Mung, at B–26.* In the HM, Tung Mung stated that it sold through two channels of distribution: Made to order sales; and, supplied from inventory sales. However, Tung Mung was unable to differentiate sales based on channel of distribution and reported all sales, therefore, as ''both made to order and supplied from inventory.'' Because Tung Mung claimed that it could not distinguish its level of trade based on channels of distribution, it reported home market level of trade based on its two customer types: Distributors and end-users.

For sales in the HM, Tung Mung performed sales-related activities, including arranging for freight and delivery and warranty for both distributors and end-users. Therefore, based on Tung Mung's selling functions performed for each type of customer, we preliminarily determine that there is one LOT in the home market.

In the U.S. market Tung Mung reported two levels of trade. *See November 6, 2000 Questionnaire Response from Tung Mung, at C–23.* In the U.S. market, Tung Mung stated that it sold through one channel of distribution: Made to order sales. However, Tung Mung sold merchandise to two types of customers, distributors and trading companies, and reported its U.S. level of trade based on customer type.

For U.S. sales to both distributors and trading companies, Tung Mung performed many of the same major selling functions, including freight and delivery and warranty services. Therefore, based on Tung Mung's selling functions performed for each type of customer, we preliminarily determine that there is one LOT in the U.S. market.

Finally, because the selling functions performed for both HM and EP sales are identical, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT.

Therefore, a LOT adjustment is not appropriate.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period June 8, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM TAIWAN

Manufacturer/exporter/reseller	Margin (percent)
YUSCO	0.00
Chia Far	34.95
Tung Mung	0.00

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate on all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above de minimis, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is de minimis, i.e., less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 12.61 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19780 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of stainless steel sheet and strip in coils from Italy

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy

in response to a request from respondent, Acciai Speciali Terni, S.p.A. (''AST''). This review covers imports of subject merchandise from AST. The period of review (''POR'') is January 4, 1999 through June 30, 2000.

Our preliminary results of review indicate that respondent AST has sold subject merchandise at less than normal value during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for AST.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0165.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On July 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on SSSS from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 65 FR 45035 (July 20, 2000). On July 31, 2000, AST, a producer and exporter of subject merchandise during the period of review (''POR''), requested that the Department conduct an administrative review of the antidumping duty order. In September 2000, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to AST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 58733 (October 2, 2000). On September 7, 2000, the Department issued its antidumping duty questionnaire.

On September 21, 2000, AST submitted a letter which requested certain exclusions to the data required by the Department's antidumping questionnaire. Also, on September 21, 2000, in a separate letter, AST submitted a request that the Department not require it to report downstream home market sales by its Italian affiliates. On September 22, 2000, AST requested that it not be required to submit transaction-specific data with respect to U.S. re-sales by Thyssen Copper & Brass Sales, Inc. (''CBS''), an affiliated downstream service center reseller. On October 24, 2000, petitioners filed a letter requesting that the Department deny AST's requested reporting exemptions. On October 25, 2000, the Department informed AST that, based on their representations, we were not requiring AST to report downstream sales data and were permitting AST to report cost data for finished products. However, we informed AST that we were denying their other exclusion requests.

On October 10, 2000, the Department received AST's response to Section A of the questionnaire. On November 6, 2000, we received AST's response to the remainder of the questionnaire. On December 22, 2001, the Department issued a supplemental questionnaire for Sections A, B, and C, and received AST's response on January 29, 2001. On February 21, 2001, the Department issued AST a supplemental questionnaire on Section D, and received AST's responses on March 22, 2001, and May 10, 2001. On March 28, 2001, and April 30, 2001, the Department issued Section E supplemental questionnaires for Ken-Mac Metals, Inc. (''Ken-Mac''), The Stainless Place (''TSP''), and TCT Stainless Steel (''TCT''). AST submitted its supplemental response for Ken-Mac on April 16, 2001 and their supplemental responses for TSP and TCT on May 25, 2001. The Department issued a second supplemental questionnaire for Sections A, B, and C on May 3, 2001, and received AST's response on May 29, 2001.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On January 2, 2001, the Department extended the time limit for the preliminary results in this review by 90 days. *See Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy,* 66 FR 1310 (January 8, 2001). On May 9, 2001, the Department fully extended the time limit for the preliminary results in this review. *See Notice of Extension of the Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy,* 66 FR 27066 (May 16, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, we verified further manufacturing cost information, cost and sales information provided by AST, from May 9, 2001 through May 11, 2001, June 4, 2001, to June 8, 2001, and June 11, 2001, to June 14, 2001, respectively, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Period of Review

The POR is January 4, 1999 through June 30, 2000.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils (''SSSS''). Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[1],

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and

7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or

7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' [6] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' [7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [8]

Normal Value Comparisons

To determine whether AST's sales of subject merchandise from Italy 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)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions. We made corrections to reported home market sales and cost data based on the Department's findings at verification, as appropriate. *See Analysis Memorandum for AST for the Period January 4, 1999, through June 30, 2000,* dated July 31, 2001.

Transactions Reviewed

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because AST'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 sales in the home market provide a viable basis for calculating NV.

B. Arm's Length Test

During the POR AST sold SSSS in the home market to affiliated customers (resellers and end-users). 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 billing adjustments, rebates, movement charges, direct selling expenses, and home market 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); *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27355 (May 19, 1997).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the Scope of the Review section above, which were produced and sold by AST in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Constructed Export Price

In accordance with section 772(a) of the Act, export price (''EP'') is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this review, AST classified its U.S. sales through channel one as EP sales and sales through channels two and three as CEP sales. However, based on the information on the record, we preliminarily find that all of AST's U.S. sales are appropriately classified as CEP sales.

Channel two sales are made from the inventory of Acciai Speciali Terni USA (''AST USA''), AST's affiliated U.S. based reseller. Channel three sales involve subject merchandise that is sold by AST to an affiliated U.S. reseller (*i.e.,* Ken-Mac, TSP, and TCT), who may or may not further manufacture the merchandise before reselling it to an unaffiliated customer. Therefore, because sales in channels two and three are sold from inventory of AST's affiliated U.S. resellers, it is appropriate to classify these sales as CEP sales. With respect to channel one sales, AST reported that these U.S. sales are shipped directly from the factory in Italy to the U.S. customer. AST USA serves as the principal point of contact for the U.S. customer. For these sales U.S. customers place their orders with AST USA, which then places the order with AST. Upon confirmation from AST, AST USA issues the invoice to the customer. AST USA is solely responsible for collecting payment from the U.S. customer. Because the contracts on which AST U.S. channel one sales were based were between AST USA and its unaffiliated U.S. customers and AST USA invoiced and received payment from the unaffiliated U.S. customer, the Department preliminarily determines that AST's channel one U.S. sales were made ''in the United States'' within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions. This is consistent with *AK Steel Corp.* v. *United States,* 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated CEP, in accordance with section 772(b) of the Act, based on the packed, CIF or FOB prices to the first unaffiliated customer in the United States. We made adjustments to the starting price for billing adjustments, where applicable. In addition, we made adjustments to the starting price by adding alloy surcharges, skid charges, and freight equalization charges, where appropriate. 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 inland insurance, foreign brokerage and handling, marine insurance, international freight, U.S. customs

[6] ''GIN4 Mo''is the proprietary grade of Hitachi Metals America, Ltd.

[7] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

[8] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

duties, U.S. inland freight, U.S. warehousing expenses, and brokerage and handling. 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 technical selling expenses), inventory carrying costs, and indirect selling expenses. For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. These costs consisted of the costs of the materials, packing, fabrication, and general expenses associated with further manufacturing in the United States. Pursuant to section 772(d)(3) of the Act, we also reduced the CEP by the amount of profit allocated to the expenses deducted under section 772(d)(1) and (2).

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons.''

Cost of Production (''COP'') Analysis

Because the Department determined that AST made sales in the home market at prices below the cost of producing the subject merchandise in the investigation and therefore excluded such sales from normal value (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy,* 65 FR 15446 (June 8, 1999)), the Department determined that there are reasonable grounds to believe or suspect that AST made sales in the home market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on September 7, 2000, to determine whether AST made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of AST's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. AST requested that the Department use quarterly cost data when performing the sales-below-cost test because of the extended time period of the review (18 months) and because of alleged significant fluctuations in the price of raw materials (*e.g.,* nickel) during the POR. In support of its argument, AST submitted a chart showing the daily market price of nickel during the POR. Although the chart evidences that the price of nickel steadily increased for much of the POR, we cannot conclude based on fluctuations in the price of nickel alone that use of a single POR cost, which includes costs for other raw materials such as scrap, processing costs, and G&A expenses, would yield an inappropriate comparison. Therefore, the Department preliminarily determines that it is appropriate to calculate a single-weighted average cost for the POR. We used full-POR COP information provided by AST in its questionnaire responses, with the following exceptions:

1. At verification, we found that AST improperly applied the general and administrative (''G&A'') expense ratio to total cost of manufacture. *See Memorandum to the File: First Administrative Review of Stainless Steel Sheet and Strip in Coils from Italy—Cost and Sales Verification Report for Acciai Speciali Terni S.p.A. (''Cost Verification Report''),* July 31, 2001. We recalculated G&A expenses by applying the G&A expense ratio to total variable cost of manufacture.

2. At verification we found that AST did not include foreign exchange rate losses in its calculation of G&A expenses for fiscal year 1999/2000. *See Cost Verification Report.* Therefore, we have recalculated the POR average G&A expense ratio.

3. During verification AST explained that they did not intend to claim an interest income offset to interest expenses for fiscal year 1999/2000 despite having included the offset in their reported interest expenses. *See Cost Verification Report.* Therefore, we have recalculated interest expenses for the preliminary results.

4. During verification, we found that AST made a clerical error in its calculation of the fixed overhead expense ratio. *See Cost Verification Report.* We have recalculated fixed overhead expenses for the preliminary results.

B. Test of Home Market Prices

We compared the weighted-average COP from January 1, 1999, through June 30, 2000 (''cost reporting period'') for AST, adjusted where appropriate (*see* above), to its home market sales of the foreign like product as required under section 773(b) of the Act. 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.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period are at prices less than the COP, we determine such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C)(i) of the Act. The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act. Because each individual price was compared against the weighted average COP for the cost reporting period, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Price-to-Price Comparisons

We based NV on the home market delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments for billing adjustments, rebates, and alloy surcharges, where appropriate. We made adjustments for foreign inland freight in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, warranty expense, interest revenue, and insurance revenue, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

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 SG&A expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1).

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. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. 19 CFR 351.412(c)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect 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 Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present review, AST requested a CEP offset. (As noted above, we have preliminarily determined that all of AST's U.S. sales are CEP sales.) To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses.

In the home market, AST reported one level of trade. AST sold through two channels of distribution in the home market: (1) directly from its mill to unaffiliated end-users/speciality end-users, white goods manufacturers and affiliated and unaffiliated service centers; and (2) from its warehouse to industrial end-users, speciality end-users, and service centers/distributors. AST claimed two levels of trade in its U.S. market. AST sold through three channels of distribution in the U.S. market: (1) Directly from its mill through AST USA to unaffiliated end-users and distributors/service centers; (2) from the inventory of AST USA; and (3) from the mill through AST USA to its affiliated U.S. further manufacturers/reseller, which then sell to unaffiliated customers.

For sales in home market channel one, AST performed all sales-related activities, including arranging for freight and delivery; pre-sale and continuous technical assistance; trial lots; warranty services; price negotiation; sales calls and visits; after-sales service; and extending credit. The same selling functions were performed in home market channel two; however, unlike direct factory sales, these sales carry no guarantee or warranty. Also, AST, rather than the customer, typically initiates sales of these products by distributing a list of available products to potential customers. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

We reviewed the selling functions and services performed by AST in the U.S. market, as represented by AST in its responses. AST indicated that the selling functions performed by AST for CEP sales, regardless of channel of distribution, include the following: processing AST USA inquiries and purchase orders; invoicing AST USA; extending credit to AST USA; freight and delivery arrangements from AST's plant to the U.S. port (including the cost of transporting the goods to the European port, port handling, and ocean freight), and warranty services. Although AST characterizes its involvement in the CEP sales as low, for back-to-back U.S. sales shipped directly from AST's factory to the unaffiliated customer (*i.e.,* U.S. channel one), AST is more involved in the sales process (*e.g.,* collaborating with AST USA to determine the price) and provides a higher degree of freight and delivering arrangements (*i.e.,* low volume shipments to multiple customers located throughout the United States).

In addition to the above selling functions, based on information provided by AST, we find that AST made sales visits and provided pre-sale and technical assistance. Although AST indicated in its response that it did not make sales calls and visits for its CEP sales, AST did report that AST representatives occasionally visit the United States and meet with AST USA officials. *See* AST's January 29, 2001 questionnaire response at SA–10. With respect to technical assistance, in both its U.S. and home market sales database AST reported as indirect selling expenses the costs associated with operating AST's Technical Services Department, which provides pre-sale and technical assistance. Therefore, it appears that AST offers pre-sale technical assistance for its CEP sales.

AST performs identical selling functions across all three U.S. channels of distribution and at the same degree with the exception of more intensive price negotiations and freight and delivery services for U.S. back-to-back sales. We find that the differences in the degree of selling functions performed to be relatively minor. Therefore, we preliminarily determine that there is one LOT in the U.S. market.

AST performed many of the same selling functions for both its CEP sales (*i.e.,* sales to AST USA) and home market sales such as processing customer orders; price negotiation (U.S. channel one and both home market channels); extending credit; freight and delivery arrangements; warranty services; and pre-sale technical assistance. In the home market AST performed the additional selling functions of offering prototypes and trial lots and price negotiation. Also, AST maintained that it performed some of the selling functions at a higher degree (*i.e.,* services such as warranty, extending credit, sales visits, freight and delivery arrangements).

Proprietary information submitted by AST indicates that selling activities associated with price negotiations and the provision of prototypes and trial lots by AST in the home market were not substantial. *See Analysis Memorandum.* Price negotiations are a subpart of the overall sales process, the expenses for which are captured in indirect selling expenses. The data submitted by AST indicate that AST's indirect selling expenses are comparable in both markets. Similarly, the data on the record indicate that the degree of difference in certain selling functions performed was not substantial. According to AST, all sales of prime merchandise carry a warranty regardless of market and it is AST which approves the claim and provides the reimbursement for the claim. Moreover, AST reported warranty claims in both the home and U.S. markets. Also, although AST extends credit to multiple customers in the home market, it also extends credit for CEP sales. The comparability of AST's indirect selling

expenses in each market also does not support a finding that other selling activities related to the sales process (*e.g.,* sales visits, freight and delivery arrangements) are performed at a substantially higher degree in the home market than the U.S. market. Therefore, we find that AST's claims of additional and more advanced selling functions for home market sales in comparison to CEP sales are either unsubstantiated or insufficient to support a finding of different LOTs. *See* 19 CFR 412(c)(2). Accordingly, we preliminarily determine that sales in the home market and in the U.S. market were made at the same LOT and have not make a LOT adjustment or CEP offset.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer/exporter/reseller	Margin (percent)
AST	0.67

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except that if the rate for a particular product is *de minimis, i.e.,* less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 11.23 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19781 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by respondent Mexinox S.A. de C.V. (Mexinox) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico (A–201–822). This review covers one manufacturer/exporter (Mexinox) of the subject merchandise to the United States during the period January 4, 1999 to June 30, 2000.

We preliminarily determine that sales of S4 in coils from Mexico have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between United States price and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 1, 2000).

Background

On July 27, 1999 the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order* on stainless steel sheet and strip in coils from Mexico (64 FR 40560). On July 20, 2000, the Department published the *Notice of Opportunity to Request Administrative Review* of stainless steel sheet and strip in coils from Mexico for the period January 4, 1999 through June 30, 2000 (65 FR 45035).

In accordance with 19 CFR 351.213 (b)(1), the respondent (Mexinox) requested that we conduct an administrative review of Mexinox in the A–201–822 case. On September 6, 2000, we published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period January 4, 1999 through June 30, 2000 (65 FR 53980).

Because it was not practicable to complete these reviews within the normal time frame, on February 15, 2001, we published in the **Federal Register** our notice of the extension of time limits for the A–201–822 review (66 FR 10483). This extension established the deadline for these preliminary results as July 31, 2001.

Scope Inquiry

In response to the Department's March 23, 2001 supplemental questionnaire, on April 20, 2001 Mexinox submitted a database containing information regarding downstream sales made by its affiliate, Mexinox Trading. (For more information about the Department's request, see ''Sales Through Affiliated Resellers'' below.) In the accompanying narrative, Mexinox reported that certain of the sales made by Mexinox Trading were of quantities less than 20 kgs. (53 lbs.). Mexinox described this merchandise as ''small pieces that have been crudely cut (with scissors) from a coil on a piece-by-piece basis based on length measurements specified by the customer.'' Mexinox further stated that ''these materials are more properly considered cut-to-length sheets than stainless steel sheet and strip in coils. In fact they are curled into a circular shape only for the convenience of the customer for transportation.'' In the database submitted to the Department, Mexinox coded sales of this merchandise both as outside the ordinary course of trade and as non-subject. *See* page 7 of Mexinox's April 20, 2001 submission.

On May 10, 2001, the Department requested further information about Mexinox Trading's sales of merchandise of quantities less than 20 kg. In its May 25, 2001 response, Mexinox reiterated the description of the merchandise made in its April 20, 2001 submission, and added that the cut pieces are ''rolled up like a poster and held together with a rope or steel band to facilitate transportation.'' *See* Mexinox's May 25, 2001 submission at 10. Claiming that the material in question is outside the scope of this review, Mexinox formally requested a scope ruling from the Department pursuant to section 351.225(c), (f)(6), and (k) of the Department's regulations.

Based on the criteria set forth under section 351.225(k) of the Department's regulations, we have determined that materials sold in quantities of less than 20 kg are covered by the scope of this review. First, the Department's written description of the merchandise under review is dispositive. Specifically, the material in question is a stainless steel flat-rolled product that is ''rolled up like a poster'' (*i.e.,* in coil form), and it meets the width and gauge criteria set forth in the scope of this review (*i.e.,* it is greater than 9.5 mm in width and less than 4.75 mm in thickness; *see* Appendix III of the Department's September 8, 2000 questionnaire). Therefore, we have concluded that this merchandise complies with the scope description set out in the investigation of S4 in coils from Mexico. For further information, see the Department's Memorandum to the File from Robert James, dated July 31, 2001.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of

0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [5]

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by Mexinox using standard verification procedures such as the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which we will place on file in Room B–099 of the main Commerce building.

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Sales Made Through Affiliated Resellers

A. U.S. Market

As noted in Mexinox's October 6, 2000 questionnaire response at 11 and 12, both Ken-Mac Metals Inc. (Ken-Mac) and Copper and Brass Sales, Inc. (CBS) are affiliated resellers that sold subject merchandise in the United States during the POR. Thus, we have included in our preliminary margin calculation resales of Mexinox subject merchandise made through Ken-Mac and CBS.

B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading) is a wholly-owned subsidiary of Mexinox which sells both subject and non-subject merchandise in the home market. In its October 6, 2000 questionnaire response, Mexinox reported that sales through Mexinox Trading represented less than five percent of Mexinox's total sales of subject merchandise in the home market. Because Mexinox Trading's sales of subject merchandise were less than five percent of home market subject merchandise sales, and because Mexinox reported that these sales passed the Department's arm's-length test, pursuant to section 351.403 (c) and (d) of the Department's regulations, we permitted Mexinox to report its sales to Mexinox Trading rather than require it to report downstream sales to the first unaffiliated customer.

In several letters to the Department, the petitioner alleged that the record contained insufficient information about the role of Mexinox Trading in Mexinox's home market transactions, and therefore urged the Department to collect information regarding downstream sales made by Mexinox Trading. On March 23, 2001, the Department requested that Mexinox report all sales of the foreign like product by Mexinox Trading to the first unaffiliated customer in a separate database, and asked Mexinox to provide more information about Mexinox Trading's operations. The Department did not make a determination at that time as to whether it would use the sales from Mexinox Trading to the first unaffiliated customer in calculating normal value. Instead, as the Department indicated in a separate memorandum, it might include those sales in calculating normal value if it made a determination that Mexinox and Mexinox Trading were functioning as a single entity. *See* the Memorandum from Deborah Scott to Richard Weible, dated March 23, 2001.

Based on the additional information provided by Mexinox as well as our findings at verification, we find that Mexinox and Mexinox Trading are functioning as separate and distinct entities. Therefore, for this preliminary determination, we find no reason to use the downstream sales through Mexinox Trading in calculating normal value. Rather, pursuant to section 351.403 (c) and (d) of the Department's regulations, we have used the sales from Mexinox to Mexinox Trading, since they constitute less than five percent of sales of the foreign like product in the home market, and because those sales pass the arm's-length test.

Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico 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)(2) of the Tariff Act, we compared individual EPs and CEPs to monthly weighted-average NVs.

Transactions Reviewed

For its home market and U.S. sales, Mexinox reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale (section 19 CFR 351.401(i)). Mexinox stated that the invoice date represented the date when the essential terms of sales, *i.e.*, price and quantity, are definitively set, and that up to the time of shipment and invoicing, these terms were subject to change. Because petitioners alleged that Mexinox did not provide adequate support for its claim that price and quantity may change at any time between the final order acceptance date (confirmation date) and the final invoice date, the Department requested that Mexinox provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. Mexinox responded to our request on December 22, 2000 and provided a final revised version of its analysis on April 20, 2001. In addition, for purposes of completeness, Mexinox voluntarily revised its home market and U.S. databases in order to include sales transactions having order dates within the POR (regardless of sale date). Based on our analysis of the information submitted by Mexinox, we have preliminarily determined that the date of invoice is the appropriate indicator of the actual date of sale because record evidence indicates that in a substantial number of instances the price and quantity changed between the date of the order acceptance and the date of invoice. Therefore, we find that Mexinox's claim that price and quantity terms are subject to negotiation until the date of invoice is substantiated.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Review'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff 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 of the comparison sales in the home 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 the exporter to the 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 LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff 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 affect price comparability, we adjust NV under section 773(A)(7)(B) of the Tariff Act (the CEP offset provision).

We asked Mexinox to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. Mexinox identified two channels of distribution in the home market: (1) retailers and (2) end-users. For both channels, Mexinox performs similar selling functions such as pre-sale technical assistance and after-sales warranty services. *See, e.g.*, Attachment A–34 of Mexinox's April 16, 2001 submission. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one LOT for Mexinox's home market sales. *See Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 63 FR 30185, 30190 (June 3, 1998).

For the U.S. market Mexinox reported two LOTs: (1) EP sales consisting, in some cases, of sales made directly to unaffiliated U.S. customers, and in other cases of sales made from the stock of finished goods held at the Mexican factory in San Luis Potosi (SLP Stock sales) to unaffiliated U.S. customers; and (2) CEP sales made through Mexinox USA's Brownsville warehouse to service centers and end users. The Department examined the selling functions performed by Mexinox for both EP and CEP sales (after deductions made pursuant to section 772(d) of the Tariff Act). These selling functions included customer sales contacts (*i.e.*, visiting current or potential customers and promotion of new products), technical services, and inventory maintenance. We found that Mexinox provided a qualitatively different degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant a determination that two separate LOTs exist in the United States.

When we compared EP sales to home market sales, we determined that both sales were made at the same LOT. For both EP and home market transactions, Mexinox sold directly to the customer, and provided similar levels of customer sales contacts, technical services, and inventory maintenance. For CEP sales (as adjusted), Mexinox performed fewer customer sales contacts, technical services, inventory maintenance, and warranty services. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market sales involved a more advanced stage of distribution than CEP sales. In the home market, Mexinox provides marketing further down the chain of distribution by providing certain downstream selling functions that are normally performed by service centers in the U.S. market (*e.g.*, technical advice, credit and collection, etc.).

Based on the above analysis, we determined that CEP and the starting price of home market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to home market sales, we examined whether a level-of-trade adjustment may be appropriate. In this case, Mexinox sold at one LOT in the home market; therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between levels of trade. Further, we do not have the information which would allow us to examine pricing patterns of Mexinox's sales of other similar products, and there are no other respondents or other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the level of trade in Mexico for Mexinox is at a more advanced stage than the level of trade of the CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Tariff Act, as claimed by Mexinox. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Tariff Act. We applied the CEP offset to NV, whether based on home market prices or CV.

In addition to the three U.S. channels of distribution discussed above (direct sales, SLP stock sales, and sales through Mexinox's affiliate, Mexinox USA), Mexinox reported U.S. sales through two other channels of distribution: CEP sales through Ken-Mac and CEP sales through CBS (*see* the section on ''Affiliation'' above). In all cases, CBS resold subject merchandise from inventory which it purchased from Ken-Mac. For purposes of this preliminary determination, we treated both of these channels of distribution as equivalent to the CEP level of trade as described above.

Export Price and Constructed Export Price

Mexinox reported some of its sales of subject merchandise sold to unaffiliated U.S. customers through its affiliated company, Mexinox USA, as EP transactions. For EP sales, the price terms were set by management in Mexico before importation into the United States, and the products were shipped directly to the customer through Mexinox USA without being introduced into U.S. inventory. Furthermore, we reviewed the information Mexinox submitted about the sales process for these sales and determined that the role Mexico USA played was ancillary at most. Mexinox reported as CEP transactions its sales of subject merchandise sold to Mexinox USA for its own account. Mexinox USA then resold the subject merchandise after importation to unaffiliated customers in the United States.

We calculated EP in accordance with section 772(a) of the Tariff 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 packed prices to unaffiliated purchasers in the United States. We made deductions for discounts, rebates, and debit/credit notes. We also made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign inland insurance, U.S. inland freight, U.S. brokerage and handling, U.S. customs duty, and U.S. warehousing. We also added duty drawback to the starting price, in accordance with section 772(c)(1)(B) of the Tariff Act.

We calculated CEP in accordance with section 772(b) of the Tariff Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for discounts, rebates, and debit/credit notes where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, U.S. customs duties, U.S. inland freight, foreign brokerage and handling, and foreign inland insurance. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act, and added duty drawback to the starting price in accordance with section 772(c)(1)(B) of the Tariff Act. For those sales in which material was sent to an unaffiliated U.S.

processor to be further processed, we made an adjustment based on the transaction-specific further-processing amounts reported by Mexinox. In addition, the entities Ken-Mac and CBS performed some further manufacturing of some of Mexinox's U.S. sales. For these sales, we deducted the cost of further processing in accordance with 772(d)(2) of the Tariff Act. In calculating the cost of further manufacturing for Ken-Mac and CBS, we relied upon the further manufacturing information provided by Mexinox.

Facts Available

In accordance with section 776(a)(1) of the Tariff Act, in these preliminary results we find it necessary to use partial facts available in those instances where the respondent did not provide us with certain information necessary to conduct our analysis. In a small number of cases, Mexinox's affiliated U.S. reseller, Ken-Mac, was unable to confirm the origin of the subject merchandise it sold during the POR. Therefore, Mexinox provided data about these particular resales through Ken-Mac in a separate database. At page KM–3 of its March 5, 2001 submission, Mexinox reported that it allocated these sales of ''unattributable'' merchandise ''amongst the potential suppliers of the material based on relative percentage, by volume, of stainless steel and strip purchased during the POR by Ken-Mac from each supplier.'' In addition to Mexinox, ''potential suppliers'' of this merchandise include, among others, Krupp Thyssen Nirosta GmbH (KTN), a producer which is subject to the companion antidumping duty administrative review covering S4 in coils from Germany. At our sales verification of Ken-Mac, we thoroughly reviewed this issue and determined that Ken-Mac had acted to the best of its ability in attemping to trace the origin of the subject merchandise that it sold during the POR.

Because of the unknown origin of certain of Ken-Mac's resales of subject merchandise, Mexinox has, in effect, not provided all the information necessary to complete our analysis. Therefore, we have preliminarily determined that, pursuant to section 776(a) of the Tariff Act, it is appropriate to use the facts otherwise available in calculating a margin on these sales. Section 776(a) of the Tariff Act provides that the Department will, subject to section 782(d), use the facts otherwise available in reaching a determination if ''necessary information is not available on the record.'' Therefore, for these preliminary results, we have calculated a margin on Ken-Mac's ''unattributable'' resales by applying the overall margin calculated on all other sales/resales of subject merchandise to the weighted-average price of these ''unattributable'' sales. We then weighted the result using a portion of the ''unattributable'' database representing the ratio of Ken-Mac's purchases of stainless steel from Mexinox to stainless steel purchases from all vendors.

Normal Value

A. Selection of Comparison Market

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 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)(B) of the Tariff Act. Because 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.

B. Affiliated-Party Transactions and Arm's-Length Test

Sales to affiliated customers in the home market 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(b). 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 minus 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). In instances where no price ratio could be calculated 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 margin calculation. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509 (Nov. 8, 1998), citing to *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993). 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.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in our investigation of S4 in coils from Mexico (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 30790 (June 8, 1999), we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Mexinox.

We calculated the COP based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Tariff Act.

We used the respondent's reported COP amounts to compute weighted-average COPs during the POR. We compared the weighted-average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act: (1) whether within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Where twenty percent or more of the respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2) (B) and (C) of the Tariff Act. Based on our comparison of prices to the weighted-average per-unit cost of production for the POR, we determined whether the below-cost

prices were such as to provide for recovery of costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Mexinox revealed that less than twenty percent of Mexinox's home market sales of certain products were at prices below Mexinox's COP. We therefore concluded that for such products, Mexinox had not made below-cost sales in substantial quantities. See section 773 (b)(2)(C)(i) of the Tariff Act. We therefore retained all such sales in our analysis. For other products, more than twenty percent of Mexinox's sales were at below-cost prices. In such cases we disregarded the below-cost sales, while retaining the above-cost sales for our analysis. See Preliminary Results Analysis Memorandum dated July 31, 2001, a public version of which is on file in room B–009 of the main Commerce building. We relied on the respondent's COP and CV amounts as reported.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of the respondent's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses 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. We deducted from CV the weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made adjustments for debit/credit notes, interest revenue, discounts, rebates, insurance revenue, and freight revenue, where appropriate. We made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranty expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff 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 Tariff Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff 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, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review we preliminarily determine the following weighted-average dumping margin exists for the period January 4, 1999 through June 30, 2000:

Manufacturer/Exporter: Mexinox.

Weighted Average Margin (percentage): 4.03.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for Mexinox will be the rate established in the final results of review;

(2) If the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(3) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all others rate from the investigation (30.85 percent; *see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 40560, 40562 (July 27, 1999)).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review

period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19782 Filed 8–7–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and partial recission of antidumping duty administrative review of stainless steel sheet and strip in coils from the Republic of Korea.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from the Republic of Korea in response to a request from respondents Pohang Iron & Steel Co., Ltd. (''POSCO''), Samwon Precision Metals Co., Ltd. (''Samwon''), Daiyang Metal Co., Ltd. (''DMC''), and petitioners,[1] who requested a review of Sammi Steel Co. (''Sammi'') and any of its affiliates within the meaning of section 771(33) of the Tariff Act of 1930, as amended (''the Act''), including any successor or surviving company to Sammi. This review covers imports of subject merchandise from POSCO, Samwon, DMC and Sammi. The period of review (''POR'') is January 4, 1999 through June 30, 2000.

Our preliminary results of review indicate that Samwon and DMC have sold subject merchandise at less than normal value (''NV'') during the POR and that POSCO did not make any sales below normal value during the POR. In addition, we have preliminarily determined to rescind the review with respect to Sammi because it had no shipments of subject merchandise to the United States during the period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for Samwon and DMC.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita (POSCO); Stephen Shin (Samwon); Amy Ryan (DMC), Brandon Farlander (Sammi); or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–0413, (202) 482–0961, (202) 482–0182 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on stainless steel sheet and strip in coils from the Republic of Korea (65 FR 45035). On July 27, 2000, petitioners requested a review of Sammi and its affiliates within the meaning of section 771(33) of the Act. On July 31, 2000, POSCO, Samwon, and DMC, producers and exporters of subject merchandise during the POR, in accordance with 19 CFR 351.213(b)(2), requested administrative reviews of the antidumping order covering the period January 4, 1999, through June 30, 2000. On September 6, 2000, the Department published in the **Federal Register** a notice of initiation of administrative review of this order (65 FR 53980).

On September 20, 2000, and in subsequent submissions on September 28, 2000, October 13, 2000, and November 3, 2000, Sammi informed the Department that it had no shipments of subject merchandise to the United States during the POR. We have confirmed this with the Customs Service. See the Memorandum from Brandon Farlander to the File, ''*U.S. Customs Data Query for Entries During the 1999–2000 Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils From the Republic of Korea,*'' dated July 31, 2001. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding our review with respect to Sammi. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

On November 27, 2000, and December 4, 2000, petitioners requested the Department to initiate a sales below cost investigation on Samwon and DMC, respectively. On February 2, 2001 and March 7, 2001, the Department initiated the sales below cost investigation on Samwon and DMC, respectively.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On January 5, 2001, the Department extended the time limit for the preliminary results in this review to July 2, 2001. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 66 FR 1085 (January 5, 2001). On March 14, 2001, the Department extended the time limit for the preliminary results in this review for an additional 30 days. The preliminary results are now due on July 31, 2001. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review,* 66 FR 14891 (March 14, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other

[1] Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC.

elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81 [2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this review. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this review. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[7]

Partial Rescission of Review

Sammi reported, and the Department confirmed through independent U.S. Customs Service data, that it had no shipments of subject merchandise during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Sammi. (*See e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review,* 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 53287, 53288 (Oct. 14, 1997).)

Since Sammi did not report any shipments during the POR, we have no basis for determining a margin. Therefore, since Sammi did not participate in the original investigation, its cash deposit rate will remain at 12.12 percent, which is the all others rate established in the less than fair value (''LTFV'') investigation.

Verification

As provided in section 782(i) of the Act, we verified sales and cost information, provided by POSCO, from February 2, 2001, to February 14, 2001, and February 19, 2001, to February 23, 2001, respectively, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. In addition, we conducted a cost verification of Samwon from June 11, 2001, to June 15, 2001. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Normal Value Comparisons

To determine whether POSCO's sales of subject merchandise from Korea to the United States were made at less than fair value, we compared the constructed export price (''CEP'') to the NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions. We made corrections to reported U.S. and home market sales data based on the Department's findings at verification, as appropriate.

Transactions Reviewed

For POSCO, Samwon and DMC, we compared the aggregate volume of home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Korea was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because the volume of home market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise for all three companies, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon the home market sales of the foreign like product. Thus, we based NV on the prices at which the foreign like product was first sold for consumption in Korea, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the CEP or NV sales, as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the ''Scope of the Review'' section above, which were produced and sold by POSCO, Samwon and DMC in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in making its determination.

On November 27, 2000, petitioners submitted an allegation of sales below cost by Samwon. On January 4, 2001, the Department found reasonable grounds to believe or suspect that Samwon made home market sales at prices below COP, as set forth in 773(b) of the Act and initiated a cost-of-production investigation. Samwon's reported COP is based in part on an allocation methodology which does not reconcile to the company's own production records. Samwon has stated in its responses that the company's allocation methodology is based on the professional judgement of company engineers. At verification, the Department discovered that the allocation methodology does not reflect the company's own production

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

experience in a manner that can be verified due to Samwon's record-keeping ability. *See Antidumping Duty Review on Stainless Steel Sheet and Strip in Coils from Korea: Cost Verification Report of Samwon Precision Metals,* dated July 24, 2001, at 11–14. Therefore, Samwon's methodology possesses serious flaws which render ineffective the Department's ability to accurately conclude whether HM sales have been made below the cost of production based on the company's reporting of model-specific costs. The Department notes that, although the overall cost pool captures all costs related to production of subject merchandise, we were unable to adjust the reported CONNUM-specific costs due to the broad nature of the company's allocation methodology and the inaccuracies contained within the company's own production records. As a result, the CONNUM-specific costs of production reported in Samwon's response cannot serve as a reliable basis for reaching a preliminary results of review. Therefore, pursuant to section 776(a) of the Act, we have instead relied on partial facts available for Samwon for this preliminary results of review.

Although the reported CONNUM-specific costs are unusable, we found that the overall costs reported by Samwon were consistent with the data kept by the company in the normal course of business. Also, in the aggregate, we did not find any reason to suggest that the total reported costs did not accurately reflect the costs associated with all subject merchandise in its entirety. Therefore, in accordance with section 782(e)(3) of the Act, we have not ''declined to use information submitted on the record by an interested party and is necessary to the determination but does not meet all of the applicable requirements established by the administering authority.'' Consequently, as partial facts available, we have calculated one weighted-average COP and compared all home-market prices to the single COP for the purposes of determining sales below cost. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999). Additionally, for comparisons of EP to CV, the Department is likewise using a single CV. For further details, see the memorandum from Stephen Shin through Rick Johnson to the File, *Analysis for the Preliminary Results of Stainless Steel Sheet and Strip in Coils From Korea—Samwon Precision Metals Co., Ltd. (''Samwon'')* (''Analysis Memo: Samwon''), July 31, 2001. Given the considerable variation between models of a given product, the Department notes that the use of a single weighted-average COP most often leads to results which do not accurately reflect the costs incurred in a company's own production process for a particular model. However, in the case at hand, the Department notes that a preponderance of Samwon's production and HM sales quantity centers around a small number of models that do not differ significantly in terms of the physical characteristics which the Department considers as having the greatest impact on the overall costs of production of the merchandise. As these models constitute the preponderance of Samwon's overall production quantity, these models also constitute the preponderance of Samwon's overall cost pool. Since the Department weighted the average COP calculated in this review by production quantity, this single weighted-average COP in fact approximates the production costs for the models of stainless steel sheet and strip which Samwon primarily produces. Thus, the Department finds that using one weighted-average COP in this instance does not lead to a significantly distortive COP given the fact that a preponderance of Samwon's costs are incurred in the production of a small number of models. *See Analysis Memo: Samwon* at 4–6.

Notwithstanding the Department's decision to use Samwon's reported COP in this manner, this decision does not represent an endorsement by the Department of Samwon's methodology for reporting COP. As noted in the verification report and the explanation above, there are flaws in Samwon's methodology which render ineffective the Department's established methodology of calculating dumping margins. In particular, the Department is advising Samwon that the reporting methodology used in this review will be unacceptable for future segments of this proceeding. In future segments, Samwon risks the application of adverse facts available in the event that it fails to report COP data that is allocated sufficiently to unique CONNUMs in a manner that is verifiable.

Because the data used by the Department as the basis of facts available is the respondent's own data, it is not secondary information within the meaning of section 776(c) of the Act. Consequently, the statute does not require the Department to corroborate this information.

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

POSCO

For purposes of this review, POSCO has classified its sales as export price (''EP'') sales. However, after an analysis of POSCO's information on the record, we preliminarily determine that all of POSCO's sales to the United States should be classified as constructed export price sales.

POSCO identified the following two channels of distribution for U.S. sales: (1) POSCO sales through Pohang Steel America Corp. (''POSAM''), POSCO's wholly owned U.S. subsidiary, to an unaffiliated customer in the United States, and (2) POSCO sales through POSCO Steel Sales & Services Co., Ltd. (''POSTEEL''), POSCO's affiliated trading company in Korea, to POSAM, and finally, to an unaffiliated customer in the United States. We based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place prior to importation into the United States.

As noted above, POSCO has indicated that all of its U.S. sales made through POSAM should be treated as EP sales. POSAM takes title to the subject merchandise and, when it sold the subject merchandise to the unaffiliated U.S. customer, POSAM issued an invoice to the U.S. customer. *See* POSCO's October 3, 2000 Section A response, at A–10 and Appendix A–6 and A–10. Based on this information on the record, and, in light of AK Steel Corp. v. United States, 226 F.3d 1361 (Fed. Cir. September 12, 2000), we preliminarily determine that all of

POSCO's sales have taken place in the United States. Therefore, we determine that all of POSCO's sales are appropriately classified as CEP sales.

We calculated CEP based on packed prices 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 from the plant to the port of export, foreign brokerage and Korean customs clearance fees, international freight, marine insurance, U.S. customs duty, and U.S. brokerage and wharfage expenses (classified as other U.S. transportation expenses). Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in the constructed export price. 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 (imputed credit expenses, postage and term credit expenses, and letter of credit and remittance expenses) and indirect selling expenses, including inventory carrying costs, For POSAM's indirect selling expenses, we adjusted POSCO's claimed imputed credit offset to include only the sum of imputed credit expenses reported for U.S. sales of subject merchandise. 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.

DMC

DMC reported that it made all sales to the United States through its wholly-owned subsidiary in the United States, Ocean Metal Corporation (''OMC''). Consequently, it classified all of its U.S. sales as CEP sales. We calculated CEP based on packed prices 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 from the plant to the port of export, foreign inland freight from the plant to the unaffiliated customer, foreign brokerage and Korean customs clearance fees, international freight, marine insurance, U.S. customs duty, and U.S. brokerage and wharfage expenses. Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in the constructed export price. 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 and indirect selling expenses, including inventory carrying costs. 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.

Samwon

For purposes of this review, Samwon has classified its sales as export price (''EP'') sales. Based on the information on the record, we are using export price as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, by Samwon to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record. Samwon identified two channels of distribution for U.S. sales (sales to the U.S. through unaffiliated resellers and sales directly to unaffiliated U.S. customers) for its U.S. sales during the POR. We based EP on packed prices for export to the United States. We made deductions for inland freight (from Samwon's plant to the port of export), international freight, marine insurance, container handling fees, certification handling fees, and foreign brokerage and handling in accordance with section 772(c) 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 home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Comparison'' sections of this notice.

Cost of Production (''COP'') Analysis

POSCO

Because the Department determined that POSCO made sales in the home market at prices below the cost of producing the subject merchandise in the investigation and therefore excluded such sales from normal value (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 64 FR 30664, 30670 (June 8, 1999)), the Department determined that there are reasonable grounds to believe or suspect that POSCO made sales in the home market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry to determine whether POSCO made home market sales during the POR at prices below their respective COP within the meaning of section 773(b) of the Act.

Samwon and DMC

Based on our examination of petitioners' allegation of sales below cost and our subsequent initiation of a sales below cost investigation, the Department required Samwon and DMC to submit Section D cost data to determine whether they made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. *See* the Department's questionnaire to Samwon and DMC dated January 4, 2001 and March 2, 2001, respectively.

We conducted the COP analysis described below.

A. Calculation of COP

POSCO

In accordance with section 773(b)(3) of the Act, we calculated COP for POSCO, Samwon and DMC, 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 expenses, and packing costs. We used home market sales and COP information provided by each company in its questionnaire responses, with the following exceptions, detailed in the proprietary version of the July 31, 2001 memorandum to Neal Halper, Director, Office of Accounting, *Cost of Production (''COP'') and Constructed Value (''CV'') Calculation Adjustments for the Preliminary Results of Pohang Iron & Steel Co., Ltd. (''POSCO''):*

1. POSCO purchased a major input from an affiliate and used the input's transfer prices in its calculation of COP and CV. For the preliminary results, we have increased the transfer price of these purchases to a market price in accordance with section 773(f)(2) and (3) of the Act.

2. In 1999, POSCO wrote off all of its deferred foreign exchange losses through retained earnings. POSCO originally capitalized these losses with the intention of recognizing the loss over time on its income statement. Subsequently, POSCO expensed these deferred losses directly to equity in 1999. Therefore, we adjusted POSCO's reported COP to include the entire

amount of the remaining deferred foreign exchange losses.

3. We adjusted POSCO's reported foreign exchange ratio to include gains and losses associated with cash and ''other'' accounts in the numerator.

Samwon

In accordance with section 773(b)(3) of the Act, as facts available, we calculated COP on a factory-wide basis on the sum of Samwon's cost of material and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. We used home market sales and COP information provided by Samwon in its questionnaire responses, with the following exceptions, detailed in the proprietary version of the memorandum from Stephen Shin to the file, *Analysis for the Preliminary Results of Stainless Steel Sheet and Strip in Coils from Korea—Samwon Precision Metals Co., Ltd. (''Samwon''),* July 31, 2001:

1. Samwon misclassified foreign exchange gain/loss, donation, foreign exchange valuation gain/loss, miscellaneous loss, service income, and gain on disposal of fixed assets as interest expenses which the Department normally considers G&A expenses. For the preliminary results, we have reclassified these expenses and recalculated Samwon's G&A and interest expense ratios.

2. We adjusted Samwon's reported G&A expense to include only foreign exchange gain/loss associated with the cost of materials used in the production of subject merchandise and to exclude all other types of foreign exchange gain/loss.

3. Since Samwon was unable to provide support for its claim of short-term interest income, we have adjusted Samwon's interest expense ratio to exclude interest income.

DMC

We made no changes to the submitted data for this administrative review.

B. Test of Home Market Prices

We compared the weighted-average COP from January 4, 1999, through June 30, 2000 (''cost reporting period'') for POSCO, Samwon and DMC, adjusted where appropriate (see above), to its home market sales of the foreign like product as required under section 773(b) of the Act. 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.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the extended period are at prices less than the COP, we determine such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C)(i) of the Act. The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act. Because each individual price was compared against the weighted average COP for the cost reporting period, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales from our analysis for POSCO, Samwon and DMC. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV for POSCO, Samwon and DMC based on the sum of each company's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each company in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Price-to-Price Comparisons

POSCO

We based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where applicable, for movement expenses (i.e., inland freight from plant to distribution warehouse, warehousing expense, and inland freight from either plant/distribution warehouse to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, warranty expense and interest revenue, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Also, on certain sales, we added to NV an amount for duty drawback. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Samwon

We based NV on the home market prices to unaffiliated purchasers and those affiliated customers which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made circumstance-of-sale adjustments or deductions for credit, warranty expense, and interest revenue, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

DMC

We based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's-length test. DMC reported that it incurred no freight expenses in the home market. Therefore, we made no adjustment for movement expenses in accordance with section 773(a)(6)(B) of the Act. We made a circumstance-of-sale adjustment for credit. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Also, on certain sales, we added to NV an amount for duty drawback. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find contemporaneous home market sales of the foreign like product. Where applicable, we make adjustments to CV in accordance with section 773(a)(8) of the Act. We did not base NV upon CV for POSCO or Samwon for these preliminary results of review. However, for DMC, we based NV on CV when we were unable to find contemporaneous home market sales of the foreign like product.

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 SG&A expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the affiliated 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 affect 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 Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

POSCO

In the present review, POSCO requested a LOT adjustment or a CEP offset if the Department determines that POSCO's sales through POSAM are CEP sales. (As noted above, we have preliminarily determined that all of POSCO's U.S. sales through POSAM are CEP sales.) To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses.

In both the U.S and home markets, POSCO reported one level of trade. *See* POSCO's August 14, 2000, Section A response, at A–11–12. POSCO sold through two channels of distribution in the home market: (1) Directly from its mill to unaffiliated end-users/OEM's and affiliated and unaffiliated service centers; and (2) through POSTEEL to unaffiliated end-users/OEM's and unaffiliated service centers. POSCO sold through two channels of distribution in the U.S. market: (1) Through POSAM to unaffiliated trading companies; and (2) through POSTEEL to POSAM, and then to unaffiliated trading companies.

For sales in home market channel one, POSCO performed all sales-related activities, including arranging for freight and delivery; providing computerized accounting and sales systems; market research; warranty; sales negotiation; after-sales service; quality control; and extending credit. The same selling functions were performed in home market channel two; however, it was POSTEEL, not POSCO, which performed all the major selling functions. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

For U.S. sales through either channel one or two, POSCO or POSTEEL performed many of the same major selling functions, such as freight and delivery; market research; warranty; sales negotiation; after-sales service; and quality control. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the U.S. market.

Based on our analysis of the selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Therefore, we preliminarily determine that a LOT adjustment or CEP offset is not warranted in this case.

Samwon

In the present review, Samwon stated that a LOT adjustment was not applicable. (As noted above, we have preliminarily determined that all of Samwon's U.S. sales are EP sales.) To determine whether an adjustment is necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and United States markets, including the selling functions, classes of customer, and selling expenses.

In both the home and U.S. market, Samwon reported two levels of trade. *See* Samwon's October 12, 2000 Section A response at A–9 and November 6, 2000 Section B&C response, at B–12. Samwon sold through two channels of distribution in each market: (1) Made-to-order sales directly to end-users and (2) made-to-order sales to resellers/traders.

For sales in the home market to either end-users or resellers/traders, Samwon arranged inland freight. Samwon reported that the company provided technical support through on-site visitation upon customer request regardless of channel of distribution. Samwon reported no other sales or warranty services. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

For U.S. sales, Samwon arranged inland freight, ocean freight, and insurance upon customer request. Samwon reported no other sales services or a warranty service. Because the selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the U.S. market.

Based on our analysis of the selling functions performed for sales in the home market and EP sales in the U.S. market, we preliminarily determine that, despite the additional selling function (*i.e.,* technical visits) offered to home market customers, there is no significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Therefore, we preliminarily determine that a LOT adjustment or CEP offset is not warranted in this case.

DMC

In the present review, DMC made no claims that a LOT adjustment was appropriate. (As noted above, we have preliminarily determined that all of DMC's U.S. sales CEP are sales.) To determine whether an adjustment is necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

For sales in the home market to either end-users or distributors, DMC's selling activities in the home market consisted of receiving and processing customers' orders, arranging freight and delivery for small customers, delivery services for customers purchasing large quantities, inventory maintenance for small distributors, and warranty services. Because DMC's selling activities did not vary by channels of distribution, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, DMC sold all of its merchandise through its's U.S. subsidiary, OMC. Consequently, DMC claimed that OMC performed the requisite selling activities and that it did

not perform any selling activities such as the negotiation of sales terms, maintenance and collection of accounts receivable, and evaluation of customer credit, importation of subject merchandise and delivery of the merchandise to the unaffiliated customer. For the U.S. market, DMC's selling functions are limited to freight and delivery arrangements, which do not vary by customer type. Therefore, we preliminarily determine that there is one LOT in the U.S. market and that it is at a different level of trade than the comparison market.

We attempted to examine whether the difference in LOTs affects price comparability. However, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that there is only one LOT in the home market. Because of this, we were unable to calculate a LOT adjustment. Therefore, because the NV is established at a more advanced level of trade than the LOT of the CEP transactions, we adjusted NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period January 4, 1999 through June 30, 2000:

STAINLESS STEEL SHEET AND STRIP IN COILS FROM KOREA

Manufacturer/exporter/reseller	Margin (percent)
POSCO	0.00
Samwon	7.88
DMC	2.96

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Furthermore, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Assessment

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except that if the rate for a particular product is *de minimis, i.e.,* less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 12.12 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19783 Filed 8–7–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Preliminary Results of Antidumping Administrative Review: Stainless Steel Sheet and Strip in Coils From France

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

ACTION: Notice of preliminary results in the antidumping duty administrative review of stainless steel sheet and strip in coils from France.

SUMMARY: In response to a request from Ugine S.A. (''Ugine''), the U.S. Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip (''SSSS'') from France for the period January 4, 1999 through June 30, 2000. The Department preliminarily determines that a dumping margin exists for Ugine's sales of SSSS in the United States. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Ugine's merchandise during the period of review. The preliminary results are listed in the section titled ''Preliminary Results of Review,'' infra.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or James Doyle, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–3434, or 202–482–0159, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On July 27, 1999, the Department published in the **Federal Register** the amended antidumping duty order on SSSS from France. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France,* 64 FR 40562 (July 27, 1999). On July 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of this antidumping duty order on stainless steel sheet and strip in coils from France for the period January 4, 1999 through June 30, 2000. *See Opportunity to Request Administrative Review* 65 FR 45035 (July 20, 2000). On July 28, 2000, Ugine, a French producer and exporter of subject merchandise, requested that the Department conduct a review of its sales of the Department's antidumping duty order on SSSS from France. On September 6, 2000, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review for the period January 4, 1999 through June 30, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 65 FR 53980 (September 6, 2000).

On October 16, 2000, Ugine reported that it made sales of subject merchandise to the United States during the period of review in its response to Section A of the Department's questionnaire. On November 7, 2000, Ugine submitted its responses to Sections B, C, D, and E of the Department's questionnaire. On December 21, 2000, the Department issued a supplemental questionnaire for Sections A and B of Ugine's questionnaire response. On January 5, 2001, the Department issued a supplemental questionnaire for Section C of Ugine's questionnaire response. On January 25, 2001, the Department published an extension of time limit for the preliminary results of the antidumping duty administrative review. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coil from France,* 66 FR 7738 (January 25, 2001). On January 26, 2001, the Department issued a supplemental questionnaire for Sections D and E of Ugine's questionnaire response. On January 29, 2001, February 9, 2001, and February 23, 2001, Ugine submitted its response to the Department's first set of supplemental questionnaires. On March 29, 2001, the Department issued its second supplemental questionnaire for Sections A through E of Ugine's supplemental response. On April 13, 2001, Ugine submitted its response to the second supplemental questionnaire. On June 19, 2001, the Department published an extension of time limit for the preliminary results of the antidumping duty administrative review. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review of Stainless Steel Sheet and Strip in Coil from France,* 66 FR 32936 (June 19, 2001).

Scope of Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015,

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[6]

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Ugine for use in our preliminary results. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by Ugine. We verified sales and cost information provided by Ugine from May 2, 2001 to May 11, 2001. Additionally, we verified Ugine's U.S. subsidiary, Uginox Steel Corporation (''Uginox''), from May 30, 2001 through June 1, 2001. Further, we verified Ugine and Uginox's U.S. subsidiary, Hague Steel Corp. (''Hague''), from June 19, 2001 through June 22, 2001. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Product Comparison

In accordance with section 771(16) of the Act, we considered all SSSS products produced by Ugine, covered by the description in the ''Scope of Review'' section of this notice, supra, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to SSSS products sold in the United States. We have relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): grade, hot/cold rolled, gauge, finish, metallic coating, non-metallic coating, width, tempered/tensile strength, and edge trim. The Department's questionnaire authorized respondents to make distinctions (sub-codes) within some of these characteristics, but not within others. For certain product characteristics (*i.e.,* finish and coating) Ugine reported additional sub-codes which were specifically permitted by the Department's questionnaire. However, Ugine also reported additional sub-codes in its hot/cold rolled, and tempered product characteristic categories. These are characteristics for which the Department's questionnaire did not explicitly permit sub-codes. Nevertheless, for this preliminary results, the Department has included the additional codes that Ugine reported in the aforementioned categories in the Department's product matching methodology. *See Analysis Memo from Robert Bolling to The File,* dated July 31, 2001. At verification, we reviewed respondent's claims for the additional sub-codes. *See Home Market Sales and Cost Verification Report of Ugine* at pages 6 and 7, dated July 31, 2001. In light of our findings at verification, we conclude that the use of these additional codes is appropriate, and have included these codes in the Department's product matching methodology. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the September 8, 2000 antidumping duty questionnaire and instructions, or to constructed value (''CV''), as appropriate.

Export Price/Constructed Export Price

We calculated CEP in accordance with section 772(b) of the Act because the first sales to an unaffiliated purchaser took place after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for discounts, credit, warranty expenses, and commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant to distribution warehouse, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. inland freight from warehouse/plant to the unaffiliated customer, U.S. warehouse expenses, other U.S. transportation expense, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. We recalculated credit expenses for those Uginox sales with missing payment dates because payment has not yet been made. For sales with missing payment dates, the Department set the date of payment as the projected preliminary results date. For a further explanation, see *Analysis Memo from Robert Bolling to The File,* dated July 31, 2001. Additionally, we recalculated certain commissions for Hague because at Hague's verification we discovered that for certain U.S. sales, Hague did not pay an arm's length price to the sales agent. *See Hague Verification Report* at page 11, dated July 25, 2001. We also adjusted the starting price for billing adjustments to the invoice price and freight revenue.

For products that were further manufactured after importation, we adjusted for all costs of further manufacturing in the United States in accordance with section 772(d)(2) of the Act. We deducted the profit allocated to expenses deducted under section 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity (including further manufacturing costs), based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

In our U.S. CEP calculation, we included all downstream sales from Edgcomb Metals Company (''Edgcomb''), International Specialty Tube Corporation (''ISTC''), Hague, and J&L Specialty Steel, Inc., reported in respondent's November 7, 2000 submission.

Additionally, on March 29, 2001, the Department requested that Ugine report all U.S. sales of subject merchandise of its home market affiliated producer, IUP, during the POR. IUP sold subject merchandise to the United States through Ugine's affiliated super-distributor Uginox and through Rahns Specialty Metal, Inc. (''Rahns''), an unaffiliated distributor. For the preliminary results, we have included all of IUP's U.S. sales of subject merchandise that went through both Uginox and Rahns during the POR.

Normal Value

After testing home market viability, as discussed below, we calculated normal value (''NV'') as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was 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 greater than or equal to five percent of the aggregate volume of U.S. sales), we

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

compared Ugine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because Ugine'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. We therefore based NV on home market sales.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the cost of production (''COP''), we based NV on prices to home market customers. We calculated NV based on prices to unaffiliated home market customers. Where appropriate, we deducted discounts, rebates, credit expenses, warranty expenses, inland freight, inland insurance, and warehousing expense. We also adjusted the starting price for billing adjustments and freight revenue. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We recalculated credit expenses for those sales with missing payment dates. For sales with missing payment dates, the Department set the date of payment to the projected preliminary results date. *See* Analysis Memo from Robert Bolling to The File, dated July 30, 2001.

We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV.

For reasons discussed below in the ''Level of Trade'' section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Arm's-Length Sales

Ugine reported that it made sales in the home market to affiliated end users. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unrelated party, we determined that sales made to the related party were at arm's length. Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. In our home market NV calculation, we have included Ugine's sales to its affiliated resellers, Ugine France Service (''UFS'') and Imphy Ugine Precision (''IUP''), because both UFS and IUP pass the Department's arm's length test criteria. Therefore, we have not included UFS nor IUP's downstream sales to its other affiliated resellers (*i.e.,* Bernier, PUM, Paturle, and PMA).

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 identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, selling, general and administrative expenses (''SG&A''), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense 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 France. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, 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.

1. Cost of Production Analysis

Because we disregarded sales below the cost of production from the Less-Than-Fair-Value (''LTFV'') investigation, the most-recently completed segment of these proceedings, we have reasonable grounds to believe or suspect that sales by Ugine in its home market were made at prices below the COP, pursuant to section 773(b)(1) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 308204 (June 8, 1999) (''*Final Determination*''). Therefore, pursuant to section 773 (b)(1) of the Act, we conducted a COP analysis of home market sales by Ugine.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of Ugine's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (''G&A''), including interest expenses, and packing costs. We relied on the COP data submitted by Ugine in its original and supplemental cost questionnaire responses. For these preliminary results, we did not make any adjustments to Ugine's submitted costs.

B. Test of Home Market Prices

We compared the weighted-average COP for Ugine 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 the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable billing adjustments, movement charges, 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 Ugine'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 Ugine's sales of a given product during the POR were at prices less than the COP, we determined that such sales 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 use POR 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, we disregarded the below-cost sales.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Ugine's cost of materials, fabrication, G&A (including interest expenses), U.S. packing costs, direct and indirect selling expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Ugine 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 actual weighted-average home market direct and indirect selling expenses.

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. For EP, the U.S. 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 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 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 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, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732 (November 19, 1997).

In reviewing the selling functions reported by the respondents, we examined all types of selling functions and activities reported in respondent's questionnaire response on LOT and during verification. In analyzing whether separate LOTs existed in this review, we found that no single selling function was sufficient to warrant a separate LOT in the home market. *See Antidumping Duties; Countervailing Duties, Final Rule,* 63 FR 65347 (November 25, 1998).

We determined that Ugine sold merchandise at two LOTs in the home market during the POR. One level of trade involved sales made through two channels: Sales by Ugine directly to unaffiliated service centers or end users (Channel 1) and sales made by Ugine with the assistance of Ugine France Service in its capacity as sales agent, to unaffiliated end users (Channel 2). Additionally, the second level of trade involved sales made through two channels: Sales from Ugine to its affiliate, IUP, with subsequent resales by IUP to unaffiliated end users and service centers (Channel 3) and sales from Ugine to its affiliate, IUP, and then, with the assistance of Ugine France Service in its capacity as sales agent, to unaffiliated end users (Channel 4). From our analysis of the marketing process for these sales, we have determined that there are significant distinctions in selling activities between Ugine's sales to its affiliate in Channels 3 and 4 and its sales through channel 1 or 2. *See Memorandum from Robert A. Bolling to Edward Yang,* dated July 31, 2001, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC. Based on these differences, we concluded that two LOTs existed in the home market.

In order to determine the LOTs of the U.S. market, we reviewed the selling activities associated with each channel of distribution. Ugine only reported CEP sales in the U.S. market. Because all of Ugine's CEP sales in the U.S. market were made through either Uginox or Rahns, where Ugine has characterized both as super-distributors that perform the same selling functions, there was only one level of trade. For these CEP sales, we determined that fewer and different selling functions were performed for CEP sales to Uginox and Rahns than for sales at either of the home market LOTs. In addition, we found that sales at both home market LOTs were at a more advanced stage of distribution (to end-users) compared to the CEP sales.

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. 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). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we did not calculate a LOT adjustment. Instead, a CEP offset was applied to the NV-CEP comparisons. *See Memorandum from Robert A. Bolling to Edward Yang,* dated July 30, 2001, on file in Import Administration's Central Records Unit, Room B–099, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC.

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act, based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use the daily exchange rate in effect on the date of sale in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1998), and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the

following weighted-average dumping margin exists:

STAINLESS STEEL SHEET AND STRIP IN COILS

Producer/manufacturer/exporter	Weighted-average margin (percent)
Ugine	3.43

Pursuant to 19 CFR 351.224, the Department will disclose to any party to the proceeding, within ten days of publication of this notice, the calculations performed. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by dividing the total dumping margins calculated for the U.S. sales to the importer by the total entered value of these sales. This rate will be used for the assessment of antidumping duties on all entries of the subject merchandise by that importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Ugine, the only reviewed company, will be that established in the final results of this review; (2) For previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the ''all other'' rate established in the LTFV investigation, which was 9.38 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from France,* 64 FR 40562 (July 27, 1999).

This notice serves as a preliminary reminder to importers of their responsibility under regulation 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19784 Filed 8–7–01; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Japan

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

ACTION: Notice of preliminary results in the antidumping duty administrative review of stainless steel sheet and strip in coils from Japan.

SUMMARY: In response to a request from a respondent in the original investigation, Kawasaki Steel Corporation (''Kawasaki''), the Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSS'') from Japan. This review covers imports of subject merchandise from Kawasaki. The period of review is January 4, 1999 through June 30, 2000.

The Department preliminarily determines that SSSS from Japan has been sold in the United States at less than normal value during the period of review. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price and normal value.

Interested parties are invited to comment on these preliminary results. See ''Preliminary Results of the Review'' section, infra.

EFFECTIVE DATE: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or James C. Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–0409 or 202–482–0159, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000). See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27295 (May 19, 1997).

Background

On July 20, 2000, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on SSSS from Japan. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 65 FR 45035 (July 20, 2000). On July 31, 2000, Kawasaki, a producer and exporter of subject merchandise during the period of review (''POR''), requested that the Department conduct an administrative review of the

antidumping duty order. On September 6, 2000, the Department initiated an administrative review of the antidumping duty order on SSSS from Japan with regards to Kawasaki. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 65 FR 53980, 53981 (September 6, 2000). On September 8, 2000, the Department issued its antidumping duty questionnaire.

On September 20, 2001, Kawasaki submitted a request that the Department permit it to limit its reporting: (1) of home market sales to merchandise identical to or similar to the subject merchandise sold in the U.S. market through the first three product-matching characteristics (grade, hot/cold rolled, and gauge), or to only prime merchandise, and (2) of costs to Kawasaki's fiscal year 1999 (April 1999 through March 2000), or to Kawasaki's fiscal year 1999 plus the second semester of its fiscal year 1998 (October 1998 through March 2000). On September 28, 2001, petitioners filed an objection to Kawasaki's request, arguing that a complete database is necessary for the Department to properly compare home market and U.S. sales, that Kawasaki should not be allowed to select the home market sales it submits, and that the Department's established practice is to require a respondent to submit costs that coincide with the POR. On October 4, 2000, Kawasaki submitted a response to petitioners' objection, asserting that it is not selecting the home market sales, but rather seeking to limit reporting sales under the Department's own matching criteria at the most basic level, and that it is not able to report its costs based on the POR. On October 13, 2000, the Department granted Kawasaki's request to limit its reporting of home market sales to all identical and similar home market sales of subject merchandise according to the first three matching criteria, and denied Kawasaki's request to report costs for a period different from the POR. On October 19, 2000, petitioners filed a submission again arguing that Kawasaki should be required to submit its complete home market sales database. On October 26, 2000 Kawasaki responded to petitioners' submission, arguing that the Department properly allowed limited home market sales reporting.

On September 29, 2000, the Department received Kawasaki's Section A response to the questionnaire. On November 3, 2000, Kawasaki filed its Section B and C responses to the questionnaire. On November 13, 2000, Kawasaki filed its Section D response. On November 20, 2001, the Department issued a Section D supplemental questionnaire. On December 11, 2000, Kawasaki filed its Section D supplemental response. On December 18, 2000, Kawasaki filed revised home market and cost files. On February 9, 2001, the Department issued a Section A supplemental questionnaire. On February 23, 2001, Kawasaki filed its Section A supplemental response. On March 2, 2001, the Department issued a Sections B–C supplemental questionnaire. On March 30, 2001, Kawasaki filed its Sections B– supplemental response. On June 15, 2001, the Department issued a Sections A–D second supplemental questionnaire. On July 2 and 6, 2001, Kawasaki filed its Sections A–D second supplemental response.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On May 29, 2001, the Department extended the time limit for the preliminary results in this review to July 31, 2001. See Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Japan, 66 FR 29086 (May 29, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Period of Review

The POR is January 4, 1999 through June 30, 2000.

Scope of the Review

Upon completion of four changed circumstances reviews pursuant to section 751(b) of the Act and section 351.216 of the Department's regulations, we have excluded certain products from the scope of the order. These four excluded products are identified in the scope, infra.

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219130031, 7219130051, 7219130071, 7219130081,[1] 7219140030, 7219140065, 7219140090, 7219320005, 7219320020, 7219320025, 7219320035, 7219320036, 7219320038, 7219320042, 7219320044, 7219330005, 7219330020, 7219330025, 7219330035, 7219330036, 7219330038, 7219330042, 7219330044, 7219340005, 7219340020, 7219340025, 7219340030, 7219340035, 7219350005, 7219350015, 7219350030, 7219350035, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220121000, 7220125000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220207005, 7220207010, 7220207015, 7220207060, 7220207080, 7220208000, 7220209030, 7220209060, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50

[1] Due to changes to the HTS numbers in 2001, 7219130030, 7219130050, 7219130070, and 7219130080 are now 7219130031, 7219130051, 7219130071, and 7219130081, respectively.

percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (''UNS'') as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [4]

Also excluded are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.'' [6]

Also excluded are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (''AWS'') specification ANSI/AWS A5.9–93. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part,* 65 FR 17856 (April 5, 2000). The products are 0.5 mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER308L, ER 309L, ER 316L and ER347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon—0.03% maximum
Chromium—20.0–22.0%
Nickel—10.0–12.0%
Molybdenum—0.75% maximum
Manganese—1.0–2.5%
Silicon—0.65% maximum
Phosphorus—0.03% maximum
Sulphur—0.03% maximum
Copper—0.75% maximum
Columbium—8 times the carbon level minimum—1.0% maximum

Also excluded are certain stainless steel used for razor blades, medical surgical blades, and industrial blades, and sold under proprietary names such as DSRIK7, DSRIK8, and DSRIK9. *See Stainless Steel Sheet and Strip in Coils*

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part, 65 FR 54841 (September 11, 2000). This stainless steel strip in coils is a specialty product with a thickness of 0.15 mm to 1.000 mm, or 0.006 inches to 0.040 inches, and a width of 6 mm to 50 mm, or 0.250 inches to 2.000 inches. The edge of the product is slit, and the finish is bright. The steel contains the following chemical composition by weight: Carbon 0.65% to 1.00%, Silicon 1.00% maximum, Manganese 1.00% maximum, Phosphorus 0.35% maximum, Sulfur 0.25% maximum, Nickel 0.35% maximum, Chromium 0.15% maximum, Molybdenum 0.30% maximum.

Also excluded are certain stainless steel lithographic sheet. *See* Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part, 65 FR 64423 (October 27, 2000). This sheet is made of 304-grade stainless steel and must satisfy each of the following fifteen specifications. The sheet must have: (1) An ultimate tensile strength of minimum 75 KSI; (2) a yield strength of minimum 30 KSI; (3) a minimum elongation of 40 percent; (4) a coil weight of 4000–6000 lbs.; (5) a width tolerance of −0/+0.0625 inch; and (6) a gauge tolerance of ±0.001 inch. With regard to flatness, (7) the wave height and wave length dimensions must correspond to both edge wave and center buckle conditions; (8) the maximum wave height shall not exceed 0.75 percent of the wave length or 3 mm (0.118 inch), whichever is less; and (9) the wave length shall not be less than 100 mm (3.937 inch). With regard to the surface, (10) the surface roughness must be RMS (RA) 4–8; (11) the surface must be degreased and no oil will be applied during the slitting operation; (12) the surface finish shall be free from all visual cosmetic surface variations or stains in spot or streak form that affect the performance of the material; (13) no annealing border is acceptable; (14) the surface finish shall be free from all defects in raised or depression nature (e.g., scratches, gouges, pimples, dimples, etc.) exceeding 15 microns in size and with regard to dimensions; and (15) the thickness will be .0145±.001 and the widths will be either 38″, 38.25″, or 43.5″ and the thickness for 39″ material will be .0118 ±.001 inches.

Also excluded is nickel clad stainless steel sheet and strip in coils from Japan. *See* Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination to Revoke Order in Part, 65 FR 77578 (December 12, 2000). This nickel clad stainless steel sheet must satisfy each of the following specifications. The sheet must: (1) have a maximum coil weight of 1000 pounds; (2) with a coil interior diameter of 458 mm to 540 mm; (3) with a thickness of .33 mm and a width of 699.4 mm; (4) fabricated in three layers with a middle layer of grade 316L or UNS 531603 sheet and strip sandwiched between the two layers of nickel cladding, using a roll bonding process to apply the nickel coating to each side of the stainless steel, each nickel coating being not less than 99 percent nickel and a minimum .038 mm in thickness. The resultant nickel clad stainless steel sheet and strip also must meet the following additional chemical composition requirement (by weight): The first layer weight is 14%, specification Ni201 or N02201, Carbon 0.009, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.992. The second layer weight is 72%, specification 316L or UNS 513603, Carbon 0.02, Silicon 0.87, Manganese 1.07, Phosphorus 0.033, Sulfur 0.001, Nickel 12.08, Chromium 17.81, Molybdenum 2.26, Iron 65.856 for a combined total of 100. The third layer is 14%, specification Ni201 or N02201, Carbon 0.01, Sulfur 0.001, Nickel 99.97, Molybdenum 0.001, Iron 0.01, Copper 0.001 for a combined total of 99.993. The weight average weight is 100%. The following is the weighted average: Carbon 0.01706, silicon 0.6264, Manganese 0.7704, Phosphorus 0.02376, Sulfur 0.001, Nickel 36.6892, Chromium 12.8232, Molybdenum 1.62748, Iron 47.41912, and Copper is 0.00028. The above-described material is sold as grade 316L and manufactured in accordance with UNS specification 531603. This material is classified at subheading 7219.90.00.20 of the Harmonized Tariff Schedule of the United States.

Normal Value Comparisons

To determine whether sales of subject merchandise from Japan to the United States were made at less than fair value (''LTFV''), we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, supra. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP transactions.

In its questionnaire response, Kawasaki reported that Kawasho Corporation (''Kawasho'') is an affiliated reseller that made sales of subject merchandise during the POR. While Kawasaki made sales in both the U.S. and home markets during the POR, Kawasho did not make sales in the U.S. during the POR. Kawasaki did not report its home market sales to Kawasho, but rather its sales through Kawasho, except for certain sales. In general, for its home market sales, Kawasaki reported that its sales to unaffiliated parties include Kawasaki's sales to unaffiliated customers, and Kawasaki's sales through affiliated reseller Kawasho to unaffiliated customers. Kawasaki's home market sales to affiliated parties include sales to end users, and sales to resellers. Kawasaki explained that the exceptions to this reporting were that: (1) It could not report the sales of another affiliated reseller to end users, as that reseller could not trace its final sales to purchasers of Kawasaki subject merchandise, and thus Kawasaki reported its sales to that affiliated reseller instead; (2) it could not report a portion of downstream sales made by affiliated processors and resellers that purchase subject merchandise from Kawasho, as these parties do not trace back to the original product, so Kawasaki reported its sales to Kawasho instead; and (3) it could not report most downstream sales of Kawasho's ''buy-back'' transactions, where Kawasho sells to affiliates who process the material and sell it back to Kawasho, as all but one affiliated processor do not trace back to the original product, and therefore Kawasho reported its sales to the processors instead. We have used Kawasaki's reported sales for purposes of these preliminary results.

Transactions Reviewed

We compared the aggregate volume of Kawasaki's home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product Kawasaki sold in Japan was sufficient, pursuant to section 773(a)(1) of the Act, to form a basis for NV. Because Kawasaki's volume of home market sales of the foreign like product was greater than five percent of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon Kawasaki's home market sales of the foreign like product. Thus, we based NV on the prices at which the foreign like product was first sold for consumption in Japan (or as far as Kawasaki could trace the downstream sale in Japan, *see* ''Normal Value Comparisons'' section, supra), in

the usual commercial quantities, in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the ''Scope of the Review'' section, supra, which were produced and sold by Kawasaki in the home market during the POR, to be foreign like products for the purpose of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

Export Price/Constructed Export Price

In accordance with section 772(a) of the Act, export price (''EP'') is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price (''CEP'') is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For purposes of this review, Kawasaki has classified its sales as EP sales. Kawasaki identified one channel of distribution (sales to unaffiliated Japanese trading companies in Japan) for its U.S. sales during the POR. Kawasaki stated that ''(b)ecause the date of sale, i.e., the invoice date, for these sales took place before the date of importation into the United States, Kawasaki has coded such sales as EP sales in the U.S. sales file.'' See Kawasaki's November 3, 2000 Section C response (''Section C response''), at C–12. Based on the information on the record, we preliminarily determine that such sales were EP sales. We calculated EP in accordance with section 772(a) of the Tariff Act of 1930, as amended (''Act''). We based EP on packed prices to unaffiliated Japanese trading companies for export to the United States. We made deductions for foreign inland freight, foreign brokerage and handling, foreign inland insurance, rebates, and credit expenses in accordance with section 772(c) of the Act.

Kawasaki also reported that its mills are located in free trade zones (''FTZ''), and that it pays no duty on imported alloys used in producing subject merchandise for U.S. sales. Since the FTZ does not constitute the customs area of Japan, duties were not imposed on the imports into the FTZ unless and until they were withdrawn for consumption and entered into the customs territory of Japan. Therefore, the duties attributable to raw materials imported into the FTZ and re-exported to the United States constitute uncollected duties within the meaning of section 772(c)(1)(B) of the Act. See Certain Welded Stainless Steel Pipe from Taiwan: Final Results of Administrative Review, 63 FR 38382 (July 16, 1998). Kawasaki provided a worksheet establishing a linkage between the imported alloys and the subject merchandise. See Kawasaki's March 30, 2001 Supplemental Section B and C response, at Exhibit 15. In addition, Kawasaki stated that it imported sufficient amounts of the elements under bond that were then consumed in the production of subject merchandise. Accordingly, for these preliminary results, we also made an upward adjustment to the U.S. price for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value

After testing home market viability, as discussed in the ''Transactions Reviewed'' section, supra, and whether home market sales were at below-cost prices, in the ''Cost of Production Analysis,'' infra, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Comparisons'' sections of this notice.

1. Cost of Production Analysis

Because the Department disregarded certain Kawasaki sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding (*i.e.,* the original investigation), and therefore excluded such sales from normal value (see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan, 64 FR 30574 (June 8, 1999)), the Department determined that there are reasonable grounds to believe or suspect that Kawasaki made sales in the home market at prices below the cost of producing the merchandise in this review. See section 773(b)(2)(A)(i) of the Act. We conducted the COP analysis as 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, plus amounts for home market selling, general and administrative expenses (''SG&A''), interest expenses, and packing costs. We used home market sales and COP information provided by Kawasaki in its questionnaire responses.

B. Test of Home Market Prices

We compared the weighted-average COP for the POR to Kawasaki's home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales: (1) Were made within an extended period of time in substantial quantities; and (2) were not made at prices which permitted the recovery of all costs within a reasonable period of time.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Kawasaki'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 the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of Kawasaki's sales of a given product were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' The extended period of time for this analysis is the POR. See section 773(b)(2)(B) of the Act. Because each individual price was compared against the weighted average COP for the cost reporting period, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, CV is calculated based on the sum of the respondent's cost of materials, fabrication and other processing expenses. Calculation of the COP included in the calculation of CV is as noted in the ''Calculation of COP'' section of this notice, supra. In accordance with section 773(e)(2)(A) of

the Act, SG&A and profit is based 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.

Price-to-Price Comparisons

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. We made adjustments, where applicable, for movement expenses (*i.e.,* inland freight, warehousing expense, and inland insurance) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments or deductions for credit, interest revenue, warranty expense, technical service expense, and repacking, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find suitable home market sales of the foreign like product. We did not base NV on CV for Kawasaki for these preliminary results of review.

Arm's Length Test

If any sales to affiliated customers in the home market were not made at arm's length prices, we excluded them from our analysis because we consider them to be outside the ordinary course of trade. To test whether 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, and packing. Where 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 arms's length. *See* 19 CFR 351.403(c). 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 analysis. *See* Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar product.

Date of Sale

Kawasaki reported the original invoice date/shipment date as the date of sale, for both the home market and the U.S. market. Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to these regulations provides an explanation of this policy, as well as examples of when the Department may choose to base the date of sale on a date other than the date of invoice. *See* Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27295, 27348–49 (May 19, 1997). We note that we used Kawasaki's original invoice date/shipment date as the date of sale in the original investigation. For this review, in accordance with 19 CFR 351.401(i), where appropriate, we based date of sale on the original invoice date/shipment date.

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 transaction. As noted in the ''Export Price/Constructed Export Price'' section, supra, we preliminarily determine that Kawasaki's U.S. sales were EP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit (as noted in the ''Price-to-CV Comparisons'' section, supra, we did not base NV on CV for these preliminary results). For EP sales, the LOT is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer.

To determine whether NV sales are at a different LOT than EP 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.

In the present review, Kawasaki stated that EP sales to unaffiliated trading companies are made at the same level of trade as the home market sales to unaffiliated trading companies. However, Kawasaki requested a LOT adjustment if the Department compares U.S. sales to home market sales occurring at a different level of trade. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems and selling functions in both the United States and Japanese markets.

Kawasaki reported two levels of trade in the home market and one level of trade in the U.S. market. Kawasaki reported three channels of distribution in the home market: (1) Kawasaki sales to unaffiliated trading companies; (2) Kawasaki direct sales to end users; and (3) Kawasho's resales of Kawasaki-produced SSSS. Kawasaki reported one channel of distribution in the U.S. market: Kawasaki sales to unaffiliated trading companies.

For Kawasaki sales to unaffiliated trading companies in the home market, Kawasaki reported that it: maintains no inventory, provides technical advice, services warranty claims (with partial responsibility by the trading companies), advertises and markets its products for sale, primarily arranges warehousing, inputs data to the specification control system, arranges freight and delivery, handles sales processing (including invoicing and payment collection), administers rebates, and handles little demand forecasting. For Kawasaki direct sales to end users in the home market, Kawasaki reported that due to the nature of the sale, it was not as involved in day to day negotiations and customer contacts, or daily sales functions and services. For Kawasho's sales in the home market, Kawasaki reported that Kawasaki maintains no inventory (although Kawasho sometimes maintains inventory), provides technical advice, services warranty claims (with partial responsibility by Kawasho), advertises and markets its products for sale (as does Kawasho), arranges warehousing (although Kawasho primarily arranges warehousing), maintains and revises the specification control system (Kawasho inputs data to the specification control system), arranges freight and delivery (as does Kawasho), does not handle sales processing (Kawasho is responsible for sales processing), administers rebates, and handles little demand forecasting (Kawasho is responsible for demand forecasting). Based on our review of the selling

functions offered in the three channels of distribution in the home market, there do not appear to be substantial differences in the selling activities aside from a differentiation in degree to which these services are provided in Kawasaki direct sales to end users in the home market. Because these selling functions are substantially similar for the three sales channels in the home market, we preliminarily determine that there is one LOT in the home market.

For Kawasaki sales to unaffiliated trading companies for the U.S. market, Kawasaki reported similar selling functions as for the home market. Specifically, Kawasaki stated that it: maintains no inventory, provides technical advice, services warranty claims (with partial responsibility by the trading companies), advertises and markets its products for sale, did not incur warehousing (as the customer picked up the merchandise at Kawasaki's works), inputs data to the specification control system, did not arrange freight and delivery (the trading companies were responsible for freight and delivery), handles sales processing (including invoicing and payment collection), administers rebates, and handles little demand forecasting.

Based on our analysis of the selling functions performed for sales in the home market and EP sales for the U.S. market, we preliminarily determine that, despite some slight differences in minor selling functions (*i.e.,* warehousing, freight and delivery) performed by Kawasaki on the U.S. sales, there is not a significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. Accordingly, we have not made a LOT adjustment.

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, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period January 4, 1999 through June 30, 2000:

Producer/Manufacturer/Exporter	Weighted-Average Margin
Kawasaki Steel Corporation	1.94%

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments on these preliminary results. Case briefs must be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within 30 days of the date of publication of this notice, an interested party may request a public hearing on arguments to be raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except that no deposit will be required if the rate is zero or *de minimis, i.e.,* less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the original LTFV investigation, the cash deposit rate will continue to be the ''all others'' rate of 37.13 percent established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review is issued and published in accordance with section 751(a)(1) of the Act, 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19909 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod From Korea: Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision

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

ACTION: Amendment of final determination of sales at less than fair value pursuant to Court Decision.

SUMMARY: On April 10, 2001, the United States Court of International Trade (CIT) affirmed the determination made by the Department of Commerce (the Department) pursuant to a remand of the final antidumping duty determination of sales at less than fair value on stainless steel wire rod from Korea. *Al Tech Specialty Steel Corp., et. al.,* v. *United States,* Slip Op. 01–41 (CIT April 10, 2001). In the remand determination, the Department reclassified Changwon Specialty Steel Co., Ltd.'s (Changwon's) U.S. sales as constructed export price (CEP) sales. As this decision is now final and conclusive, we are amending the final determination.

EFFECTIVE DATE: August 7, 2001.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5346.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1998, the Department published in the **Federal Register** a notice of final determination of sales at less than fair value on stainless steel wire rod from Korea. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea,* 63 FR 40404 (July 29, 1998) (Final Determination). On September 15, 1998, the Department published in the **Federal Register** a notice of amendment of final determination of sales at less than fair value and antidumping duty order on stainless steel wire rod from Korea. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Korea,* 63 FR 49331 (September 15, 1998) *(Amended Final Determination).* The petitioners in this case, Al Tech Specialty Steel Corporation, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL–CIO/CLC, subsequently appealed the Department's determination before the CIT on one issue, the classification of Changwon's U.S. sales. The CIT issued a remand, at Commerce's request, to reconsider this issue in light of the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *AK Steel* v. *United States,* 226 F.3d 1330 (Fed. Cir. 2000) *(AK Steel),*[1] which was issued during the pendency of the litigation. *Al Tech Specialty Steel Corp., et al.,* v. *United States,* Court No. 98–10–03054 (CIT October 31, 2000) (order granting voluntary remand) *(Al Tech).*

The Department filed its redetermination on remand on February 9, 2001. The Department, for purposes of the remand, reclassified Changwon's U.S. sales as CEP sales. On April 10, 2001, the CIT affirmed the Department's remand determination. *Al Tech Specialty Steel Corp., et. al.,* v. *United States,* Slip Op. 01–41 (CIT April 10, 2001). No parties have appealed this decision.

As a result of the remand determination, the final dumping margins are as follows:

Manufacturer	Margin (percent)
Changwon, Pohang Iron and Steel Co., Ltd., and Dongbang Special Steel Co., Ltd	5.77
Sammi Steel Co., Ltd	[1] 28.44
All Others	5.77

[1] Unchanged from the *Amended Final Determination*

Cash Deposit Requirements

The Department will direct the United States Customs Service to require, on or after the date of publication of this notice in the **Federal Register**, the cash deposit rates listed above for the subject merchandise. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of an administrative review of this order.

[1] Note, on February 23, 2000, the Federal Circuit first issued an opinion in AK Steel, No. 99–1296. *See* 203 F.3d 1330 (Fed. Cir. 2000). The Korean producers then filed a petition for rehearing and suggestion for rehearing *en banc.* The Federal Circuit granted the petition for rehearing for the limited purpose of clarifying the Court's opinion. As a result, the Court withdrew the previous opinion and issued a revised opinion on September 12, 2000. *See AK Steel,* 226 F.3d 1330 (Fed. Cir. 2000). All references to *AK Steel* in this notice refer to the revised, September 12, 2000, opinion.

Dated: July 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19779 Filed 8–6–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products from Japan: Preliminary Results of Changed Circumstances Review

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

ACTION: Preliminary Results of Changed Circumstances Review.

EFFECTIVE DATE: August 8, 2001.

SUMMARY: We preliminarily determine that, because several interested parties are interested in the maintenance of the order with respect to the merchandise described below, there is no reasonable basis to believe that changed circumstances sufficient to warrant revocation exist. Therefore, we preliminarily determine that there is insufficient industry support for revoking the order with respect to that merchandise. Interested parties are invited to comment on these preliminary results (*see* the *Preliminary Results of Review and Intent to Not Revoke the Antidumping Duty Order* section, below).

FOR FURTHER INFORMATION CONTACT: Michael Ferrier or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1394 or (202) 482–1131, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin mill products from Japan (Certain Tin

Mill Products from Japan: Notice of Antidumping Duty Order, 65 FR 52067 (August 28, 2000)). On April 6, 2001, Weirton Steel and the Independent Steelworkers Union, petitioners in this proceeding, requested that the Department revoke in part the antidumping duty order on certain tin mill products from Japan. On May 3, 2001, petitioners submitted a change in the definition of the product for which they requested a changed circumstances review. Specifically, petitioners requested that the Department revoke the order with respect to imports of merchandise meeting certain specifications (hereafter referred to as ''the merchandise in question''). This merchandise is described in the ''Scope of Review'' section, below.

Weirton Steel, a domestic producer of the subject merchandise, together with the Independent Steelworkers Union and the United Steelworkers of America, AFL–CIO, were the petitioners in the underlying sales at less-than-fair-value investigation. In their changed circumstances request, petitioners stated that they have no interest in maintaining the antidumping duty order on certain tin mill products from Japan with respect to the merchandise in question, and that they believe that none of the known producers of the subject merchandise have any interest in having the merchandise in question remain within the scope of the antidumping order. However, the Department had no information on the record that the other known domestic producers of tin mill products, Bethlehem Steel Corp., National Steel Corp. (''National Steel'') , Midwest Division, Ohio Coatings Co., U.S. Steel Group, a Unit of USX Corp., and USS-Posco Industries, Inc. (''UPI''), had no interest in maintaining the antidumping duty order with respect to the merchandise in question described in Weirton's request. Therefore, we did not combine the initiation with the preliminary results, which is our normal practice under section 351.221(c)(3)(ii).

On May 21, 2001, we initiated a changed circumstances review for the merchandise in question (Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order, 66 FR 29086 (May 29, 2001) (''Initiation of Changed Circumstances Review''). In the initiation notice, we indicated that interested parties could submit comments for consideration in the Department's preliminary results not later than 20 days after publication of the initiation of the review, and submit responses to those comments not later than 10 days following the submission of comments.

On June 15, 2001, we received comments from UPI. UPI is a domestic producer of subject merchandise and is an interested party pursuant to 771(9)(C) of the Act. UPI indicated that it can and has produced the merchandise in question, that it has an interest in maintaining the antidumping duty order with respect to that merchandise, and that it would object to the exclusion of the merchandise in question from the order.

On June 18, 2001, we received comments from National Steel, a domestic producer of subject merchandise and, therefore, an interested party pursuant to 771(9)(C) of the Act, indicating that it has an interest in maintaining the order with respect to the merchandise in question, and that it would object to the exclusion of that merchandise from the order. National Steel's comments also note that petitioners failed to show that producers accounting for at least 85 percent of the production of the domestic like product express a lack of interest in continuation of the order with respect to the merchandise in question. On June 21, 2001, National Steel indicated that it had inadvertently filed its June 18, 2001 response under an incorrect case number.

Scope of Review

The products covered by this antidumping duty order include tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single-or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (#10%) or 0.251 mm (90 pound base box) (#10%) or 0.255 mm (#10%) with 770 mm (minimum width) (#1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (#1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m2; with a chrome oxide coating restricted to 6 to 25 mg/m2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m2 as type DOS, or 3.5 to 6.5 mg/m super2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin- coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m2, with a chromium oxide layer of 5–30 mg/m2, with a tensile strength of 260–440 N/mm super2, with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG) 10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU

1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: Crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of ¼ inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium coating weight of metallic chromium at 100 mg/square meter and chromium oxide of 10 mg/square meter, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS–A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of #⅛ inch, with a thickness tolerance of ι0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS–A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope is dispositive.

The scope of the products covered by this changed circumstances review are as follows:

—Double reduced (CADR8 temper) electrolytically chromium coated steel with chromium oxide at a level of 1.6 mg/sq. ft. (#0.9), having a base box weight of 60 pounds (nominal thickness of 0.0066 inch (#5% tolerance)), and a surface with a 7C stone finish, lubricated with butyl stearate oil (BSO) or dioctyl sebacate oil (DOS) with the level ranging from 0.22 to 0.32 gm/base box. The material is 31½ inches in actual width (−0/+1/16 inch width tolerance) and made from fully deoxidized (killed) continuous cast and continuous annealed steel that is free of detrimental non-metallic inclusions (i.e., clean steel) with earring hazard minimized. The maximum edge wave is ⅛ inch, with crossbow controllable to less than 2 inches per sheet. The maximum camber per three feet is 0.020 inch, the maximum burr is 0.001 inch, and the maximum pinholes per coil is 0.2%. The maximum coil weight is 25,000 pounds, with an interior coil diameter of 16 inches to 16½ inches, and an exterior coil diameter of 36 inches to 60 inches. When loaded for shipment, the coil is placed on the pallet with the eye of the coil standing vertical, with each side of the pallet being 60 inches having 4 × 4 runners, and outside runners placed a minimum of 37 inches apart.

The merchandise subject to this order is classified in the HTSUS under subheading 7210.50.0000 if of non-alloy steel, and under HTSUS subheading

7225.99.0090 if of alloy steel. Although the subheadings are provided for convenience, our written description of the scope is dispositive.

Analysis

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide that the Secretary may revoke an order, in whole or in part, based on changed circumstances if ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part * * *.'' In this context, the Department has interpreted ''substantially all'' production normally to mean at least 85 percent of domestic production of the like product (*see* Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 64 FR 14213, 14214 (March 24, 1999).

In order to determine whether ''substantially all'' of the domestic producers supported revocation of the order with respect to the merchandise in question, the Department solicited comments from all parties (*see* Initiation of Changed Circumstances Review, 66 FR 29088). As noted above, the Department received comments from UPI and from National Steel. Petitioners' submissions contain no evidence indicating that at least 85 percent of the domestic industry of the like product have no interest in the continuance of the order with respect to the merchandise in question. Based on the existence of objections of UPI and National Steel, producers of the domestic like product by admission of petitioners themselves, we have preliminarily determined that there are no grounds for concluding that at least 85 percent of the domestic industry of the like product supports the partial revocation of the order.

Preliminary Results of Review and Intent To Not Revoke the Antidumping Duty Order

Based on the submissions by the producers, the Department has preliminarily determined that there are no grounds for assuming that producers supporting a partial revocation of the order account for at least 85 percent of domestic production of the like product. Under the definition given above, there are no grounds for assuming that partial revocation of the order with respect to the merchandise in question is supported by ''substantially all'' of the domestic producers of the like product. As a result, we preliminarily determine that changed circumstances sufficient to warrant partial revocation of the antidumping duty order on tin mill products from Japan with respect to the merchandise in question do not exist.

The current requirements for the cash deposit of estimated antidumping duties on the subject merchandise will remain in effect until the publication of the final results of the next administrative review.

Parties wishing to comment on these results must submit briefs to the Department within 30 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal briefs. Parties who submit comments or rebuttal briefs in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**.

In accordance with 19 CFR 351.216(e), the Department will issue its final results of review within 270 days after the date on which the changed circumstance review was initiated (*i.e.,* no later than February 15, 2002).

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: July 20, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19910 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–806]

Certain Pasta From Turkey: Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Turkey for the period January 1, 1999 through December 31, 1999. We have preliminarily determined that certain producers/exporters have received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the Preliminary Results of Review section of this notice. Interested parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

EFFECTIVE DATE: August 8, 2001.

FURTHER INFORMATION CONTACT: Annika O'Hara or Melanie Brown, Office of AD/CVD Enforcement 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3798 and (202) 482–4987, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department'') regulations are to 19 CFR part 351 (April 2000).

Case History

On July 24, 1996, the Department published in the **Federal Register** (61 FR 38546) the countervailing duty order on certain pasta from Turkey. On July 20, 2000, the Department published in the **Federal Register**, a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order (65 FR 45035). We received requests for review and initiated the review for calendar year 1999, on September 6, 2000 (65 FR 53980). In accordance with 19 CFR 351.213(b), this review of the order covers the following producers or exporters of the subject merchandise for which a review was specifically requested: Filiz Gida Sanayi ve Ticaret A.S. (''Filiz''), Beslen Makarna Gida Sanayi ve Ticaret A.S. and Beslen Pazarlama Gida Sanayi ve Ticaret A.S. (''Beslen''), Pastavilla Makarnacilik Sanayi ve Ticaret A.S. (''Pastavilla''), and Maktas Makarnacilik ve Ticaret A.S. (''Maktas'').

On October 2, 2000, we issued countervailing duty questionnaires to the Government of Turkey (''GRT'') and the above-named companies under review. We received responses to our

questionnaires on November 22, 2000, and issued supplemental questionnaires on December 20, 2000. Responses to the supplemental questionnaires were received on January 9 and 10, 2001. Between April 3 and 6, 2001, we issued a second set of supplemental questionnaires to all the respondents except Beslen. The responses to these supplemental questionnaires were received between April 25 and May 2, 2001.

Scope of Order

Covered by the order are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons or polyethylene or polypropylene bags, of varying dimensions.

Excluded from the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise under review is currently classifiable under subheading 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Scope Ruling

To date, the Department has issued the following scope ruling:

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the countervailing duty order. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the countervailing duty order. (*See* May 24, 1999 memorandum from John Brinkman to Richard Moreland, which is on file in the Central Records Unit (''CRU'') in Room B–099 of the main Commerce building.)

Period of Review

The period of review (''POR'') for which we are measuring subsidies is from January 1, 1999 through December 31, 1999.

Change in Ownership

Pursuant to the finding of the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Delverde Srl* v. *United States,* 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (''*Delverde III*''), the Department has developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000, following the CAFC's decision in *Delverde III*, and also applied in *Grain-Oriented Electrical Steel from Italy; Final Results of Countervailing Duty Administrative Review,* 66 FR 2885 (January 12, 2001).

The first step under this new methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the period of investigation or review, the Department would then continue to countervail the remaining benefits of that subsidy.

Pastavilla underwent a change in ownership through a private-to-private transaction in 1995 when a Turkish business conglomerate, the Koç Group, bought the company from its founders. The ownership of Filiz changed in a 1996 private-to-private transaction in which Italian pasta manufacturer Barilla became the majority shareholder of Filiz. Regarding Beslen, the Turkish Grain Board (''TMO''), a government-owned enterprise, acquired 45 percent of the shares in Beslen in 1990. The remaining shares were—and still are—owned by Okan Holding, a privately owned holding company. In 1998, the TMO transferred its shares in Beslen to the Turkish Privatization Board, apparently in preparation for privatization of the shares.

We have not made a finding for the purpose of these preliminary results as to whether the pre-sale entities are distinct persons from the post-sale entities because the respondents have not reported receiving any subsidies prior to the changes in ownership (*e.g.*, non-recurring grants or long-term loans provided to the previous owner of the company) from which they continued to benefit during the POR.

On this basis, we find that application of the change-in-ownership methodology is not relevant in this review.

Subsidies Valuation Information

Benchmark Interest Rates for Short-term Loans: In the POR, Pastavilla had outstanding pre-shipment loans denominated in Turkish lira (''TL'') while Maktas had pre-shipment loans denominated in both TL and foreign currencies. *See* section I.1 below.

The Department uses company-specific interest rates as the benchmark rate, where possible, in accordance with 19 CFR 351.505. Because short-term interest rates in Turkey fluctuated significantly during the POR, we have used monthly benchmark rates, *e.g.*, the interest rate paid on a pre-shipment loan obtained in January 1999 has been compared to the interest rate paid on a benchmark loan obtained the same month. Maktas has argued that the Department should use the costs it paid on discounted checks as the benchmark interest rate for its TL-denominated pre-shipment loans. In the calculation of these preliminary results, we have used the discounts paid on such checks as the benchmark rate. We have increased these rates to reflect taxes that are normally paid on short-term loans in Turkey (*i.e.*, the Resource Utilization Support Fund (''KKDF'') tax, the Banking and Insurance Transactions (''BIST'') tax, and the stamp tax) but are not charged on pre-shipment and other export-related short-term loans (*see* section I.2 below).

Pastavilla did not obtain any comparable commercial short-term loans in the same months as it obtained its pre-shipment loans and we, therefore, lack company-specific benchmark interest rates for Pastavilla. 19 CFR 351.505(3)(ii) directs us to use a national average interest rate as the benchmark where there are no company-specific rates. The GRT does not maintain or publish data concerning the predominant national average short-term interest rates in Turkey. We have, therefore, calculated a monthly benchmark interest rate based on the short-term interest rates in Turkey for 1999 as reported weekly by The

Economist. This is consistent with the methodology used in *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Review,* 65 FR 18070 (April 6, 2000) (''*1998 Pipe & Tube*''). As in the case of Maktas, we have increased these interest rates to reflect the tax exemptions on pre-shipment loans.

With respect to pre-shipment loans denominated in foreign currencies, Maktas has provided the interest rates paid on comparable commercial short-term loans denominated in the same currencies. In accordance with 19 CFR 351.505, we have used these interest rates as the benchmark rates for the foreign currency pre-shipment loans.

Benefits to Mills: All the respondents owned mills for processing wheat into semolina, which is the principal input product in pasta. None of the mills was separately incorporated, *i.e.*, both the semolina and the downstream product (pasta) were produced within a single corporate entity.

On this basis and in accordance with 19 CFR 351.525(b)(6)(ii), the Department has attributed subsidies provided for the production of semolina and pasta to the sales by the corporate entities that received them.

Adjusting for Inflation: During the POR, the inflation rate in Turkey exceeded 50 percent, as shown in the IMF's International Financial Statistics (''IFS''). Adjusting the subsidy benefits and the sales figures for inflation neutralizes any potential distortion in our subsidy calculations caused by high inflation and the timing of the receipt of the subsidy. Consistent with the methodology used in *1998 Pipe & Tube,* we calculated the ad valorem subsidy rates for each program by multiplying the benefit in the month of receipt by the rate of inflation from the month of receipt until the end of the POR. Next, we adjusted the monthly sales values in the same way and added these adjusted values, thus obtaining total sales for the POR valued at December 1999 prices. In these calculations, we used the Wholesale Price Index (''WPI'') as reported in the IFS.

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

1. Pre-Shipment Export Loans

In order to meet the financing needs of Turkish exporters, the Export Credit Bank of Turkey provides short-term pre-shipment loans to exporters through intermediary commercial banks. The term for TL-denominated loans is 120 days, whereas the term for loans denominated in foreign currencies is 180 days. Both types of loans may cover up to 100 percent of the FOB export value. The interest rate charged on the loans is established by the Export Credit Bank and is changed periodically. The intermediary commercial banks, which take the risk that the borrower may default, can require additional fees to offset this risk and may also charge a commission. Like all other export-related short-term loans, the pre-shipment export loans are exempted from the KKDF, BIST, and stamp taxes (*see* Subsidies Valuation Information section above).

Maktas and Pastavilla had outstanding pre-shipment export loans in the POR.

The Department has previously found that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act because the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') from Turkey,* 61 FR 30366 (June 14, 1996) (''*Pasta Investigation Final*''). The loans are a direct transfer of funds from the GRT bestowing a benefit in the amount of the difference between the benchmark interest rate (including the taxes listed above) and the interest rate and fees paid by the recipient companies. In *Pasta Investigation Final*, we found the pre-shipment export loans to be specific in accordance with section 771(5A)(B) of the Act because receipt of these loans is contingent upon export performance. We have also previously found that these loans are not tied to a particular export destination and have, therefore, treated this program as an untied export loan program which renders it countervailable regardless of whether or not the loans were used for exports to the United States. *See 1998 Pipe & Tube,* 67 FR at 18072. In this review, no new information has been provided that would warrant reconsideration of these determinations.

Pursuant to 19 CFR 351.505, we have calculated the benefit as the difference between the payments of interest and taxes that Maktas and Pastavilla made on their pre-shipment export loans during the POR and the payments the companies would have made on comparable commercial loans. We divided the resulting benefit by the value of each company's exports during the POR, adjusting for inflation as described in the Subsidies Valuation Information section above. On this basis, we preliminarily determine the countervailable subsidy from this program to be 5.45 percent *ad valorem* for Maktas and 1.73 percent *ad valorem* for Pastavilla.

2. Exemption from KKDF, BIST, and Stamp Taxes on Export-related Loans

Pursuant to Article 4 of Resolution no. 94/5782 of June 13, 1994, Turkish companies are exempted from paying the KKDF, BIST, and stamp taxes on export-related short-term loans regardless of whether the loans are denominated in TL or foreign currencies. These exemptions are allowed both on loans at preferential interest rates (such as the pre-shipment export loans discussed above) and on loans at non-preferential interest rates.

Maktas reported receiving tax exemptions on short-term export-related loans provided at non-preferential interest rates. (Tax exemptions on preferential-rate pre-shipment export loans have been included in the calculation of the countervailable benefit for these loans, as described above.)

We have preliminarily determined that these tax exemptions confer a countervailable subsidy within the meaning of section 771(5) of the Act. They constitute revenue forgone by the GRT and provide a benefit in the amount of the tax exemptions.

We have preliminarily determined that the tax exemptions are specific in accordance with section 771(5A)(B) of the Act because their receipt is contingent upon exportation.

The Department typically treats tax exemptions as recurring grants in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy, we divided the total amount of the tax exemptions received by Maktas on short-term export-related loans outstanding during the POR by the value of Maktas' exports during the POR, adjusting for inflation as described in the Subsidies Valuation Information section above. On this basis, we preliminarily determine the countervailable subsidy from this program to be 5.31 percent *ad valorem* for Maktas.

3. VAT Support for Domestic Machinery and Equipment Purchases

Under the General Investment Encouragement Program (''GIEP''),[1] companies engaging in a wide variety of investment projects such as expanding or modernizing their production facilities, improving infrastructure, undertaking research and development,

[1] GIEP is the successor to GIP (General Incentives Program) which the Department examined in *Pasta Investigation Final* and *1998 Pipe & Tube.*

etc., can obtain an Investment Incentive Certificate for the project from the GRT. This certificate makes the company eligible for certain benefit programs as specified on each certificate. (A company may have more than one certificate depending on the number of investment projects.) The application for a certificate should include a description of the investment project, a feasability study, a list of the machinery and equipment that the company plans to buy in connection with the project, etc. In order to receive a certificate, the company must commit to a certain level of investment and deposit a certain amount of money with the GRT (smaller investments and deposits are required for companies in areas designated as ''priority development regions'').

The Department has previously determined that some parts of the GIP/GIEP program are not countervailable (*see* section II.4 below) while other parts of the program are countervailable. ''VAT Support for Domestic Machinery and Equipment Purchases,'' a program rebating the full VAT on domestically produced machinery and equipment, is countervailable. In some instances, a 10 percent premium is added to the VAT rebate.

In *1998 Pipe & Tube,* we determined that the VAT Support Program was countervailable under section 771(5)(D)(ii) of the Act because the VAT rebates constituted revenue forgone by the GRT. We also found the program to be specific under section 771(5A)(C) of the Act because the receipt of the rebates was contingent upon the use of domestically produced goods. A precursor to this program, ''Incentive Premium on Domestically Obtained Goods,'' which functioned in a similar manner, was found countervailable for the same reasons in *Pasta Investigation Final.*

In *1998 Pipe & Tube,* we found that the VAT Support Program changed on August 1, 1998. As of that date, any company holding an Investment Incentive Certificate issued on or after August 1, 1998, could claim a full VAT exemption on *all* machinery and equipment acquired for the investment project, regardless of whether it is imported or domestically produced. This new program, which is called ''VAT Exemption for Imported and Locally Purchased Machinery and Equipment,'' is further discussed under section II.5 below.

However, in *1998 Pipe & Tube,* we also found that companies could still receive benefits under the old system, i.e., VAT rebates exclusively on domestically produced machinery and equipment, if the Investment Incentive Certificate was issued before August 1, 1998.

Pastavilla received benefits under the old VAT Support Program during the POR. As noted above, the Department has previously determined that these rebates confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GRT bestowing a benefit in the amount of the rebate. As noted above, this program has previously been found to be specific. In this review, no new information has been provided that would warrant reconsideration of this determination.

We have previously treated the VAT rebates on domestic machinery and equipment as recurring grants because once a company has received an Investment Incentive Certificate, it becomes eligible for the VAT Support Program. *See* 1998 Pipe & Tube. The receipt of benefits is automatic; companies do not have to apply for new certificates each year. In the current review, no new information has been placed on the record that would cause us to depart from this treatment. Therefore, to calculate the countervailable subsidy, we divided the amount received by Pastavilla in the POR by the value of the company's total sales in the POR, adjusting for inflation as described in the Subsidies Valuation Information section above. On this basis, we preliminarily determine the countervailable subsidy from this program to be 0.04 percent *ad valorem* for Pastavilla.

II. Programs Preliminarily Determined To Be Not Countervailable

1. Export Credit Insurance

Exporters can obtain short-term export credit insurance from the Export Credit Bank of Turkey. These are one-year blanket insurance policies which cover up to 90 percent of losses incurred due to political risks (*e.g.,* cancellation of the buyer's import permit or license and losses resulting from war, revolution, etc.) and commercial risks (*e.g.,* the insolvency of the buyer or the refusal or failure of the buyer to take delivery of the goods). The insurance provided under this program is a post-shipment insurance because the Export Credit Bank becomes liable only if the loss occurs on or after the date of shipment.

The premium rates differ depending on the following factors: (1) whether the buyer is a public or a private entity, (2) the risk classification of the buyer's country, (3) the payment terms, and (4) the length of the credit period. Previously, it was obligatory for companies taking pre-shipment export loans (*see* section I.1 above) to use the export credit program. However, since February 1997, use of the export credit insurance program is voluntary for borrowers under the pre-shipment export loan program.

The export credit insurance program was not used in the investigation of this case (*see Pasta Investigation Final*) or in *1998 Pipe & Tube*. In this review, Maktas and Filiz have reported buying export credit insurance from the Export Credit Bank, although neither company received any reimbursements under the program during the POR.

The GRT has provided information for the time period 1995–1999 showing that, in each of these years, the premiums paid for the export credit insurance and other income generated by the program exceeded the insurance claims paid to participating companies. The 1999 annual report of the Export Credit Bank also shows that the bank's operating income (which includes the operating income for the export credit insurance program) exceeds its long-term operating costs. On this basis, in accordance with 19 CFR 351.520(a)(1), we preliminarily find the export credit insurance program to be not countervailable.

2. Purchases of Domestic Wheat from the TMO under Decree 98/11033

There are three main ways for Turkish pasta producers to obtain wheat for semolina: (1) from the TMO, (2) from local growers and traders, or (3) through imports. Prices on Turkish wheat are set above world market price as part of a price support scheme benefitting domestic wheat growers. However, companies holding an Inward Processing License may obtain cheaper wheat by either importing it under a duty-drawback program (*see* section II.3 below) or by purchasing Turkish wheat from the TMO under Decree 98/11033 at prices below normal domestic prices. The GRT and Maktas, the only company using this program in the POR, have stated that the price of wheat purchased under this decree is at or above the price generated in international tender auctions held by the TMO to sell Turkish wheat to foreign buyers, *i.e.,* a world market price. Companies using Inward Processing Licenses must export the finished product regardless of whether they import wheat under the duty drawback program or buy it from the TMO under Decree 98/11033.

Under 19 CFR 351.516(a)(1), price preferences for inputs used in the production of goods for export confer a countervailable benefit if the inputs are provided at more favorable terms or

conditions than inputs used in the production of goods for domestic consumption, unless ''such terms or conditions are not more favorable than those commercially available on world markets to exporters.'' As explained above, the prices that Maktas paid for wheat purchased under Decree 98/11033 were equivalent to, or higher than, the prices that foreign buyers paid for Turkish wheat at auctions. We preliminarily regard these prices to be world market, but before issuing the final results of this review, we will seek more information from the GRT about the auctions and we will also request support documentation for the prices paid at the auctions.

On this basis, we preliminarily determine that the provision of wheat under Decree 98/11033 is not countervailable.

3. Wheat Imports Under Inward Processing Licenses

As described above, Turkish companies holding an Inward Processing License may import wheat duty-free under a duty drawback program provided that they export the finished product. Maktas and Pastavilla imported wheat under an Inward Processing License in the POR.

According to 19 CFR 351.519, a benefit exists to the extent that the amount of the remission or drawback exceeds the amount of import charges on the imported input or to the extent that the exemption extends to inputs that are not consumed in the production of the exported products. Maktas and Pastavilla imported wheat (which is processed into semolina, the main input product in pasta) under the Inward Processing Licenses. There is no indication that either company received excessive remissions of the import duty, which normally is 50 percent on imported wheat. On this basis, we preliminarily determine that wheat imports under the Inward Processing Licenses are not countervailable. However, before issuing the final results of this review, the Department will request Maktas and Pastavilla to document that they did not receive excessive remissions of the import duty under this program.

4. Certain GIEP Benefits: Investment Allowances, Customs Duty Exemptions, and Stamp Tax Exemptions

In *Pasta Investigation Final,* we determined that certain GIEP (formerly GIP) benefits, were not countervailable because there were no *de jure* limitations on the types of industries eligible for these benefits (*see* 61 FR at 30371). Further, we determined that the pasta industry was not a dominant user of the program, nor did it receive a disproportionate number of the Investment Incentive Certificates issued by the GRT during the time period 1991–1994. In other words, we found that the certificates were not *de facto* specific to the pasta industry.

In the POR, Filiz used certain GIEP benefits (Investment Allowance, which is a form of corporate income tax deduction, and Customs Duty Exemptions) under an Investment Incentive Certificate issued in 1994. In *Pasta Investigation Final,* we found the Customs Duty Exemptions to be not countervailable because, as explained above, there was neither *de jure,* nor *de facto,* specificity for certificates issued in 1994. In the current review, no new information has been placed on the record that would cause us to change this determination.

Regarding the Investment Allowances portion of the GIP/GIEP program, none of the respondents in the investigation used this program. However, these allowances were used in *1998 Pipe & Tube* where we analyzed them by examining the specificity of the Investment Incentive Certificates. We have applied the same type of analysis to the Investment Allowances used by Filiz in this review. Because we found in *Pasta Investigation Final* that certificates issued in 1994 were not specific, we preliminarily determine that the Investment Allowances used by Filiz under its 1994 Investment Incentive Certificate are not countervailable.

During the POR, Filiz also used an Investment Incentive Certificate issued in 1998. Pastavilla used certificates issued between 1996 and 1999, and Maktas used a certificate issued in 1996. The GIP/GIEP programs used by these companies included Investment Allowances and Customs Duty Exemptions. Beslen also held Investment Incentive Certificates issued during the same general time period (Beslen's data regarding its certificates is proprietary and, therefore, cannot be discussed in further detail in this notice). Beslen received Customs Duty Exemptions and Stamp Tax Exemptions under its certificates. (The VAT support reported by the respondents in the context of the GIEP program has been dealt with elsewhere in this notice.)

Consistent with *Pasta Investigation Final* and *1998 Pipe & Tube,* we have analyzed the countervailability of the Investment Allowances, Customs Duty Exemptions, and Stamp Tax Exemptions in terms of the specificity of the Investment Incentive Certificates issued between 1996 and 1999. Based on information gathered from the Turkish Treasury Department's website (http://www.hazine.gov.tr), we preliminarily determine that the food and beverages industry did not receive a disproportionate number of Investment Incentive Certificates during the time period 1996–1999. On this basis, we preliminarily determine that the Investment Allowances, Customs Duty Exemptions, and Stamp Tax Exemptions received under Investment Incentive Certificates issued between 1996 and 1999 are not countervailable.

5. VAT Exemption on Imported and Locally Purchased Machinery and Equipment

As discussed in section I.3 above, the VAT Support Program changed on August 1, 1998. From that date, the program, renamed ''VAT Exemption on Imported and Locally Purchased Machinery and Equipment,'' entitles holders of Investment Incentive Certificates issued on or after August 1, 1998, to claim full VAT exemption on all machinery and equipment acquired for the investment project, regardless of whether it is imported or domestically produced.

During the POR, Pastavilla used this new program under an Investment Incentive Certificate issued in 1999. Because benefits under the program are no longer tied to the purchase of domestically produced machinery and equipment and because the food and beverages industry did not receive a disproportionate number of Investment Incentive Certificates during the relevant time period (see section II.4 above), we preliminarily find the ''VAT Exemption for Imported and Locally Purchased Machinery and Equipment'' program to be not countervailable.

III. Programs Preliminarily Determined To Be Not Used

1. Pasta Export Grants.
2. Export Credit Through the Foreign Trade Corporate Companies' Rediscount Credit Facility.
3. Performance Foreign Currency Export Loans.
4. Corporate Tax Deferrals.
5. Subsidized Credits for a Proportion of Fixed Expenditures.
6. Subsidized Credits in Foreign Currencies.
7. Direct Payments to Exporters for Wheat Products to Compensate for High Domestic Input Prices.
8. GIP/GIEP Program:
a. Exemption from Certain Customs Duties and Fund Levies.
b. Exemption from Certain Taxes, Duties and Fees (Other Tax Exemptions).

c. Subsidized Turkish Lire Credit Facilities.

d. Land Allocation.

e. Energy Support.

f. Payment of Certain Obligations of Firms Undertaking Large Investments.

IV. Programs Preliminarily Determined To Have Been Terminated

The GRT has stated that the following programs have been terminated. Before issuing the final results in this administrative review, we will seek confirmation through official government documents and other sources that these programs no longer exist.

1. Free Wheat Program.
2. Payments for Exports on Turkish Ships/State Aid for Exports Program.
3. Tax Exemption Based on Exports Earnings (Corporate Tax Law 3946).
4. Advance Refunds of Tax Savings.
5. Exemption from Mass Housing Fund Levy (Duty Exemptions).
6. GIP/GIEP Program:

a. Interest Spread Return Program.

b. Resource Utilization Support Fund.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1999 through December 31, 1999, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service (''Customs'') to assess countervailing duties at these net subsidy rates. Because the rates for Beslen and Filiz are zero, we plan to instruct Customs to liquidate entries from these companies during the POR without regard to countervailing duties.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at these rates on the FOB value of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Company	Ad valorem rate (percent)
Beslen Makarna Gida Sanayi ve Ticaret A.S. and Beslen Pazarlama Gida Sanayi ve Ticaret A.S	0.00
Filiz Gida Sanayi ve Ticaret A.S	0.00
Maktas Makarnacilik ve Ticaret A.S	10.76
Pastavilla Makarnacilik Sanayi ve Ticaret A.S	1.77

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

For companies that were not named in our notice initiating this administrative review, the Department has directed Customs to assess countervailing duties on all entries between January 1, 1999 and December 31, 1999 at the rates in effect at the time of entry.

For all non-reviewed firms, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Notice of Countervailing Duty Order: Certain Pasta (''Pasta'') From Turkey,* 61 FR 38546 (July 24, 1996) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 31, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–19777 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080201A]

Notice of Public Meeting

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

ACTION: Notice of meeting of the North Pacific Research Board Voting Members to nominate a new member.

SUMMARY: The North Pacific Research Board (Board) will meet August 14, 2001, at 3 p.m. at the U.S. Department of Agriculture (USDA) Forest Conference Room, Room 541B, Federal Building, Juneau, AK in order to nominate a new Board member. The meeting is open to the public. Members of the public may address the Board or submit written comments.

DATES: August 14, 2001, 3 p.m., Alaska local time.

ADDRESSES: Inquiries related to the Board's meeting should be submitted to Bill Hines, International Coordinator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to Room 453 of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Bill Hines, 907–586–7224 or email at William.Hines@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 401(a) of Public Law (Pub.L.) 105–83, as amended by Pub.L. 106–113, established the Environmental Improvement and Restoration Fund. Twenty percent of the interest proceeds from this fund, which contains one half of the amount awarded to the United States in the case, *United States* v.

Alaska, 521 U.S. 1 (1997) is used by the Department of Commerce to finance fisheries and marine research in the Bering Sea, North Pacific Ocean, and Arctic Ocean. These research activities are administered by the North Pacific Research Board. The remaining 80 percent of the interest earned from this fund is used by Bureau of Land Management, Fish and Wildlife Service, National Park Service, and USDA Forest Service to address maintenance backlogs.

Recent changes to the Board's original legislation detailed in Pub.L. 106-554, empower 5 members of the 20-member Board to make all decisions of the Board, including grant recommendations. The amendment also created a twentieth member, who shall represent fishing interests and shall be nominated by the Board and appointed by the Secretary of Commerce. The Board shall nominate this twentieth member at its upcoming meeting.

Special Accommodations

This meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bill Hines (see **FOR FURTHER INFORMATION CONTACT**) at least 7 working days prior to the meeting date.

Dated: August 2, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19905 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072401B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Advisory Subpanel (HMSAS) will hold a work session, which is open to the public.

DATES: The HMSAS will meet on Sunday, August 26, 2001 from 1 p.m. to 5 p.m.; and Monday, August 27, 2001 from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room at the California Department of Fish and Game, 4665 Lampson Avenue, Suite C, Los Alamitos, CA 90720; (562) 342–7100.

Council address: Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council, (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review draft highly migratory species (HMS) fishery management plan documents. The draft management plan was revised by the HMS Plan Development Team in response to Council guidance.

Although nonemergency issues not contained in the HMSAS meeting agenda may come before the HMSAS for discussion, those issues may not be the subject of formal HMSAS action during this meeting. HMSAS action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSAS's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 2, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19901 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080101C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee will hold a meeting which is open to the public.

DATES: The meeting will begin on Monday, August 27, 2001, at 10 a.m. and will continue through Tuesday, August 28, 2001, as necessary.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council office, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384; (503) 326-6352.

Council address:

FOR FURTHER INFORMATION CONTACT: John DeVore, Groundfish Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop preliminary options for allocations and other management measures for the 2002 Pacific Coast groundfish fishery. In addition, the committee will evaluate current catch levels of overfished groundfish species and may propose inseason adjustments. The committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. The committee will prepare recommendations and contribute to draft rebuilding plans for canary rockfish, bocaccio, cowcod rockfish, coastwide lingcod stocks, Pacific ocean perch, widow rockfish, and darkblotched rockfish that will be presented to the Council at its September meeting. If available, the committee may also review new rebuilding analyses for Pacific ocean perch, coastwide lingcod stocks, and darkblotched rockfish and may propose revisions to the current rebuilding plans and management measures. No management actions will be decided by the Ad Hoc Allocation Committee. The committee's role will be development of recommendations for consideration by the Council at its September meeting in Portland, OR.

Although nonemergency issues not contained in the Ad Hoc Allocation Committee meeting agenda may come before the committee for discussion, those issues may not be the subject of formal Ad Hoc Allocation Committee action during this meeting. Ad Hoc Allocation Committee action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the committee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 2, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19902 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080101E]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Strategic Plan Implementation Oversight Committee (SPOC) will hold a telephone conference, which is open to the public.

DATES: The telephone conference will be held Thursday, August 30, 2001 from 9 a.m. until 12 p.m.

ADDRESSES: Listening stations will be available at sveral locations. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the telephone conference is to discuss several strategic plan related issues (1) results of the license limitation in the open access fishery meeting, (2) composition of the Council's marine reserves steering group, and (3) results of the Council's Ad Hoc Allocation Committee meeting.

Although nonemergency issues not contained in the meeting agenda may come before the SPOC for discussion, those issues may not be the subject of formal SPOC action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SPOC's intent to take final action to address the emergency.

Location of Listening Stations

1. NMFS Northwest Region, Director's Conference Room, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115; Contact: Mr. Bill Robinson; (206) 526–6267.
2. Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; Contact: Mr. Dan Waldeck; (503) 326–6352
3. California Fish and Game Commission, Conference Room, Room 1320, 1416 Ninth Street, Sacramento, CA 95814; Contact: Mr. LB Boydstun; (916) 653–6281.
4. Natural Resource Building, oom 677, 111 Washington Street, E Olympia, WA 98501; Contact: Mr. Phil Anderson; (360) 902–2819.
5. National Marine Fisheries Service, Northwest Fisheries Science Center, 2030 S. Marine Drive, Newport, OR 97365; Contact: Ms. Cyreis Schmitt; (541) 867–0127.
6. Coos Bay Trawlers Association, 63422 Kingfisher Road, Charleston, OR 97420; Contact: Mr. Steve Bodnar; (541) 888–8012.
7. Pacific Marine Conservation Council, 340 Industry Road, Astoria, OR 97103; Contact: Mr. Bob Eaton; (503) 325–8188.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 2, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19904 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080101D]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council will hold meetings of its Habitat Advisory Panel (AP), Coral Advisory Panel, Marine Protected Areas Advisory Panel, Snapper Grouper Advisory Panel, Law Enforcement Advisory Panel, Wreckfish Advisory Panel and a meeting of the Marine Protected Areas Committee in Charleston, South Carolina.

DATES: The meetings will be held on August 28, 2001 through August 31, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: *August 28, 2001, from 8:30 a.m. until 5:30 p.m.*, the Habitat Advisory Panel (AP) will meet.

August 29, 2001, from 8:30 a.m. until noon, the Habitat AP and Coral AP will meet.

August 29, 2001, from 1:30 p.m. until 5:30 p.m., the joint meeting of the Habitat AP, Coral AP, Marine Protected Areas AP, Snapper Grouper AP, Law Enforcement AP and Wreckfish Advisory Panels will take place.

August 30, 2001, from 8:30 a.m. until 5:30 p.m., the joint meeting will continue.

August 31, 2001, from 8:30 a.m. until 5 p.m., the Marine Protected Areas Committee will meet.

The Habitat Advisory Panel will meet August 28, 2001 and on August 29, 2001, in conjunction with the Coral Advisory Panel. Issues to be discussed include but are not limited to: review and evaluation of a draft list of marine protected areas for the South Atlantic region, snapper grouper spawning locations, research efforts at offshore habitat areas ''The Point'' in North Carolina and ''The Charleston Bump'' in South Carolina, dredging, sand mining and beach renourishment activities and policy statement development (including state efforts), workshop process for review and updating designated Essential Fish Habitat (EFH) and Essential Fish Habitat-Habitat Areas of Particular Concern, EFH Assessment process, ecosystem management - process for development of an EcoPath Model for the South Atlantic Bight,

National Coalition for Marine Conservation report on prey/predator interactions and management implications, development of a draft research plan for Gray's Reef State National Marine Sanctuary, Sargassum management status, status of Oculina Bank research efforts, updated Southeast Area Monitoring and Assesssment Program (SEAMAP) and Minerals Management Service (MMS) bottom mapping efforts, status of deepwater habitat mapping initiative, NOAA initiatives (Islands in the Stream, Sustainable Seas, and Ocean and Coastal Exploration), and expansion of the Council's Habitat Homepage.

A joint meeting of the Marine Protected Areas Advisory Panel, Habitat AP, Coral AP, Snapper Grouper AP, Law Enforcement AP, Wreckfish AP, will be held August 29–30, 2001. Advisory panel members will hear a presentation on current data collection methods and analysis in regards to marine protected areas (MPAs). Following the presentation, AP members will discuss proposed MPAs in the south Atlantic based on location, species composition, habitat composition, enforcement issues, and social and economic importance. Based on these discussions, the AP members will develop recommendations on which sites will be forwarded to the Marine Protected Areas Committee.

The Council's Marine Protected Areas Committee will meet August 31, 2001, to review recommendations regarding MPA sites from the joint AP meeting and develop Committee recommendations to forward to the South Atlantic Fishery Management Council.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by August 24, 2001.

Dated: August 2 , 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19903 Filed 8–7–01; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 10, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–20052 Filed 8–6–01; 3:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 17, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–20053 Filed 8–6–01; 3:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 24, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–20054 Filed 8–6–01; 3:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 31, 2001.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–20055 Filed 8–6–01; 3:49 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Proposed Buy American Act Exemption for Commercial U.S.-Made End Products

AGENCY: Department of Defense (DoD).

ACTION: Request for public comments.

SUMMARY: The Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) is seeking information that will assist it in evaluating a proposed public interest exception to the Buy American Act (BAA) in procurements subject to the Trade Agreements Act (TAA) for commercial U.S.-made end products, substantially transformed in the United States, that do not qualify as domestic end products under the BAA. A similar exception was issued for U.S.-made information technology products on May 16, 1997. Interested parties are invited to submit written comments or recommendations relative to this proposed public interest exception.

DATES: Comments must be received no later than September 24, 2001.

ADDRESSES: Send all comments to Domenico C. Cipicchio, Deputy Director, Defense Procurement, Contract

Policy & Administration, OUSD (AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060.

FOR FURTHER INFORMATION CONTACT: Susan M. Hildner, Procurement Analyst, Defense Procurement, Defense Systems Procurement Strategies, OUSD (AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060, (703) 695–4258, or e-mail to Susan.Hildner@osd.mil.

SUPPLEMENTARY INFORMATION: The BAA requires the Government to purchase for public use only domestic end products. For a manufactured end product, this means a product that has been manufactured in the United States substantially all from articles, materials, or supplies in mind, produced, or manufactured in the United States. DoD considers a product to be ''substantially all from articles, materials, or supplies mined, produced, manufactured in the United States'' if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Under the TAA, the BAA is waived for eligible products from certain designated countries. The country of origin for eligible products is the country in which the articles/components (wherever the origin) have been substantially transformed into an article of commerce with a name, character, or use distinct from that of the articles from which it was transformed. Since the TAA applies only to products of foreign countries, the BAA is not waived for products substantially transformed in the United States from mostly foreign components, *i.e.,* U.S.-made end products that do not qualify as domestic end products. This results in treating such U.S.-made end products less favorably than designated country end products, which might encourage companies to manufacture products or locate manufacturing facilities in a designated foreign country rather than in the United States. Because of the different rules of origin, U.S.-made end products that do not qualify as domestic end products are at a competitive disadvantage against designated foreign countries when competing for DoD procurements (because of the application of the 50 percent evaluation factor to U.S.-made end products that do not qualify as domestic end products). Additionally, the different rules of origin result in a disproportionately burdensome record-keeping requirement on firms offering both domestic and U.S.-made end products. Because of the component content requirement of the BAA, vendors must determine, control, and track the source of components. In today's global economy, this has become an extremely difficult, if not impossible, task and create a disincentive for commercial companies to sell to DoD. On the other hand, this burden does not apply to vendors from designated countries, because the TAA substantial transformation rule of origin does not require tracking the origin of components. This is especially true for commercial items. Given the impact of the different rules of origin, it seems appropriate to determine that application of the BAA to commercial U.S.-made end products is inconsistent with the public interest in procurements subject to the TAA. The proposed exception will eliminate the burdensome record-keeping requirements for U.S. companies, allow DoD to procure U.S.-made commercial items if they are lower in cost, allow DoD access to state-of-the-art commercial technology, and reduce the incentive to move end product manufacturing facilities to a designated foreign country.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–19915 Filed 8–7–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 01–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 01–19 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–01–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 JUL 2001
In reply refer to:
I-01/006287

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 01-19, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office for defense articles and services estimated to cost $725 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 01-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$140 million
Other	$585 million
TOTAL	$725 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: Fifty Joint Tactical Information Distribution Systems terminals including hardware, spare and repair parts, support and test equipment, software support, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support.**

(iv) **Military Department: Navy (GMK)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 18 JUL 2001**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - Joint Tactical Information Distribution System Terminals

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 50 Joint Tactical Information Distribution Systems (JTIDS) terminals including hardware, spare and repair parts, support and test equipment, software support, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $725 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The proposed sale of the JTIDS terminals will form part of the advance tactical data link system will improve and integrate the recipient's information flow between tactical aircraft, surface ships and ground stations. The recipient can absorb this system as it replaces existing independent systems and provides for more efficient and costly management of defensive forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime integration contractor will be selected through a competitive procurement. There are no offset agreements proposed in connection with this potential sale.

It is estimated that during implementation of this sale a number of U.S. Government and contractor representatives will be assigned to the recipient or travel there intermittently during the program. As the program is defined through consultations between U.S. Government/contractor and recipient program representatives, specific numbers and types of qualified personnel for the many areas of this program will be identified.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 01-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The advanced tactical data link system contains sensitive state-of-the-art technology. Some of the hardware (Joint Tactical Information Distribution System and other "Link-16 Like" terminals), publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consist of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminals, installed systems and related software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 01–19814 Filed 8–7–01; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Finding of No Significant Impact; Pentagon Renovation Master Plan; New Outfall Line Associated With the Pentagon Heating and Refrigeration Plant (H&RP)

AGENCY: Department of Defense.

ACTION: Notice.

In accordance with the National Environmental Policy Act and the policies of the Department of Defense, implementing the regulations of the Council on Environmental Quality (40 CFR 1500–1508), I find that the project described in the Supplemental Environmental Assessment dated July 1999, is not a major Federal action significantly affecting the quality of the human environment. Therefore, no Environmental Impact Statement will be prepared.

This action supplements the Finding of No Significant Impact (FONSI) for the Pentagon Renovation Master Plan dated November 1, 1991. That finding was based on an Environmental Assessment dated May 28, 1991.

This finding is based on the Supplemental Environmental Assessment dated July 1999 on the Condenser Line Outfall associated with the Heating and Refrigeration Plant (H&RP). The Supplemental Environmental Assessment dated July 1999 is incorporated herein.

Name of Responsible Official: Walker Lee Evey.

Title: Program Manager, Pentagon Renovation Program.

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 01–19813 Filed 8–7–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001]

Federal Acquisition Regulation; Submission for OMB Review; Standard Form 28, Affidavit of Individual Surety

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0001).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 28, Affidavit of Individual Surety. A request for public comments was published at 66 FR 32606, June 15, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Acquisition Policy Division, GSA (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) is used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. To qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 is used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 500.
Responses Per Respondent: 1.43.
Total Responses: 715.
Hours Per Response: .4.
Total Burden Hours: 286.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

Dated: August 2, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19835 Filed 8–7–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0029]

Federal Acquisition Regulation; Submission for OMB Review; Extraordinary Contractual Action Requests

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0029).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning extraordinary contractual action requests. A request for public comments was published at 66 FR

32605, June 15, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Acquisition Policy Division, GSA (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers the collection of information as a first step under Public Law 85–804, as amended by Public Law 93–155 and Executive Order 10789 dated November 14, 1958, that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 16.
Total Burden Hours: 1,600.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 2, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19836 Filed 8–7–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0037]

Federal Acquisition Regulation; Submission for OMB Review; Presolicitation Notice and Response, Standard Form 1417

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0037).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Presolicitation Notice and Response, Standard Form 1417. A request for public comments was published at 66 FR 30718, June 7, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 5,310.
Responses Per Respondent: 8.
Total Responses: 42,480.
Hours Per Response: .167.
Total Burden Hours: 7,094.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

Dated: August 2, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19837 Filed 8–7–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078]

Federal Acquisition Regulation; Submission for OMB Review; Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0078).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the make-or-buy program. A request for public comments was published at 66 FR 30893, June 8, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, Section 15.407–2, Make-or-Buy Programs, of the FAR—

(i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: *150*; Responses Per Respondent: *3*; Total Responses: *450*; Hours Per Response: *8*; Total Burden Hours: *3,600*.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: August 2, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19830 Filed 8–7–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0033]

Federal Acquisition Regulation; Submission for OMB Review; Contractor's Signature Authority

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0033).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor's signature authority. A request for public comments was published at 66 FR 33668, June 25, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA, (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

Entities doing business with the Government must identify those persons who have the authority to bind the principal. This information is needed to ensure that Government contracts are legal and binding. The information is used by the contracting officer to ensure that authorized persons sign contracts.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

Respondents: 4,800.
Responses Per Respondent: 1.
Total Responses: 4,800.
Hours Per Response: .017.
Total Burden Hours: 82.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0033, Contractor's Signature Authority, in all correspondence.

Dated: August 2, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19839 Filed 8–7–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office, DoD

Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 7, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

QNRO–10

SYSTEM NAME:

Inspector General Investigative Records.

SYSTEM LOCATION:

Office of the Inspector General, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are interviewed by or provide information to the National Reconnaissance Office (NRO) Office of Inspector General, and persons involved with or who have knowledge about a matter being investigated or reviewed by the Office of the Inspector General. These persons include NRO civilian and military personnel assigned or detailed to the NRO, persons with a contractual relationship with the NRO or who perform work under NRO contracts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigations, reports of interviews, signed statements, correspondence, government forms, internal NRO memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301, Departmental Regulations; NRO Directive 22–3A; E.O. 12333; E.O. 12958; E.O. 12968; and E.O. 9397 (SSN).

PURPOSE(S):

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To appropriate officials within the Intelligence Community (Central Intelligence Agency, other Federal departments, agencies, inspectors generals and elements thereof) to the extent that the records concern NRO funds, personnel, property programs, operations, or contracts or when relevant to the official responsibilities of those organizations and entities; regarding personnel matters; and to evaluate current and proposed programs policies and activities, selected assignments and requests for awards or promotions.

To Federal, state, local, foreign or international agencies, or to an individual or organization, when necessary to elicit information relevant to an NRO Inspector General investigation, inquiry, decision or recommendation.

To the Department of Justice or any other agency responsible for representing NRO interests in connection with a judicial, administrative, or other proceeding.

To the Department of Justice or other Intelligence Community Inspector General or agency to the extent necessary to obtain information or advice on any matter relevant to an Office of Inspector General investigation;

To the President's Foreign Intelligence Advisory Board, and the Intelligence Oversight Board, and any successor organizations, when requested by those entities, or when the Inspector General determines that disclosure will assist in the performance of their oversight functions; and

The DoD ''Blanket Routines Uses'' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products

RETRIVABILITY:

Name or Social Security Number.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to the Inspector General staff whose official duties require such access.

RETENTION AND DISPOSAL:

Records are permanently maintained by NRO.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, and any aliases or nicknames, address, Social Security Number, current citizenship status, date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual, parties other than the individual, as well as by personal records and documentation; subjects and suspects of NRO investigations; interview of witnesses, victims, and confidential sources. All types of records and information maintained by all levels of government, private industry, and non-profit organizations reviewed during the course of the investigation or furnished the NRO; and any other type of record deemed necessary to complete the NRO investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 326. For additional information contact the system manager.

[FR Doc. 01–19823 Filed 8–7–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Add a Record System.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on September 7, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/INC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF FM A

SYSTEM NAME:

Leave Request and Approval System (LeaveWeb)

SYSTEM LOCATION:

Base Financial Services Offices (FSO) at Air Force installations and units.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force active duty personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, home address and phone, unit, leave address and emergency telephone number, leave days requested, leave days taken, leave balance, grade, and approving official's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; implemented by Air Force Instruction 36–3003, Military Leave Program; and E.O. 9397 (SSN).

PURPOSE(S):

To document the request and authorization of military leave, and the administration of leave, to document the start and stop of such leave; record address and telephone number where the member may be contacted while on leave; and certify leave days chargeable to the member.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the American Red Cross for emergency assistance to members or dependents and relatives in emergency conditions.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly authorized. When under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Programs and Analysis Division, Financial Management Directorate Headquarters Air Mobility Command, (HQ AMC/FMP), 402 Scott Drive, Unit 1K1, Scott Air Force Base, IL 62225–5300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to their unit administrator, or the base financial services office customer service desk.

Written requests must contain the full name, Social Security Number, signature of the requester and duty phone.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to their unit administrator, or the base financial services office customer service desk.

Written requests must contain the full name, Social Security Number, signature of the requester and duty phone.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Fore Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from the Defense Joint Military Pay System and from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–19820 Filed 8–7–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on September 7, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA and Privacy Manager, Policy and Plans Directorate, Principal Deputy Assistant Secretary of the Air Force for Business and Information Management, CIO–BIM/P, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F010 AFXO A

SYSTEM NAME:

Civil Aircraft Landing Permit Case Files.

SYSTEM LOCATION:

Associate Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civil aircraft owners and/or operators.

CATEGORIES OF RECORDS IN THE SYSTEM:

A revocable license for use of Air Force real property consisting of a Civil Aircraft Certificate of Insurance, a Civil Aircraft Landing Permit, and a Civil Aircraft Hold Harmless Agreement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 44502, General facilities and personnel authority, as implemented by Air Force Instruction 10–1001, Civil Aircraft Landing Permits.

PURPOSE(S):

To maintain a directory on those individuals who are authorized to operate civil aircraft at Air Force airfields.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by persons responsible for processing applications to operate civil aircraft on Air Force airfields in performance of official duties and by other authorized personnel who are properly screened and cleared for need-to-know. Records are stored in cabinets in a vaulted office.

RETENTION AND DISPOSAL:

Expired records are destroyed by tearing into pieces and burning.

SYSTEM MANAGER AND ADDRESS:

Chief, Permits and Agreements, Civil Aviation Office, Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves should address inquiries to the Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves should address inquiries to the Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330–1480.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the applicant and insurance company.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–19822 Filed 8–7–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Future Development and Operations at Fort George G. Meade, MD

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the FEIS that assesses the effects of future development and operations at Fort Meade on the natural and human environment.

The Proposed Action is the preferred alternative of the FEIS, and includes future development and operations of Fort Meade's Real Property Master Plan expected to occur on the installation between 2001 and 2005. The Proposed Action identifies 11 projects as being representative of the expected build out during this time. These consist of constructing new facilities that would consolidate tenants from dilapidated World War II structures and off-post leased facilities into more cost efficient and effective facilities; and demolition and construction of barracks and associated dining, headquarters and operations facilities. Other alternatives considered by the FEIS include the No Action Alternative and Alternative A. The No Action Alternative is defined as the normal daily operations at Fort Meade and adjacent areas as of 1999. Alternative A consists of constructing 9 of 11 projects purposed by the Proposed Action, and excludes the 2 out-year projects least likely to occur.

DATES: Written comments received within 30 days of the publication of this Notice of Availability by the Environmental Protection Agency in the **Federal Register** for this action will be considered by the Army during final decision making.

ADDRESSES: To obtain a copy of the FEIS, write to Commander, Fort George G. Meade, ATTN: ANME–PWE (Mr. Jim Gebhardt), Bldg. 239, 2½ Street and Ross Road, Fort Meade, Maryland 20755–5115.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gebhardt, Environmental Engineer, Fort Meade Directorate of Public Works, Environmental Management Office at (301) 677–9365.

SUPPLEMENTARY INFORMATION: The FEIS concluded that the cumulative impacts of all past, present and reasonably foreseeable future actions would have a significant impact on traffic and air quality in the study area. Whereas the population in the area immediately surrounding Fort Meade is expected to continue its historical growth rate, this rate is minimal compared to the growth in population and activity in the Region of Influence (Anne Arundel and Howard Counties), which is expected to exceed the average annual rate in Maryland of 0.6 percent. The Government concludes that the contribution of Fort Meade is small relative to the regional air quality and traffic problems. The Government further concludes that it is reasonable to proceed with the Proposed Action given Fort Meade's commitment to intensify efforts to work in partnership with the state and others to address the larger traffic and air quality issues in the region.

Fort Meade is currently undertaking four initiatives that will help mitigate the adverse air quality impacts in the region: (1) Conversion of existing oil-fired heating systems to natural gas, (2) use of vehicles powered by natural gas, (3) installation of more energy—efficient devices, and (4) fostering an extensive tree planting and reforestation program. To address traffic impacts, Fort Meade is considering encouraging the use of alternative transportation (e.g. carpooling and flextime), although major rail or bus lines do not currently service the installation. In addition, the construction of the State Route 198 by-pass onto Fort Meade via the former

Tipton Army Airfield by the Maryland State Highway Administration is designed to limit the through traffic at Fort Meade to those who reside, work or visit the installation for recreation or other purposes. This is expected to reduce congestion at the intersection of State Routes 198 and 32.

Other resources that would be measurably affected by the Proposed Action or Alternative A are water quality (by stormwater runoff), utility systems infrastructure, and noise. Considering the best management practices planned by Fort Meade to address these effects, no significant impacts to these resources from the Proposed Action, Alternative A or cumulative effects of other actions are expected to occur. The completion of the 11 projects under the Proposed Action would increase Fort Meade's annual economic contribution to the Region of influence.

Dated: August 1, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 01–19842 Filed 8–7–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Destruction of Non-Stockpile Chemical Warfare Materiel at Pine Bluff Arsenal, AR

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of Army announces its intent to prepare a site-specific EIS on the potential impacts of the destruction of the non-stockpile chemical warfare materiel (CWM) stored at Pine Bluff Arsenal and to initiate the public scoping process for the EIS. The EIS will examine potential environmental impacts of the alternatives of various destruction options. The destruction activities proposed for Pine Bluff Arsenal will have the following functions: (1) Munitions Accessing: Various accessing technologies will be assessed to include Drill and Drain, Sawing, Shearing and Reverse Assembly; (2) Chemical Agent Treatment: Technologies under consideration for agent destruction include Chemical Neutralization and Incineration; (3) Non-Agent Treatment: Industrial chemicals and binary agent precursors may be treated with the same technologies as the agents or neutralized agent waste, or may be shipped without processing to a Treatment, Storage, and Disposal Facility; (4) Munition Body Component and Explosives Treatment: Munition body decontamination and destruction technologies under consideration include Detonation, Shredding, Cutting (Saws and Fluid Jet), Plasma Arc, and Demilitarization in a Deactivation Furnace; (5) Post-treatment/Disposal of Liquid Waste: Technologies under consideration for post-treatment and disposal of liquid waste include Bio-Treatment, Plasma Arc, Gas Phase Chemical Reduction, Supercritical Water Oxidation, Incineration, Solidification and Stabilization, and Processing at a Treatment, Storage, and Disposal Facility; (6) Treatment/Disposal of Solid Waste: Technology under consideration for treatment/disposal of solid wastes include Plasma Arc, Gas Phase Chemical Reduction, and Landfilling.

The alternatives to be analyzed in the EIS are: (1) Building one or more new facilities, (2) using the Pine bluff Chemical Agent Destruction Facility currently under construction, (3) bringing the mobil treatment systems currently under development by the Product Manager for Non-Stockpile Chemical Materiel to Pine Bluff Arsenal and using them, (4) using non-developmental items, and (5) no-action (continued storage of the non-stockpile chemical warfare materiel at the Arsenal).

ADDRESSES: Written comments may be forwarded to the Program Manager for Chemical Demilitarization, Public Outreach and Information Office (ATTN: Mr. Jeff Lindblad), Aberdeen Proving Ground, MD 21010–4005.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Lindblad at 410–436–4555, by fax at 410–436–5122, or by email at jeffrey.lindblad@pmcd.apgea.army.mil.

SUPPLEMENTARY INFORMATION: In compliance with the National Environmental Policy Act (Title 40, CFR Parts 1500–1508), the Army will prepare an EIS to assess the environmental impacts of the destruction of the non-stockpile chemical warfare materiel stored at the Pine Bluff Arsenal. Public Law and international treaty mandate the destruction of most of the non-stockpile chemical warfare materiel. This EIS will analyze the potential impacts of the various methods of destroying the items that are not part of the unitary stockpile. This site-specific EIS continues the process that began when Congress established the Chemical Demilitarization Program in Public Law 99–145 (1985).

The specific purpose of the current analysis is to determine the environmental impacts of the alternatives that could accomplish the destruction of the non-stockpile chemical warfare materiel currently stored at the Arsenal, including the alternatives of using the technologies successfully demonstrated by the Chemical Stockpile Disposal Project, the Alternative Technologies and Approaches Project, the Assembled Chemical Weapons Assessment program, and any non-developmental items.

The Army will hold scoping meetings to aid in determining the significant issues related to the proposed action which will be addressed in the EIS. The scoping process will incorporate public participation, including Federal, State of Arkansas, and local agencies, as well as residents within the affected environment. The dates, times, and locations of scoping meetings will be announced in appropriate news media at least 15 prior to these meetings.

Dated: August 1, 2001.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA(I&E).

[FR Doc. 01–19843 Filed 8–7–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter three system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alterations expand the categories of individuals covered.

DATES: This proposed action will be effective without further notice on September 7, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on July 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027–3 DAJA

SYSTEM NAME:

Legal Assistance Files (August 3, 1993, 58 FR 41253).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active duty, retired and reserve (on active duty) components of the Armed Forces and their family members. Department of Defense civilian employees outside the United States or who are serving with or accompanying United States Armed Forces outside the United States in a combat zone, contingency operation, deployed by designation as ''mission essential'' or ''emergency essential'', legal assistance is limited, as determined by the supervising attorney, to matters that related to processing for employment.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 1044, Legal Assistance; Army Regulation 27–1, The Army Legal Assistance Program; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and electronic storage media.'

RETRIEVABILITY:

Delete entry and replace with 'By Social Security Number and client's surname.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Legal assistance records maintained for 5 years then destroy.'

* * * * *

A0027–3 DAJA

SYSTEM NAME:

Legal Assistance Files.

SYSTEM LOCATION:

Army Legal Assistance Policy Division, Office of the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200; Staff Judge Advocate offices at Army commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty or retired military personnel and/or their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade/rank, Social Security Number, organization, and details of problem/incident/matter on which legal assistance is sought. Records may be in the form of correspondence, memoranda, opinions of legal assistance officers, and may include interviews, summary of problems considered, advice rendered, referrals made, and documents created as a result of assistance provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 1044, Legal Assistance; Army Regulation 27–1, The Army Legal Assistance Program; and E.O. 9397 (SSN).

PURPOSE(S):

To respond to inquiries and settle issues; for management and statistical reports.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The DoD 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By Social Security Number and client's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Legal assistance records maintained for 5 years then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Army Legal Assistance Policy Division, Office of the Judge Advocate General, 1777 North Kent, Arlington, VA 22209–2194; and the Staff Judge Advocates of organizations listed in the address directory published as an appendix to the Army's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, Social Security Number, and any details that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, Social Security Number, and any details that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0215–1 CFSC

SYSTEM NAME:

Non-appropriated Fund Employee Insurance and Retirement Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Army non-appropriated fund (NAF) and appropriated fund employees who participate in the NAF Group Insurance, retirement and 401k plans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Monthly and cumulative insurance and retirement enrollment, dis-enrollment, changes and deductions for each employee; name and Social Security Number.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Pub. L. 101–508, Portability of Benefits for NAF Employees Act of 1990; Pub. L. 104–106, Defense Authorization Act of 1996; 26 U.S.C. 401, Qualified Pension, Profit-sharing, and Stock Bonus Plans; Army Regulation 215–3, Non-appropriated Funds and Related Activities Personnel Policies and Procedures; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with 'Electronic storage media, paper records and computer discs.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Authorized timekeeper lists records are maintained until super-session, then destroyed. Employee benefits and insurance files maintained by office with Army-wide responsibility are maintained for 65 years after employees' final separation from Federal service.'

* * * * *

A0215–1 CFSC

SYSTEM NAME:

Non-appropriated Fund Employee Insurance and Retirement Files.

SYSTEM LOCATION:

U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22331–0500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army non-appropriated fund (NAF) employees who participate in the NAF Group Insurance and Retirement Plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly and cumulative insurance and retirement enrollment, dis-enrollment, changes and deductions for each employee; name and Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Pub. L. 101–508, Portability of Benefits for NAF Employees Act of 1990; Pub. L. 104–106, Defense Authorization Act of 1996; 26 U.S.C. 401, Qualified Pension, Profit-sharing, and Stock Bonus Plans; Army Regulation 215–3, Non-appropriated Funds and Related Activities Personnel Policies and Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To substantiate initial enrollment and subsequent change in the NAF Group Insurance and Retirement Plan; to verify monthly deductions and to compute annuities, refunds, and death benefits.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 (A)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media, paper records and computer discs.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are located in controlled areas within building having security guards; information is accessed only by individuals who are properly cleared and trained and have need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Authorized timekeeper lists records are maintained until super-session, then destroyed. Employee benefits and insurance files maintained by office with Army-wide responsibility are maintained for 65 years after employees' final separation from Federal service.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22331–0500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22331–0500.

Individual should provide the full name, Social Security Number, NAF activity where employed, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22331–0500

Individual should provide the full name, Social Security Number, NAF activity where employed, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–

21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and NAF personnel officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680–31b TAPC

SYSTEM NAME:

Enlisted Personnel Management Information System (EPMIS) (July 31, 1998, 63 FR 40894).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Director, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

Portions of the Enlisted Evaluation System is maintained at U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Enlisted Active duty, Army National Guard, Army Reserve personnel on active duty. Initial Active duty training personnel undergoing basic training or advanced individual training; former military personnel who are applicants for enlistment in grade E–1 and E–9.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The Personnel Data Base (PERD TAPDB–AE) contains name, Social Security Number, sex, race, citizenship, religion, marital status, dependents, date and place of birth, residence, assignments, enlistment commitments by military occupational specialty (MOS), civilian acquired skills, advance individual training start and graduation date, aptitude area score, physical profile, ethnic group, grade/date of rank, enlistment and service promotion qualifications, military occupational skill code, education and training, aptitude, separation, retirement, and mailing address.

Recruit Quota system (REQUEST) contains selected information from PERD TAPDB–AE, soldier's education level and school subject, driver's license data, color vision test data, aptitude battery (ASVAB) scores, defense language aptitude battery score, and medical profile data (PULSHES). Other information contained within includes type, date, and term of enlistment, primary enlistment option, initial processing and training locations, and dates of training. Finally the system identifies the location military entrance processing station that created the accession record, recruiter identification and recruiting are credit code.

Enlisted Year Management File (RETAIN) contains select information from PERSDB TAPDB–AE, reenlistment reclassification/and Reserve component transfer action, basic active service data, estimated termination of service, reenlistment date, civilian education, career management field, primary military occupational specialty code and date of award, source of new Primary Occupational Specialty Code, training information, status of application, assignment code, date of last status change, current location, reservation control number, security investigation status and reenlistment term.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Offices having Army-wide responsibility; cut off annually, retain for 1 year in current file area, then retire to Washington National Records Center, destroy 25 years after cut-off.

Military strength monitors at installations and major commands, destroy after 2 years.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'From the individual, from Army automated systems, Military Entrance Processing Command and Army Education Centers.'

* * * * *

A0680–31b TAPC

SYSTEM NAME:

Enlisted Personnel Management Information System (EPMIS).

SYSTEM LOCATION:

Director, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

Portions of the Enlisted Evaluation System is maintained at U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted Active duty, Army National Guard, Army Reserve personnel on active duty. Initial Active duty training personnel undergoing basic training or advanced individual training; former military personnel who are applicants for enlistment in grade E–1 and E–9.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Personnel Data Base (PERD TAPDB–AE) contains name, Social Security Number, sex, race, citizenship, religion, marital status, dependents, date and place of birth, residence, assignments, enlistment commitments by military occupational specialty (MOS), civilian acquired skills, advance individual training start and graduation date, aptitude area score, physical profile, ethnic group, grade/date of rank, enlistment and service promotion qualifications, military occupational skill code, education and training, aptitude, separation, retirement, and mailing address.

Recruit Quota system (REQUEST) contains selected information from PERD TAPDB–AE, soldier's education level and school subject, driver's license data, color vision test data, aptitude battery (ASVAB) scores, defense language aptitude battery score, and medical profile data (PULHES). Other information contained within includes type, date, and term of enlistment, primary enlistment option, initial processing and training locations, and dates of training. Finally the system identifies the location military entrance processing station that created the accession record, recruiter identification and recruiting are credit code.

Enlisted Year Management File (RETAIN) contains select information from PERSDB TAPDB–AE, reenlistment reclassification/and Reserve component transfer action, basic active service data, estimated termination of service, reenlistment date, civilian education, career management field, primary military occupational specialty code and date of award, source of new Primary Occupational Specialty Code, training information, status of application, assignment code, date of last status change, current location, reservation control number, security investigation status and reenlistment term.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–6, Personnel Accounting and Strength Reporting; and E.O. 9397 (SSN).

PURPOSE(S):

To accomplish personnel management, strength accounting, and manpower management actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Social Security Administration to verify Social Security Numbers.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Computer magnetic tapes and discs; computer printouts.

RETRIEVABILITY:

By name of individual and Social Security Number.

SAFEGUARDS:

Information is protected by physical security devices, guards, computer hardware and software safeguard features, personnel clearances and unique passwords to PERDB TAPDB–AE. A tiered security system for access to enlisted data provided via Interactive Voice Response Systems based on the sensitivity of the data items provided, encryption of data transmitted via networks, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Offices having Army-wide responsibility; cut off annually, retain for 1 year in current file area, then retire to Washington National Records Center, destroy 25 years after cut-off. Military strength monitors at installations and major commands, destroy after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 223332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Total Army Personnel Command, Enlisted Personnel Management Directorate, 2461 Eisenhower Avenue, Alexandria, VA 223332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Selected data from Personnel Data Base (PERDB–TAPDF–AE) is also accessible to record subjects through an Interactive Voice Response System (IVRS).

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, from Army automated systems, Military Entrance Processing Command and Army Education Centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–19824 Filed 8–7–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Replacement Pier and Dredging at Naval Station San Diego

AGENCY: Department of the Navy, DOD.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy proposes replacement of two existing World War II era piers at Naval Station, San Diego, California, in order to more efficiently meet berthing, logistic and maintenance requirements for ships homeported in San Diego. After carefully weighing the operation needs, environmental impacts, and cost implications of the proposed action, the Department of the Navy announces its decision to demolish existing piers 10 and 11 and construct a single-deck, pile-supported replacement pier.

FOR FURTHER INFORMATION CONTACT: Ms. Grace S. Penafuerte, Naval Facilities Engineering Command, Southwest Division, 2585 Callagan Highway, Building 99, San Diego, CA 92136–5198; telephone 619–556–7773; fax 619–556–8929; or e-mail.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

The Department of the Navy (DON), pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) and the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures (40 CFR Parts 1500–1508), prepared an Environmental Impact Statement (EIS) to evaluate the environmental impacts of its proposal to demolish existing piers and construct a new pier at Naval Station San Diego, California. The DON considered four alternatives: (1) replacement of existing piers 10/11 or 11/12 with a pile-supported pier, disposal of approximately 715,600 cubic yards of dredged material at a designated open-ocean disposal site, and disposal of approximately 48,000 cubic yards of dredged material at nearby licensed upland sites after dewatering at a confined disposal facility; (2) replacement of existing piers 10/11 or 11/12 with a pile-supported pier, disposal of approximately 715,600 cubic yards of dredged material at a designated open-ocean disposal site, and disposal of approximately 48,000 cubic yards of dredged material at distant licensed upland sites after dewatering on barges; (3) replacement of existing piers 10/11 or 11/12 with a mole pier, disposal of approximately 715,600 cubic yards of dredged material at a designated open-ocean disposal site, and disposal of approximately 48,000 cubic yards of dredged material in a confined nearshore disposal site; and (4) no action. Alternative 1 is both the DON and the environmentally-preferred alternative.

After carefully weighing operational requirements, environmental impacts, and costs, I have selected Alternative 1 as the best way to achieve the DON's proposed action. In evaluating the alternatives for pier replacement and dredging at Naval Station San Diego, I considered the following: berthing,

logistics, and maintenance requirements of ships currently homeported in the San Diego region; environmental impacts from pier demolition and construction, dredging, and dredged material disposal; associated project costs; and comments received during the EIS process from federal and state regulatory agencies, non-governmental organizations, and individuals.

Implementation of Alternative 1 will include the following: (1) demolition of existing piers 10 and 11; (2) construction of a single-deck, pile-supported replacement pier, 120 feet wide and 1,500 feet long; (3) dredging of the area under and surrounding the replacement pier to a depth of 37 feet below mean lower low water, with an estimated total dredge volume of 763,600 cubic yards; (4) disposal of approximately 715,600 cubic yards of dredged material suitable for ocean disposal at the LA–5 Ocean Dredged Material Disposal Site; and (5) disposal of approximately 48,000 cubic yards of unsuitable dredged material at one or more licensed upland disposal sites after the dredged material is dewatered at a Confined Disposal Facility at Naval Station San Diego.

Environmental Impacts

Direct, indirect and cumulative impacts of the proposed action and alternatives on water resources, biological resources, topography/geology, air quality, health and safety, land use, noise, transportation, aesthetics, cultural resources, utilities, and the local economy were analyzed in the EIS. Environmental justice implications were analyzed as well. The DON determined that all potential environmental impacts from the proposed project would be less than significant, and that there would be no disproportionate adverse effects to minority or low income populations. The following paragraphs summarize impacts on environmental resources.

Water Resources

Minor, localized impacts on water quality will result from resuspension of bottom sediments during demolition and construction activities. In addition, minor, localized reduction in water circulation will result from installation of pier pilings. A storm water pollution prevention plan will minimize impacts associated with soil erosion or spillage of hazardous substances during the 24-month construction period. Implementation of Best Management Practices specific to pier activities and incorporation of measures such as filtration devices will minimize potential for adding pollutants to stormwater runoff. California Coastal Commission has concurred that the proposed project is consistent, to the maximum extent practicable, with enforceable policies of the California Coastal Program. The DON will obtain a dredging and disposal permit from the Corps of Engineers, and a Water Quality Certificate from the regional water quality board.

Biological Resources

During construction, there will be a loss of less than two acres of foraging and resting habitat for marine birds. Disturbance and permanent loss of some marine plants and animals and their habitat will result from dredging and pier construction over the same localized area. Habitat characteristics, as well as limited context and intensity of potential effects result in less than significant impacts. While the analysis in the EIS concluded that there would be no significant impacts, the DON has agreed to implement two enhancement measures as part of the proposed action: (1) a study of California least tern foraging success around manmade, in-water structures in San Diego Bay and (2) creation of two fish habitat structures at the Naval Amphibious Base Enhancement Area using concrete from existing piers. Implementation of these enhancement measures is expected to advance ongoing efforts to protect the marine environment in San Diego Bay.

Air Quality

Dredge equipment is expected to produce the largest impact on ambient air quality, emitting 33.5 tons of nitrogen oxides, but will not trigger dispersion modeling analysis for major sources. Alternative 1 will not contribute to an exceedance of an ambient air quality standard, e.g. de minimis thresholds for nitrogen oxides, volatile organic compounds, and carbon monoxide.

Ground Transportation

Vehicular volume from Alternative 1 will be less than 6 percent of the traffic volume on 8th Street (to and from Naval Station San Diego's Gate 9) and less than 2 percent of the volume on Interstate 5. Implementation of the DON's Traffic Control Plan will preclude truck movements on 8th Street near Gate 9 during peak commuting hours, prohibit the use of oversized construction vehicles on public roads, and designate specific truck traffic routes.

Utilities

Ongoing operational utility demands will be similar to those at existing piers and will not use a substantial portion of remaining capacity. The replacement pier will incorporate and connect to an existing oily wastewater treatment system used at adjacent piers. Stormwater runoff will be accommodated by the existing basewide system, will be covered by the existing basewide storm water pollution prevention plan, and will incorporate best management practices. Pier construction will include a stormwater filtration system.

Response to Comments on the FEIS

The DON received no comments on the FEIS.

Conclusions

After carefully weighing all of the information and analysis presented during the EIS process, I have determined that Alternative 1 best minimizes environmental impacts while meeting operational requirements of modern ships homeported in the San Diego region in a cost-effective manner.

Dated: July 26, 2001.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 01–19889 Filed 8–7–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors to the Superintendent, Naval Postgraduate School

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of these meetings is to elicit the advice of the board on the Naval Service's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end, the board will inquire into the curricula, instruction, physical equipment, administration, state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent. These meetings will be open to the public.

DATES: A meeting will be held on Monday, September 24, 2001, from 8:30 a.m. to 4 p.m. and on Tuesday, September 25, 2001, from 8 a.m. to 12 p.m.

ADDRESSES: These meetings will be held at the Naval Postgraduate School,

Superintendent's Conference Room, Herrmann Hall in Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Mrs. Jaye Panza, Naval Postgraduate School, 1 University Circle, Monterey, CA, 93943–5000, telephone number (831) 656–2514.

Dated: July 30, 2001.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 01–19807 Filed 8–7–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2001.

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 Leader, Regulatory 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 2, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 16,807,154

Burden Hours: 4,462,468

Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@ed.gov. 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. 01–19833 Filed 8–7–01; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–107–000]

Corn Belt Energy Corp. Complainant, v. Soyland Power Cooperative, Inc., Respondent; Notice of Complaint

August 2, 2001.

Take notice than on August 1, 2001, Corn Belt Energy Corp. (Corn Belt) tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint against Soyland Power Cooperative, Inc., pursuant to 18 CFR 385.206 of the Commission's Rules of Practice and Procedure.

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, NE., Washington, DC 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 or protests must be filed on or before August 21, 2001. 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. Answers to the complaint shall also be due on or before August 21, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19880 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–390–001]

Granite State Gas Transmission, Inc.; Notice of Compliance Filing

August 2, 2001.

Take notice that on July 27, 2001, Granite State Gas Transmission, Inc. (Granite State) tendered its filing in compliance with the Commission's June 27, 2001 Order on Compliance with Order Nos. 637, 587–G and 587–L.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19886 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–010]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiate Rate and Tariff Filing

August 2, 2001.

Take notice that on July 30, 2001, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, the following tariff sheet, proposed to be effective August 1, 2001:

Fourth Revised Sheet No. 4G

KMIGT states that the above-referenced tariff sheet reflects a negotiated rate contract effective August 1, 2001 and removes a negotiated rate contract which was in effect for the month of July, 2001. This tariff sheet is being filed pursuant to Fourth Revised Volume No. 1–B, Section 36 of KMIGT's FERC Gas Tariff, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'', in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19884 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–292–003]

Mississippi River Transmission Corporation; Notice of Compliance Filing

August 2, 2001.

Take notice that on July 30, 2001, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective October 1, 2001:

Fourth Revised Sheet No. 175

MRT states that the purpose of this filing is to comply with the Commission's order issued June 28, 2001 in Docket No. RP01–292–002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19888 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–172–000]

Mojave Pipeline Company; Notice of Informal Settlement Conference

August 2, 2001.

Take notice that an informal settlement conference in this proceeding

will be convened on Wednesday, August 8, 2001 at 1:00 p.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at 208–2182 or Dawn K. Martin at 208–0661.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–19887 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockert No. EL01–108–000]

Monroe County Electric Cooperative, Inc., Complainant, v. Soyland Power Cooperative, Inc., Respondent; Notice of Complaint

August 2, 2001.

Take notice than on August 1, 2001, Monroe County Electric Coop. (Monroe) tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint against Soyland Power Cooperative, Inc., pursuant to 18 CFR 385.206 of the Commission's Rules of Practice and Procedure.

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, NE., Washington, DC 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 or protests must be filed on or before August 21, 2001. 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. Answers to the complaint shall also be due on or before August 21, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19881 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–106–000]

Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.; Notice of Complaint

August 2, 2001.

Take notice that on July 31, 2001, Old Dominion Electric Cooperative (Old Dominion) filed a complaint against PJM Interconnection, L.L.C. (PJM). Old Dominion alleges that it is entitled to receive a credit to its transmission service charge from PJM for the facilities to be paid for and owned by Old Dominion related to the interconnection of Old Dominion's Rock Springs generation project. Old Dominion requests that the Commission direct PJM to provide Old Dominion such credits, and that the Commission direct PJM to modify its open access transmission tariff to provide that in circumstances where the transmission customer and the interconnection customer are the same entity, the transmission customer is entitled to a credit to its transmission service charge in order to recoup the costs paid for interconnection facilities.

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, NE., Washington, DC 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 or protests must be filed on or before August 20, 2001. 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. Answers to the complaint shall also be due on or before August 20, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19879 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–015]

Trunkline Gas Company; Notice of Refund Report

August 2, 2001.

Take notice that on July 30, 2001, Trunkline Gas Company (Trunkline) tendered for filing its Refund Report pursuant to Article III, Section 5 of the Stipulation and Agreement dated January 29, 2001.

Trunkline states that pursuant Article III, Section 5 of the Settlement it distributed refunds on June 29, 2001 for the period August 1, 1996 through April 30, 2001.

Trunkline further states that pursuant to Article III, Section 5(d) of the of the Settlement, it is submitting its a Refund Report which consists of the following:

Appendix A: the total refund amount for each customer, by contract and by principal and interest amounts.

Appendix B: the interest rates used to calculate refunds, which conform to the requirements of Section 154.501 (d) of the Commission's Regulations.

Appendix C: customer detailed calculations that support the principal and interest refund amounts (volumes 1 through 11).

Trunkline states that copies of the transmittal letter and Appendices A and B of the filing are being served on all affected customers, parties to the proceeding in Docket No. RP96–129–000 and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 9, 2001. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19883 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2699–000, *et al.*]

Florida Power & Light Company, *et al.*; Electric Rate and Corporate Regulation Filings

August 1, 2001.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER01–2699–000]

Take notice that on July 27, 2001 Florida Power & Light Company (FPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed service agreements with Calpine Energy Services, L.P. for Non-Firm transmission service and Firm transmission service under FPL's Open Access Transmission Tariff pursuant to Part 35 of the Commission's regulations, (18 CFR part 35).

FPL requests that the proposed service agreements become effective on July 12, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket No. ER01–2700–000]

Take notice that on July 27, 2001, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Firm Point-To-Point Transmission Service and a service agreement for Non-Firm Point-To-Point Transmission Service with Calpine Energy Services, L.P. (CES), as Transmission Customer.

A copy of the filing was served upon CES.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–2701–000]

Take notice that on July 27, 2001, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing an amendment to the Agreement of Transmission Facilities Owners to Organize the Midwest ISO to allow tax exempt-financed governmental entities to join the Midwest ISO.

The Midwest ISO requests that the amendments become effective September 26, 2001.

Copies of this filing were served on Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Michigan Electric Transmission Company

[Docket No. ER01–2702–000]

Take notice that on July 27, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing a Second Revised Service Agreement No. 22 (Agreement) with Consumers Energy Company (Customer) under its Electric Tariff FERC No. 1 with a proposed effective date of April 1, 2001. The revisions are to make the underlying agreement more consistent with Michigan Transco's pro forma generator interconnection agreement.

The filing was served upon the Customer and the Michigan Public Service Commission.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER01–2703–000]

Take notice that on July 27, 2001, UtiliCorp United Inc. (UtiliCorp), filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Commission's regulations, 18 CFR Part 35, Amendatory Agreement No. 4 to the Agreement for Interchange of Power & Interconnected Operation between UtiliCorp United Inc. d/b/a Missouri Public Service and Associated Electric Cooperative, Inc. (UtiliCorp's Rate Schedule FERC No. 60). This amendment provides for additional delivery points near Rich Hill, Missouri and near Platte City, Missouri.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER01–2704–000]

Take notice that on July 27, 2001, UtiliCorp United Inc. (UtiliCorp), filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission's regulations, 18 CFR Part 35, a revised rate schedule between UtiliCorp and the City of Rich Hill, Missouri.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. American Transmission Company LLC

[Docket No. ER01–2705–000]

Take notice that on July 27, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Badger Generating Company, LLC.

ATCLLC requests an effective date of June 29, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER01–2706–000]

Take notice that on July 27, 2001 New England Power Company (NEP) submitted:

(i) Second Revised Service Agreement No. 20 between NEP and Massachusetts Electric Company and Nantucket Electric Company (together, Mass. Electric) under NEP's FERC Electric Tariff, Original Volume No. 1 (Tariff No. 1); and

(ii)Second Revised Service Agreement No. 23 between NEP and The Narragansett Electric Company (Narragansett) under Tariff No. 1.

The service agreements have been revised to include settlement agreements between NEP, Mass. Electric, Narragansett and various retail stakeholders in Massachusetts and Rhode Island. The settlements do not change the rates, terms or conditions of the service agreements.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER01–2707–000]

Take notice that on July 27, 2001, Arizona Public Service Company (the Company) tendered for filing an informational report on refunds of over billed amounts to certain wholesale customers through the Company's FERC Fuel Adjustment Clause.

Copies of this filing have been served upon the affected parties.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER01–2708–000]

Take notice that on July 27, 2001, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Delivery and Idaho Power Marketing, under its open access transmission tariff in the above-captioned proceeding.

Idaho Power requests that the Service Agreement become effective on July 23, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Idaho Power Company

[Docket No. ER01–2709–000]

Take notice that on July 27, 2001, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and The Cincinnati Gas & Electric Company, an Ohio corporation, PSI Energy Inc., an Indiana Corporation, (collectively, Cinergy Operating Companies) and Cinergy Services, Inc., a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies, under its open access transmission tariff in the above-captioned proceeding.

Idaho Power requests that the Service Agreement become effective on July 24, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Idaho Power Company

[Docket No. ER01–2710–000]

Take notice that on July 27, 2001, Idaho Power Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and The Cincinnati Gas & Electric Company, an Ohio corporation, PSI Energy Inc., an Indiana Corporation, (collectively, Cinergy Operating Companies) and Cinergy Services, Inc., a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies, under its open access transmission tariff in the above-captioned proceeding.

Idaho Power requests that the service agreement become effective on July 24, 2001.

A copy of this filing has been served on the customer.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. American Transmission Company LLC

[Docket No. ER01–2712–000]

Take notice that on July 27, 2001, American Transmission Company LLC (ATCLLC) tendered for filing executed Network Integration Transmission Service and Network Operating Agreements between ATCLLC and Upper Peninsula Power Company.

ATCLLC requests an effective date of June 29, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. UtiliCorp United Inc.

[Docket No. EC01–132–000]

Take notice that on July 27, 2001, UtiliCorp United Inc. (UtiliCorp), filed an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b, and Part 33 of the Commission's regulations, 18 CFR Part 33. UtiliCorp requests authorization and approval of the sale by UtiliCorp and the purchase by the City of Rich Hill, Missouri (Rich Hill) of certain limited transmission facilities within the city.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER01–463–005]

Take notice that on July 27, 2001, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Compliance filing pursuant to the Commission's July 2, 2001 Order on Compliance Filing in Docket Nos. ER01–463–003 and ER01–463–004 (Not Consolidated).

A copy of this filing has been served on all parties on the official service list.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER01–1845–002]

Take notice that on July 27, 2001, Public Service Company of New Mexico (PNM) tendered for filing a Compliance Filing in association with PNM's earlier filing (dated April 23, 2001, as amended May 11, 2001) of its proposed revisions to the pricing methodology for energy provided by PNM for Schedule 4—Energy Imbalance Service under PNM's Open Access Transmission Tariff. PNM's Compliance Filing incorporates certain modifications to the proposed pricing change identified in the Commission's Order Accepting Revisions, as Modified, to Open Access Transmission Tariff, issued on June 29, 2001, *Public Service Co. of New Mexico,* 95 FERC ¶ 61,214 (2001). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to all PNM Tariff customers, all entities that have pending interconnection requests with PNM and the New Mexico Public Regulation Commission.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. FPL Energy MH50, L.P.

[Docket No. ER01–1676–002]

Take notice that on July 27, 2001, FPL Energy MH50, L.P. (MH50) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised Rate Schedule FERC No. 2 to comply with the Commission's Order in the above-referenced proceeding issued on July 11, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER01–1786–002]

Take notice that on July 27, 2001, Ameren Services Company (Ameren Services), as agent for Union Electric Company (d/b/a AmerenUE) and Central Illinois Public Service Company (d/b/a AmerenCIPS), submitted the compliance filing required by the Federal Energy Regulatory Commission's Order of July 2, 2001 in the above-referenced proceeding.

Ameren Services requests an effective date of July 1, 2001 for the changes reflected in this filing.

Copies of this filing were served all parties on the Commission's official service list in this proceeding, on all customers under the Ameren OATT and on all affected state commissions.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. PJM Interconnection, L.L.C.

[Docket No. ER01–1936–001]

Take notice that on July 27, 2001, PJM Interconnection, L.L.C. (PJM) tendered

for filing with the Federal Energy Regulatory Commission (Commission) proposed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. PJM states that the proposed amendments are submitted to comply with the Commission's June 28, 2001 Order in this proceeding.

Copies of this filing have been served on all parties, as well as on all PJM Members and the state electric regulatory commissions in the PJM control area.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Energy Marketing Company

[Docket No. ER01–1945–001]

Take notice that on July 27, 2001, Ameren Energy Marketing Company (AEM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing required by the Commission's June 27, 2001 order in this proceeding.

AEM requests an effective date of May 3, 2001 for the changes reflected in this filing.

A copy of this filing was served on all parties on the Docket No. ER01–1945 service list, and on all affected state commissions.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket Nos. ER01–2021–001 and ER01–2106–001]

Take notice that on July 27, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing with the Federal Energy Regulatory Commission (Commission) compliance Interconnection and Operating Agreements with Washington Parish Energy Center, L.L.C. and, separately, with GenPower Keo, LLC, in response to the Commission's order in Entergy Services, Inc., 95 FERC ¶ 61,437 (2001) (the June 27 Order). Also, Entergy submitted Attachment O to its Open-Access Transmission Tariff (Tariff), with revised sheets per the modifications directed by the June 27 Order, such Attachment being filed for the first time to comply with the requirements of the Commission's Order No. 614, Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000). In addition, Entergy submitted Attachment N to its Tariff, also filed to comply with Order No. 614.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. GWF Energy LLC

[Docket No. ER01–2233–001]

Take notice that on July 27, 2001, GWF Energy LLC (GWF) tendered for filing a revision to its market-based rate tariff in compliance with the Federal Energy Regulatory Commission's July 18, 2001 order in the above-referenced proceeding accepting the tariff for filing.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Jersey Central Power & Light Company Metropolitan Edison Company Pennsylvania Electric Company

[Docket No. ER01–2696–000]

Take notice that on July 27, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Exelon Generation Company, LLC (ExeGen), dated July 11, 2001. This Service Agreement specifies that ExeGen has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and ExeGen to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests an effective date of July 11, 2001 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER01–2697–000]

Take notice that on July 27, 2001 Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Duke Energy Trading and Marketing for Long-Term Firm transmission service under FPL's Open Access Transmission Tariff, pursuant to Part 35 of the Federal Energy Regulatory Commission's regulations, 18 CFR Part 35.

FPL requests that the proposed service agreements become effective on July 3, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power & Light Company

[Docket No. ER01–2698–000]

Take notice that on July 27, 2001 Florida Power & Light Company (FPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed service agreements with AMEREN Energy, Inc. for Non-Firm transmission service and Firm transmission service under FPL's Open Access Transmission Tariff pursuant to Part 35 of the Commission's regulations, 18 CFR Part 35.

FPL requests that the proposed service agreements become effective on July 20, 2001.

Comment date: August 17, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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, NE., Washington, DC 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19832 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockets Nos. CP00–232–000 and CP00–232–001]

Iroquois Gas Transmission System, L.P.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Eastchester Project

August 2, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by Iroquois Gas Transmission System, L.P. (Iroquois) in the above referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with the mitigation measures recommended in the DEIS (including a route variation to Hunts Point), would have limited adverse environmental impact.

The DEIS addresses the potential environmental effects of the project proposed by Iroquois to convey natural gas from Northport, Long Island, to the Bronx, New York. The pipeline would be constructed across Long Island Sound and be comprised of the following facilities:

32.8 miles of 24-inch diameter pipe;
Pipeline maintenance facilities constructed in Northport and the Bronx;
One mainline valve at Locus Point;
A gas meter, regulator, heater, odorant facility, and mainline valve at the project terminus in the Bronx;
Two new compressor stations along the existing Iroquois pipeline;
Additions and modifications to three existing compressor stations; and
Workspace and access roads to construct, operate, and maintain the above facilities.

The purpose of the proposed facilities would be to provide natural gas for electric generation and to serve residential, industrial, and commercial customers in New York City. The proposed project would serve:

Consolidated Edison Energy, Inc.—30,000 dekatherms per day (Dth/day)
Keyspan Ravenswood, Inc.—60,000 Dth/day
Orion Power Holdings, Inc.—60,000 Dth/day
Miriant New York Management, Inc.—60,000 Dth/day
Virginia Power Energy Marketing, Inc.—20,000 Dth/day.

This DEIS is provided to the U.S. Fish and Wildlife Service (USFWS) and to the National Marine Fisheries Service (NMFS) as our biological assessment under the Endangered Species Act (ESA). Sections 4.7, 5, and 6 of the DEIS specifically discuss listed species and measures to mitigate any project related impacts to those species and any critical habitat in the project vicinity. Staff concludes, the project, with the proposed mitigation in the DEIS, would not likely adversely affect listed species or their critical habitat. We request written concurrence from the USFWS and the NMFS on this conclusion. Absent the requested concurrence, we request initiation of formal consultation under section 7(a)(2) of the ESA.

Pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies are required to consult with the NMFS on any action that may result in adverse effects to essential fish habitat (EFH). Sections 4.6.2 through 4.6.2.2, 5, and 6 and Appendix E assess the impacts of the proposed project on EFH, and propose specific mitigation measures to minimize those impacts. We request NMFS provide any EFH Conservation Recommendations during the comment period for the DEIS.

Comment Procedures

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of GHG, PJ11.3;
- Reference Docket Nos. CP00–232–000 and 001; and
- Mail your comments so that they will be received in Washington DC on or before September 24, 2001.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

After comments are reviewed, any significant new issues are investigated, and modifications are made in the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments on the DEIS.

All appropriately filed comments will be considered by the Commission. Anyone with an interest in the outcome of this proceeding may wish to become an intervenor. An intervenor has certain legal rights and responsibilities, notably the right to contest any action the Commission may take in this proceeding. Commenting on the DEIS will not make you an intervenor. Any person seeking to intervene and become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Interventions may also be filed electronically via the Internet.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding. It has also been distributed to the commentors and libraries listed in Appendix A of the DEIS.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (*www.ferc.gov*) using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–19878 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–336–000, RP00–336–001 and RP00–336–002]

El Paso Natural Gas Company; Notice of Technical Conference

August 2, 2001.

On July 18 and 19, 2001, a technical conference was held in the above-captioned proceeding. It was agreed at the conference that El Paso would provide the parties and the Commission staff with additional analysis of the use of capacity on its system and with written answers to several questions raised at the conference. It was also agreed that after submission of this information, a second technical conference would be held.

Take notice that a technical conference will be held in this proceeding on Tuesday, August 28, 2001 at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will continue through Wednesday, August 29, 2001, if necessary.

All interested parties and staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–19885 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

August 2, 2001.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice for the St. Lawrence-FDR Power Project (FERC No. 2000–010) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On June 5, 2000, the restricted service list was modified to include the Department of the Interior (Interior). The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

The address for Mr. Thomas Tatham has changed. Delete ''1633 Broadway, 22C, New York, NY 10019–6756'' and replace with ''123 Main Street, White Plains, NY 10601''.

The contact for the Saint Regis Mohawk Tribe has changed. Delete ''Francis Jock'' and replace with ''Francis Boots''.

The contact for Interior has changed. Delete ''Lydia T. Grimm'' and replace with ''Kimberly Owens''.

Delete ''Robert Dean, Dean & Barbour, P.O. Box 176, Old Route 17, Steamburg, NY, 14783''.

As a result of these changes, the revised final restricted service list, for the purpose of commenting on the PA for the St. Lawrence-FDR Power Project, is as follows:

Dr. Robert Kuhn, NY Office of Parks, Recreation, and Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY, 12188–0189

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, DC 20004

William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601

Thomas Tatham, New York Power Authority, 123 Main Street, White Plains, NY 10601

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109

Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802

Malka Pattison, Department of the Interior, Bureau of Indian Affairs, 1849 C Street, NW, Mail Stop 4513, Washington, DC 20240

Francis Boots, THPO, Saint Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655

Salli Benedict, Henry Lickers, Mohawk Council of Akwesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3

Maxine Cole, Akwesasne Task Force on the Environment, P.O. Box 992, Hogansburg, NY 13655

David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401

James Teitt, Environmental Resources Management, 355 East Campus View Blvd, Suite 250, Columbus, OH 43235

Brian Skidders, Mohawk Nation Council of Chiefs, Box 366, Rooseveltown, NY 13683

Kimberly Owens, Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

David P. Boergers,

Secretary.

[FR Doc. 01–19882 Filed 8–7–01; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34243; FRL–6789–3]

Thiophanate-methyl; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and ecological risk assessments and related documents for thiophanate-methyl. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket control number OPP–34243 for thiophanate-methyl, must be received on or before October 9, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket control number for thiophanate-methyl, OPP–34243, in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Deanna Scher, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7043; e-mail address: scher.deanna@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for thiophanate-methyl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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/. On the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' 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/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control numbers OPP–34243. The official record consists of the documents specifically referenced in this action, 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 Hwy., 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.

II. How Can I Respond to this Action?

A. 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 for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., 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.* Submit electronic comments by e-mail to: opp-docket@epa.gov or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information 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 listed under **FOR FURTHER INFORMATION CONTACT.**

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and ecological risk assessments and other related documents for thiophanate-methyl, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the Thiophanate-methyl RED will be made available for public comment.

EPA and USDA have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as thiophanate-methyl, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2001 and early 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work

on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for thiophanate-methyl. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The thiophanate-methyl risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 15, 2001.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–19573 Filed 8–7–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66288; FRL–6794–9]

Benomyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a cancellation order for product cancellations requested by E.I. du Pont de Nemours & Company (DuPont) for its registrations of pesticide products containing methyl 1-(butylcarbamoyl)-2-benzimidazole carbamate, or benomyl, and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a May 23, 2001, notice of receipt of requests for registration cancellations. In that notice, EPA requested comments on the proposed cancellations and indicated that it would issue an order confirming the voluntary registration cancellations. Any distribution, sale, or use of canceled benomyl products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective August 8, 2001.

FOR FURTHER INFORMATION CONTACT: By mail: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: fuller.demson@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use benomyl products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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,'' ''Regulations and Proposed Rules,'' 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 OPP–66288. 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 Hwy., 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.

II. Receipt of Request to Cancel Registrations

A. Background

Benomyl is a benzimidazole carbamate and systemic foliar fungicide registered for use on almonds, apples, anise, apricots, asparagus, avocado, banana, barley, bean vine, blueberries, brassica (broccoli, Brussels sprouts, cabbage, chicory, chinese cabbage, cauliflower, collards, kale, kohlrabi, mustard greens, rutabagas, and turnips), caneberries (raspberries, blackberries, boysenberries, loganberries, and dewberries), cardoon, carrots, celery, cherries, citrus, conifers, corn, cucurbits (cucumber, melons, pumpkins, and squash), currants, dandelions, dill, figs, grapes, macadamia nuts, mangoes, mushrooms, nectarines, onions, oats, papayas, peaches, peanuts, pears, peas, pecans, peppers, pineapple, pistachio, plums, prunes, rape, rice, rye, soybeans, spinach, strawberry, sugar beets, tomatoes, wheat, and yams.

Dupont met with the Agency on April 18, 2001, and requested a voluntary cancellation of all their registrations for

products containing benomyl, to be effective December 31, 2001. Dupont stated that this decision was based on business reasons. They submitted this request in writing in a letter dated April 18, 2001. On May 1, 2001, Dupont submitted a second letter requesting that the effective date of cancellation be moved from December 31, 2001, to May 1, 2001. EPA noted that it could not grant a cancellation request until the requisite public comment period expired and EPA had considered public comments received.

Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced receipt of this request from Dupont in a **Federal Register** notice published on May 23, 2001 (66 FR 28466) (FRL–6784–3). In that notice EPA provided a 30–day comment period. Dupont requested that the Administrator waive the 180–day comment period provided under FIFRA section 6(f)(1)(c), and EPA granted this request.

Public comments were received from seven interested parties:

The American Mushroom Institute is concerned with the loss of benomyl due to its effectiveness controlling diseases such as green mold. They would like for the Agency to assist them in registering effective alternatives.

The Arizona Department of Agriculture would like for Dupont to dispose of any benomyl products that dealers have in stock after the proposed December 31, 2002, termination of sales date for products in the channels of trade. They also have concerns for users who may have excess benomyl and would like Dupont to dispose of their products as well.

The California Pistachio Commission is concerned with the timing for tolerance revocation. They fear that growers may purchase excess stocks of benomyl and not have adequate time to exhaust their benomyl supplies and allow for treated pistachios to clear the channels of trade before tolerances are revoked. They ask EPA to delay tolerance revocation until 2007.

A blueberry grower in Michigan, as well as the Michigan Blueberry Growers Association, commented on the need for effective materials to control diseases such as canker, botrytis, anthracnose, and alternaria on blueberries. The Michigan Blueberry Growers Association is also concerned over the timing for tolerance revocation.

The U.S. Apple Association commented that growers of both apples and pears will need new products to control various diseases currently controlled by benomyl. They are concerned with the high costs associated with certain benomyl alternatives, and that increased use of less-expensive alternatives may lead to resistance problems. The U.S. Apple Association also asks that EPA delay tolerance revocation for 4 years after cancellation to ensure apple products clear the channels of trade.

Finally, a consulting firm objected to Dupont's request to waive the 180–day comment period because the unexpected request for cancellation has the potential to cause financial loss to other registrants working with, or preparing to work with benomyl. Because ''me-too'' applications for registrations of a generic off-patent product require the active registration of a substantially similar product, this firm holds that Dupont has eliminated the opportunity for other registrants to apply for and obtain benomyl product ''me-too'' registrations. The effect of this, they say, is that generic registrants will lose investments they may have made in pursuing such registrations.

In response to this last comment, EPA notes that FIFRA allows applicants who have submitted their applications before the voluntary cancellation has occurred to use the data submitted by the original data submitter as long as data compensation requirements are fulfilled. EPA acknowledges that Dupont's decision may affect the business opportunities of other pesticide manufacturers who wish to register new benomyl products, and that waiving the 180–day comment period reduces the window of opportunity for submission of ''me-too'' applications for registration. At the time Dupont requested the voluntary cancellations, it had already ceased production of benomyl. FIFRA section 6(f)(1)(C) states that EPA may waive the 180–day comment period upon the request of the registrant. The Agency believes, that this provision was intended to give ample time for EPA to hear from growers the potential impact of the requested cancellations on agriculture. EPA, in coordination with the U.S. Department of Agriculture, has communicated with representatives of commodity groups for the crops on which benomyl is registered to: Inform them of the requested cancellation, summarize the **Federal Register** notice announcing the requested cancellation, ascertain the potential impacts on Agriculture of the requested cancellations, and encourage affected parties to submit comments during the 30–day comment period on the proposed cancellations. For these reasons, EPA decided that it was appropriate to grant Dupont's request to waive the 180–day comment period as provided for by FIFRA section 6(f)(1)(C).

In response to comments on the timing for tolerance revocation, EPA is concerned with growers purchasing excess amounts of benomyl. Because this action is not due to risk issues, EPA is not setting a last legal use date, but, EPA believes that use of existing stocks of these products will likely end in 2003, given that the registrant ceased production of technical product around April 2001, and that no sale or distribution of product may occur after December 31, 2002. EPA will determine how long treated food containing residues of benomyl could remain in the channels of trade assuming that treatment last occurs on December 31, 2003, and will set the tolerance revocation dates accordingly.

In response to the comments on the need for reasonable disposal of benomyl, EPA recommends that distributors purchase reasonable supplies to avoid excess stocks. EPA notes that Dupont, in a letter dated July 6, 2001, has offered to receive product for the purpose of disposal from dealers and distributors following December 31, 2002, and from users following December 31, 2003. Dupont will dispose of these products at no cost to anyone willing to ship the products to a designated Dupont facility.

In response to comments on the need for alternative materials to replace benomyl, EPA is aware of the importance of benomyl to growers. The Agency is committed to working with industry to identify and make available suitable alternatives to control diseases on mushrooms, blueberries, apples, pears, and other crops. Also, EPA continues to expedite new fungicides through its reduced risk initiative which shortens the time required to register new chemicals and uses.

B. Requests for Voluntary Cancellation of Products

Pursuant to FIFRA section 6(f)(1)(A), Dupont has submitted requests for voluntary cancellation of registrations for their products containing benomyl. The registrations for which cancellations were requested are identified in the following Table 1:

TABLE 1. — PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No	Product
E.I. du Pont de Nemours & Company	352–354	Dupont Benlate® Fungicide
E.I. du Pont de Nemours & Company	352–377	Dupont Benomyl Technical
E.I. du Pont de Nemours & Company	352–385	Dupont Benlate® OD Fungicide
E.I. du Pont de Nemours & Company	352–564	Dupont Benlate® SP Fungicide

DUPONT SPECIAL LOCAL NEED REGISTRATION CANCELLATION REQUESTS

SLN Number	Crop	Reg. No	Product
AZ–930015	Onions	352–354	Dupont Benlate® Fungicide
VT–770005	Apples	352–354	Dupont Benlate® Fungicide
WA–000009	Asparagus Crowns	352–564	Dupont Benlate® SP Fungicide
WA–770040	Asparagus Crowns	352–354	Dupont Benlate® Fungicide

III. Cancellation Order

Pursuant to section 6(f)(1)(A) of FIFRA, EPA is approving the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 1, are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1, in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy June 26, 1991 (56 FR 29362) (FRL–3846–4), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation.

A. Distribution or Sale by the Registrant

The distribution or sale of existing stocks by registrants will not be lawful under FIFRA after August 8, 2001, except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal.

B. Distribution and Sale by Other Persons

Sale or distribution by any person of existing stocks of any products identified in Table 1, will not be lawful under FIFRA after December 31, 2002.

V. Notification of Intent to Revoke Tolerances

This notice also serves as an advance notification that the Agency intends to revoke the related tolerances, for the cancelled registrations listed in this notice, unless there is a request from the public to support the tolerances for import purposes. EPA believes that the end use of any remaining existing stocks of these products will likely end in 2003 given that production of technical product by the registrant ceased around April 2001 and that sale and distribution of benomyl products will end on December 31, 2002. EPA will determine how long treated food containing residues of benomyl could remain in the channels of trade assuming that the last treatment occurred on December 31, 2003, and will set the expiration date accordingly.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist, to protect the food supply of the U.S. and to discourage the misuse of pesticides within the United States. In many cases the cancellation of a food use in the U.S. indicates that there are insufficient domestic residue data or other information to support the continuation of the tolerance and an uncertain amount of relevant data concerning residues on imported food. In the absence of relevant data, EPA is unable to make a safety finding regarding the treated food entering the U.S. Upon request, EPA will provide interested parties with its import tolerance policy and data requirements, explaining how an interested party should go about seeking to retain a tolerance for import purposes.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 23, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–19572 Filed 8–7–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64060; FRL–6795–2]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 4, 2002 unless indicated otherwise.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA

22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of Support 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'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 232, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in four pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product	Chemical Name	Delete From Label
001386–00616	2,4-D Lo-V 6E	2,4-D 2-Ethylhexyl Ester	Drainage ditch banks
035935–00005	Nufarm 2,4-D LV-4	2,4-D 2-Ethylhexyl Ester	Drainage ditch banks, lakes, ponds, other aquatic non-food sites and sugarcane
035935–00012	2,4-D Isooctyl Ester Technical	2,4-D 2-Ethylhexyl Ester	Drainage ditch banks, lakes, ponds, rice, other aquatic non-food sites and sugarcane
035935–00014	Nufarm 2,4-D	2,4-D 2-Ethylhexyl Ester	Drainage ditch banks, lakes, ponds, other aquatic non-food sites and sugarcane

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 4, 2002 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

The following Table 2 includes, the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
001386	Universal Cooperatives Inc., 1300 Corporate Center Curve, Eagan, MN 55121.
035935	Nufarm Americas, Inc., Agent For: Nufarm Limited, 500 Lower Lake Rd., St. Joseph, MO 64504.

III. What is the Agency Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail*: Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked September 7, 2001.

2. *In person or by courier*: Deliver your withdrawal request to: Document Processing Desk (DPD), Information Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. 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 6.1/8.0 or ASCII file format.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: July 24, 2001.

Richard D. Schmitt,

Associate Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–19571 Filed 8–7–01; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1036; FRL–6795–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical 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 a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1036, must be received on or before September 7, 2001.

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**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1036 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 803–3194; e-mail address: brothers.shaja@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 codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production 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 under **FOR FURTHER INFORMATION CONTACT**.

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'' ''Regulation and Proposed Rules,'' 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–1036. 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–1036 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, 1200 Pennsylvania Ave., NW., 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 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1036. 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 under **FOR FURTHER INFORMATION CONTACT**.

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. Make sure to submit your comments by the deadline in this notice.

7. 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 a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic 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 support 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 27, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it 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.

Interregional Research Project #4 (IR–4)

PP (0E6214)

EPA has received a pesticide petition [0E6214] from the Interregional Research Project #4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.492 by establishing a tolerance for residues of triflusulfuron methyl in or on the raw agricultural commodity chicory (root) at 0.05 parts per million (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 support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Dupont, E.I. du Pont Nemours and Company, Agricultural Products, Wilmington, DE 19898.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism and chemical nature of residues of triflusulfuron-methyl in plants is adequately understood.

2. *Analytical method*. High performance liquid chromatograph (HPLC) is the analytical method acceptable for determining residues of triflusulfuron-methyl in plants, and is available for enforcement purposes.

3. *Magnitude of residues*. The magnitude of residue data for triflusulfuron methyl in/on chicory is adequately understood. Residue field trials conducted in Washington and California have shown that the maximum residues in the raw agricultural commodity chicory and the processed commodities dry pulp and inulin were below the limit of detection (0.016 ppm). A tolerance for residues of triflusulfuron-methyl in chicory root at 0.05 ppm is consistent with the tolerances proposed by Du Pont for sugar beet roots and tops at 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Based on EPA criteria, technical triflusulfuron methyl is in acute toxicity Category IV for oral and inhalation routes of exposure, and for dermal irritation. Triflusulfuron methyl is in acute toxicity Category III for dermal toxicity and for eye irritation. Acute oral toxicity in rats LD_{50} 5,000 mg/kg; acute dermal toxicity in rabbits LD_{50} 2,000 mg/kg; and acute inhalation toxicity in rats LC_{50} 5.1 mg/L. Primary eye irritation in rabbits, non-irritant primary dermal irritation in rabbits, non-irritant dermal sensitization in guinea pigs, and non-sensitizer acute neurotoxicity no observed adverse effect level (NOAEL)= 2,000 mg/kg/day highest dose tested (HDT).

2. *Genotoxicity*. Mutagenicity data for technical triflusulfuron methyl include a reverse mutation assay (Ames Test) which was negative at concentrations up to 1,000µ mg/plate, the HDT; a *Salmonella typhimurium* plate incorporation assay which was negative at concentrations up to 3,000µ mg/plate, HDT; and a Chinese hamster ovary/hypoxanthine-guanine (CHO/HPRT) assay which was negative at concentrations up to 2,000 mg/kg/day, HDT. A chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations greater than or equal to 1,500µ mg/mL. A second chromosomal aberration/human lymphocyte assay was positive in the presence of metabolic activation at concentrations of 2,000µ mg/mL. Results in the absence of metabolic activation were inconclusive for both chromosomal aberration studies. The mouse bone marrow micronucleus test was negative at doses up to 5,000 mg/kg, HDT. In three *Salmonella typhimurium* plate incorporation assays, metabolites of triflusulfuron methyl were negative up to 5,000µ mg/plate, HDT.

3. *Reproductive and developmental toxicity*. In a 2–generation rat reproduction study, rats were fed dosages of 0, 0.588, 5.81, 44.0 and 89.5 mg/kg/day (males) and 0, 0.764, 7.75, 58.0, and 115 mg/kg/days (females) with a reproductive toxicity NOAEL equal to or greater than 89.5 and 115 mg/kg/day for males and females, respectively, based on the absence of reproductive

effects in rats at the HDT. The NOAEL for systemic toxicity was 5.81 and 7.75 mg/kg/day for males and females, respectively based on decreased body weight/body weight gain (bwt/bwt gain) and food efficiency in males and females, and decreased weights of offspring from the F_0 generation on days 14 and 21 post-partum at 44.0 and 58.0 mg/kg/day in males and females, respectively. Technical triflusulfuron methyl was evaluated for developmental toxicity potential in rats and rabbits. Rats were fed dosages of 0, 30, 120, 350, and 1,000 mg/kg/day with a developmental NOAEL equal to or greater than 1,000 mg/kg/day (HDT) and a maternal toxicity NOAEL of 120 mg/kg/day with a lowest observed adverse effect level (LOAEL) of 350 mg/kg/day based on reduced body weight gain in the 350 and 1,000 mg/kg/day animals, reduced food consumption in the 1,000 mg/kg/day animals and lower food efficiency in the 350 and 1,000 mg/kg/day. Rabbits were fed dosages of 0, 15, 90, 270, and 800 mg/kg/day with a NOAEL for developmental toxicity of 90 mg/kg/day with a LOAEL of 270 mg/kg/day based on the increase in abortions and a decrease in mean fetal body weight (bwt). The NOAEL for maternal toxicity is 90 mg/kg/day with a LOAEL of 270 mg/kg/day based on the maternal death and abortions, and increase in clinical signs noted in the mid-high and high dose groups, decreased food efficiency and increased post mortem finding describing gastrointestinal effects.

4. *Subchronic toxicity*. The subchronic toxicity of technical triflusulfuron methyl was evaluated in rabbits, rats, and dogs. In a 21–day dermal toxicity study with rabbits fed dosages of 50, 300, or 1,000 mg/kg/day, the systemic toxicity NOAEL was equal to or greater than 1,000 mg/kg/day for males and females. The dermal toxicity NOAEL was equal to or greater than 1,000 mg/kg/day for males and females.

Two 90–day studies were conducted in the rat. In one study, rats were fed dosages of 6.2, 127, 646, or 965 mg/kg/day (males) or 7.54, 150, 774, or 1,070 mg/kg/day (females). Triflusulfuron methyl exhibited subchronic toxicity at dietary concentrations of 2,000 ppm (127 and 150 mg/kg/day for males and females) or greater in the form of decreased body weights, decreased body weight gains, decreased food efficiency, increased mean relative liver weights, and regenerative anemia. The NOAEL was 6.2 mg/kg/day (males) and 7.54 mg/kg/day (females).

In another study, rats were fed dosages of 6.56, 133, 658, or 1,036 mg/kg/day (males) or 7.71, 153, 783, or 1,124 mg/kg/day (females). Triflusulfuron methyl showed subchronic toxicity at dietary concentrations of 2,000 ppm (133 and 153 mg/kg/day for males and females) or greater in the form of decreased body weight, decreased body weight gain, decreased food efficiency, and increased mean liver weights. The NOAEL was 6.56 mg/kg/day (males) and 7.71 mg/kg/day (females).

A subchronic neurotoxicity study with rats fed dosages of 0, 6.1, 46.1, 92.7, or 186.2 mg/kg/day (males) or 7.1, 51.6, 104.1, or 205.2 mg/kg/day (females), resulted in a NOAEL of 92.7 (males) and 7.1 mg/kg/ day (females). This was based on decreased body weight/body weight gain at the LOAEL of 186.2 mg/kg/day (males) and 51.6 mg/kg/day (females).

In another 90–day subchronic study, dogs were fed dosages of 3.87, 146.1, or 267.6 mg/kg/day (males) or 3.72, 159.9, or 250.7 mg/kg/day (females). Triflusulfuron methyl was found to be hepatotoxic at 4,000 ppm (146.1 mg/kg/day males and 159.9 mg/kg/day females), and greater elevated hepatic enzyme levels and postmortem evidence, including elevation in liver weights and microscopic evidence of bile stasis. Other microscopic findings considered to be treatment related were testicular atrophy and decreased testicular weights and hypercellularity of the sternal and femoral bone marrow, with a corresponding increase in reticulocyte and leukocyte counts seen in the high-dose males and females. Based on the microscopic findings in the liver and testes of the 4,000 ppm and greater treated animals, the NOAEL was 3.87 mg/kg/day (males) and 3.72 mg/kg/day (females).

5. *Chronic toxicity*. The chronic toxicity of technical triflusulfuron methyl was evaluated in dogs, mice, and rats. In a 1–year oral toxicity study with dogs fed dosages of 1.0, 26.9, 111.6 mg/kg/day (males) and 1.2, 27.7, and 95.5 mg/kg/day (females), the NOAEL for males was 26.9 mg/kg/day; this was based on increases in alkaline phosphatase, liver weight, and incidence of minimal centrilobular hypertrophy at the LOAEL of 111.6. For females, the NOAEL was 27.7 mg/ kg/day; this was based on increased liver weight and increased incidence of minimal centrilobular hepatocellular hypertrophy at the LOAEL of 95.5 mg/kg/day.

In an 18–month carcinogenicity study, mice were fed dosages of 1.37, 20.9, 349, and 1,024 mg/kg/day (males) and 1.86, 27.7, 488, and 1,360 mg/kg/day (females). Male mice had statistically significant positive trends for hepatocellular adenomas and for combined adenoma/carcinoma (driven entirely by adenomas) at 349 and 1,024 mg/kg/day. These increases were not significant in pair-wise comparisons with control groups and were determined not to be carcinogenic effects by the Carcinogenicity Peer Review Committee (CPRC). The NOAEL was based on body and organ weight effects and was 20.9 mg/kg/day (males) and 27.7 mg/kg/day (females). In the combined chronic toxicity/carcinogenicity study, rats were fed dosages of 0, 0.406, 4.06, 30.6, and 64.5 mg/kg/day (males) and 0, 0.546, 5.47, 41.5, and 87.7 mg/kg/day (females). Male rats have a significant increasing trend and significant differences in pair-wise comparisons of the 30.6 and 64.5 mg/kg/day dose groups with controls for interstitial cell adenomas. This effect was determined to be a carcinogenic effect by the CPRC. No carcinogenic effects were noted in females up to and including 87.7 mg/kg/day HDT. The LOAEL for chronic toxicity is 30.6 mg/kg/day (males) and 41.5 (females) based on decreased body weight and body weight gain, alternations in the hematology parameters (males predominately) and an increased incidence of interstitial cell hyperplasia in males. The NOAEL for chronic toxicity is 4.06 mg/kg/day (males) and 5.47 mg/kg/day (females). This value is adjusted to the lowest concentration level of the chemical at this dosage (60%), resulting in NOAELs of 2.44 mg/kg/day (males) and 3.28 mg/kg/day (females).

6. *Animal metabolism*. For triflusulfuron methyl, in both the rat and the goat, a majority of the administrated dose was excreted in feces and urine. The biotransformation pathway for triflusulfuron methyl in the rat and the goat was similar. The major pathway was demethylation of the dimethylamino substituent on the triazine ring. The intermediate hydroxylated metabolite was also present. The secondary biotransformation pathway was clevage of the sulfonylurea bridge to form methyl saccharin, N-desmethyl triazine amine and N,N-bis-desmethyl triazine amine. In the lactating goat, triflusulfuron methyl was not excreted to any appreciable level in the milk. Levels of the ester carbonyl-derived residues were generally below the limit of reliable measurement (< 0.0006μ mg equivalent triflusulfuron methyl/mL) and triazine-derived residues reached a daily level of about 0.001 ppm. Therefore, the metabolic pathways in rats and lactating goats were very

similar. There were no significant plant metabolites of triflusulfuron methyl that were not found in the rat or goat metabolism studies. In the unlikely event that triflusulfuron methyl were to enter the livestock diet, triflusulfuron methyl and its metabolites would be rapidly excreted and would not accumulate in meat, meat by-products, or milk.

7. *Metabolite toxicology*. The approximate lethal dose (ALD) of the degradation product, N,N-bis-desmethyl triazine amine, in male rats was 450 mg/kg/day. Rats were fed dose rates of 200, 300, 450, 670, 1,000, and 2,300 mg/kg of triflusulfuron methyl. Deaths occurred up to test day 7 in rats dosed at 450 mg/kg body weight and above. Clinical signs of toxicity were observed in lethally and nonlethally dosed rats. In an *in vitro* gene mutation study, N,N,-bis-desmethyl triazine amine was not mutagenic in *Salmonella typhimurium* up to a dose of 5,000µ mg/plate. For the degradation product, triazine amine, the ALD in male rats was 670 mg/kg/day. The test substance dose was 200, 300, 450, 670, 1,000, or 2,300 mg/kg. Deaths occurred up to test day 4 in rats dosed at 670 mg/kg and above. Clinical signs of toxicity were observed in lethally and nonlethally dosed animals. In an *in vitro* gene mutation study, triazine amine was not mutagenic in *Salmonella typhimurium* up to a dose of 5,000µ mg/plate.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of methyl have been conducted. However, the standard battery of required toxicology studies have been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure to doses that far exceed likely human exposures. Based on these studies there is no evidence to suggest that triflusulfuron methyl has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. The acute dietary exposure was estimated for triflusulfuron methyl using the Dietary Exposure Evaluation Model (DEEM) (version 6.73) for a number of subpopulation groups. An acute Tier I dietary analysis was based upon the residues for sugar beet (root) at 0.05 ppm and sugar beet (top) at 0.05 ppm. The acute reference dose (aRfD) is 0.9 mg/kg bwt/day (based upon a NOAEL of 90 mg/kg bwt/day and a 100–fold safety factor). For triflusulfuron methyl, the predicated exposure for the U.S. population was 0.00460 mg/kg bwt/day (0.05 % of the aRfD) at the 95th percentile. The subpopulation with the highest predicted exposure was the non-nursing infants subgroup with an exposure of 0.00166 mg/kg bwt/day (0.19% of the aRfD) at the 95th percentile. Because the predicted exposures, expressed as percentages of the aRfD, are well below 100%, there is reasonable certainty that no acute effects would result from dietary exposure to triflusulfuron methyl.

The chronic dietary exposure was estimated for triflusulfuron methyl using the DEEM (version 6.74) for a number of subpopulation groups. A chronic Tier I dietary analysis was based upon residues for sugar beet (root) at 0.05 ppm and sugar beet (top) at 0.05 ppm. The chronic Reference dose (RfD) is 0.024 mg/kg bwt/day (based upon a NOAEL of 2.44 mg/kg bwt/day and a safety factor of 100). The estimated exposure for the U.S. population was 0.000146 mg/kg bwt/day (0.6% of the RfD). For the subpopulation with the highest level of exposure (non-nursing infants), the exposure was 0.000433 mg/kg bwt/day (<1.8% of the chronic reference dose (cRfD)). Because the predicted exposures, expressed as percentages of the cRfD, are well below 100%, there is reasonable certainty that no chronic effects would result from dietary exposure to triflusulfuron methyl. Even though very conservative assumptions were made in predicting acute and chronic exposures to triflusulfuron methyl, the predicted exposures expressed as percentages of the cRfD and aRfD values were found to be well within the acceptable range.

ii. *Drinking water*. Based on the available environmental studies conducted with triflusulfruon methyl, DuPont concludes that there is no anticipated exposure to residues of triflusulfuron methyl in drinking water. In addition, there is no established maximum concentration level (MCL) for residues of triflusulfuron methyl in drinking water.

2. *Non-dietary exposure*. Triflusulfuron methyl is not registered for any use that could result in non-occupational or non-dietary exposure to the general population.

D. Cumulative Effects

Triflusulfuron methyl belongs to the sulfonylurea class of crop protection chemicals. Other structurally similar compounds in this class are registered herbicides. However, the herbicidal activity of sulfonylureas is due to the inhibition of acetolacate synthase (ALS), an enzyme found only in plants. This enzyme is part of the biosynthesis pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the relatively low toxicity of sulfonylurea herbicides in animals. There is no reliable information that would indicate or suggest that triflusulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population*. Based on the completeness and reliability of the toxicology data base and using the conservative assumptions presented earlier, EPA has established a cRfD of 0.024 mg/kg/day. This was based on the NOAEL for the 2–year chronic rat study (2.44 mg/kg/day) and a 100–fold safety factor. It has been concluded that the aggregate exposure was 0.6% of the cRfD. Generally, exposures below 100% of the cRfD are of no concern because it represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Thus, there is reasonable certainty that no harm will result from aggregate exposures to triflusulfuron methyl residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of triflusulfuron methyl, data from the previously discussed developmental and multi-generation reproductive toxicity studies were considered. Developmental studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from the prenatal and postnatal exposures to the pesticide. The studies with triflusulfuron methyl demonstrated no evidence of developmental toxicity at exposures below those causing maternal toxicity. This indicates that developing animals are not more sensitive to the effects of triflusulfuron methyl administration than adults.

FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the data base for triflusulfuron methyl relative to prenatal and postnatal effects for children is complete. In addition, the NOAEL of 2.44 mg/kg/day in the chronic rat study (and upon which the cRfD is based) is much lower than the

NOAELs defined in the reproduction and developmental toxicology studies. The sub-population with the highest level of exposure was non-nursing infants, where exposure was < 1.8% of the cRfD. Based on these conservative analyses, there is reasonable certainty that no harm will result to infants and children from aggregate exposures to triflusulfuron methyl.

F. International Tolerances

There are no Codex Maximum Residue Levels established for triflusulfuron methyl.

[FR Doc. 01–19756 Filed 8–7–01; 8:45 am]

BILLIBG CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket Nos. 01–172 and 01–173; DA 01–1829]

Consolidated Designation of Hearings To Adjudicate Damages Claims in Cases Involving U S WEST's 1–800 Calling Platform Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 1, 2001, the Enforcement Bureau of the Federal Communications Commission (''Commission'') released a consolidated Hearing Designation Order (''HDO'') initiating hearings to adjudicate the damages claims of two interexchange carriers (''Complainants'') against U S WEST Communications, Inc., now known as Qwest (''U S WEST'' or ''Defendant''). To avail themselves of the opportunity to participate in this hearing, the parties are required to file a written Notice of Appearance with the Office of the Commission Secretary, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in the HDO, within 20 days of the mailing of the HDO to the parties.

DATES: The HDO was mailed to the parties on August 1, 2001. The parties are required to file their Notice of Appearance by August 21, 2001.

ADDRESSES: Submit the Notice of Appearance to the Office of the Commission Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–204B, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Christopher N. Olsen, 202–418–7332

SUPPLEMENTARY INFORMATION: The Commission has previously ruled that the Defendants violated section 271 of the Communications Act of 1934, as amended, by providing certain long distance services without authorization. *See AT&T Corp.* v. *U S WEST Communications, Inc., File No. E–97–28, and MCI Telecommunications, Inc.* v. *U S WEST Communications, Inc., File No. E–97–40A*, Memorandum Opinion and Order, 2001 WL 128249, DA 01–418 (Enf. Bur. Feb. 16, 2001) (''Liability Order''). The HDO refers to an Administrative Law Judge the issue of the extent to which Complainants are entitled to damages from U S WEST for the violation of section 271 found in the Liability Order.

Federal Communications Commission.

Bradford M. Berry,

Deputy Chief, Enforcement Bureau.

[FR Doc. 01–19848 Filed 8–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fifth and sixth meetings of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000.

DATES: Tuesday, October 30, 2001 at 10:00 a.m. to 12:00 p.m. and Friday, January 4, 2002 at 10:00 a.m. to 12:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW. Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson at 202–418–0845 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to identify and recommend measures that would enhance network reliability.

At the October 4, 2001 meeting, the Council will receive reports on, and discuss, the progress of its focus groups: Network Reliability, Wireline Spectrum Management and Integrity, and Interoperability. At the January 4, 2002 meeting, the Council will determine what if any final recommendations on topics within these focus areas to present to the Commission. The Council may also discuss such other matters as come before it at these meetings. Members of the general public may attend the meetings. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meetings to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*KNILSSON@FCC.GOV*) or U.S. mail (7–B452, 445 12th St. SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at http://www.fcc.gov/.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–19844 Filed 8–7–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No. 010746–010.
Title: Columbus/P&O Nedlloyd Space Charter and Sailing Agreement.
Parties:
Hamburg-Sud, d/b/a Columbus Line
P&O Nedlloyd Limited
Synopsis: The proposed modification adds minimum service levels under the agreement with respect to sailings and TEUs moving in the U.S.-Australian trades.

Agreement No.: 011517–008.
Title: APL/Crowley/Lykes/Evergreen Vessel Sharing Agreement.
Parties:
American President Lines, Ltd.
APL Co. PTE Ltd.
Lykes Lines Limited, LLC
Evergreen Marine Corp. (Taiwan) Ltd.
Hamburg-Sud, d/b/a Columbus Line and Crowley American Transport
Synopsis: In addition to renaming the agreement, the proposed amendment:

adds Columbus Line as a d/b/a of Hamburg-Sud; adds Uruguay, Paraguay, and the Bahamas to the scope of the agreement; restructures the arrangement of the parties; deletes rate authority; and revises the understanding of the parties with respect to the duration of the agreement.

Agreement No.: 011642–005.

Title: East Coast United States/East Coast of South America Vessel Sharing Agreement.

Parties:

A.P. Moller-Maersk Sealand

Safmarine Container Lines N.V.

P&O Nedlloyd, Limited

P&O Nedlloyd, B.V.

Oceanica AGW Com. E Rep. Ltda.

Compania Sud Americana de Vapores, S.A.

Companhia Libra de Navegacao S.A.

Alianca Navegacao e Logistica Ltda.

Hamburg-Sud, d/b/a Columbus Line and Crowley American Transport

Synopsis: The proposed amendment: adds Safmarine Container Lines N.V. as a party to the agreement; adds Crowley American Transport as a d/b/a of Hamburg-Sud; adds language clarifying the relationship of the parties; revises allocations; authorize Hamburg-Sud to sub-charter space from within its allocation to parties to FMC Agreement No. 011517; authorizes ad hoc purchase and sale of slots between the agreement parties and the parties to FMC Agreement No. 011517; and revises the understanding of the parties with respect to the duration and termination of the agreement.

Agreement No.: 201125.

Title: Manatee County Port Authority and Port Manatee Forestry Terminal, Inc. Agreement.

Parties:

Manatee County Port Authority

Port Manatee Forestry Terminal Inc.

Synopsis: The proposed agreement provides for the construction and use of a transit warehouse. The initial term of the agreement is for one year after which the term will be year to year.

Dated: August 3, 2001.

By order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 01–19918 Filed 8–7–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary 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 the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Costa Freight, Inc., 17800 Castleton Street, #695, City of Industry, CA 90740. Officers: Peter Sun, Vice President (Qualifying Individuals), James Zhang, President.

Allied Transport System (USA) Inc., 145–43 226th Street, Springfield Gardens, NY 11413. Officers: Thomas J. Serkes, President (Qualifying Individual), David Franschman, Vice President.

DJR Logistics, Inc., 2002 F. Greentree Executive Campus, Lincoln Drive West, Marlton, NJ 08053. Officer: Dennis J. Rowles, President (Qualifying Individual).

Energy Freight Systems, 15935 Morales—Building B, Suite 100, Houston, TX 77032. Officer: Rafael Fernandez, President (Qualifying Individual).

Xpress Freight Services, Inc., 10125 NW 116 Way, Suite 16, Miami, FL 33178. Officers: Richard Teixeira, Treasurer (Qualifying Individual), Annette de Freitas, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Cargo Partner Network, Inc., 149–40, 182nd Street, Suite B, Jamaica, NY 11413. Officers: Fergal Keenan, Secretary (Qualifying Individual), Robert Galbavy, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Bank Shipping of P.R., Inc., Caribbean Airport Facilities Bldg., Suite 216, LMM Int'l Airport Cargo Area, Carolina, P.R. 00979, Officers: Carmen J. Martinez, Vice President (Qualifying Individual), Juan Carlos Diaz, President.

Green Freight L.L.C., 1107 First Avenue, Suite 1101, Seattle, WA 98101, Officers: Amy Stocker, Vice President (Qualifying Individual), David Cannon, President.

Dated: August 3, 2001.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 01–19917 Filed 8–7–01; 8:45 am]

BILLING CODE 6730–01–P

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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 September 4, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Citigroup, Inc., New York, New York; Citigroup Holdings Company, Wilmington, Delaware; and Citicorp, New York, New York; to acquire 100 percent of the voting shares of Citibank USA, N.A., Sioux Falls, South Dakota (currently known as Hurley State Bank).

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. AmeriBank Holding Company, Collinsville, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Oklahoma, Collinsville, Oklahoma.

Board of Governors of the Federal Reserve System, August 2, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–19812 Filed 8–7–01; 8:45 am]

BILLING CODE 6210–01–S

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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 September 4, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Oswego Community Bank Employee Stock Ownership Plan, Oswego, Illinois; to acquire an additional 19.69 percent, for a total of 47 percent, of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois, and thereby indirectly acquire additional voting shares of Oswego Community Bank, Oswego, Illinois.

Board of Governors of the Federal Reserve System, August 3, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–19890 Filed 8–7–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: LIHEAP Quarterly Allocation Estimates Form ACF–535.

OMB No.: 0970–0037.

Description: The LIHEAP Quarterly Allocation Estimates Form–535 is a one-page form that is sent to 50 State grantees and the District of Columbia. It is also sent to Tribal Government grantees that receive over $1 million annually for the Low Income Home Energy Assistance program (LIHEAP). Grantees are asked to complete and submit the form in the 4th quarter of each year. The data collected on the form are the grantee's estimates of obligations they expect to make each quarter of the upcoming fiscal year. This is the only method used to request anticipated distributions of the grantee's LIHEAP funds. The information is used to develop apportionment requests and make grant awards based on each grantee's need. Information collected on this form is not available through any other Federal source. Submission of the form is voluntary.

Respondents: 50 States, the District of Columbia and Tribal governments that receive over $1 annually.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–535	55	1	.25	14
Estimated Total Annual Burden Hours				14

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 2, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–19827 Filed 8–7–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL).

Program: Refinancing Loan Application/Promissory Note (OMB No. 0915–0227)—Revision—The HEAL Program allows borrowers who graduated or separated from school to refinance all of their HEAL loans into one new HEAL loan, often at better rates and terms than their original HEAL loans. The HEAL program originally provided new federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, graduate students in health administration or clinical psychology through September 30, 1998. Eligible lenders, such as banks, savings and loan associations, credit unions, pension funds, insurance companies, State agencies, and HEAL schools are insured by the Federal Government against loss due to the borrower's death, disability, bankruptcy, and default. The basic purpose of the program was to assure the availability of funds for loans to eligible students who needed to borrow money to pay for their educational costs.

The HEAL refinancing loan application/promissory note is being used by lenders to refinance borrower's original HEAL loans into one new refinanced loan. Due to the success of this form and desire to reduce application processing time many lenders have automated this form by taking pertinent application information over the telephone and sending the completed form to the borrower for their review and signature.

The estimate of burden for the refinancing loan application/promissory note form per year is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per responses (minutes)	Total burden hours
Applicants	1,850	1	1,850	12	370
Lenders	9	206	1,854	30	927
Total	1,859		3,704		1,297

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 2, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–19853 Filed 8–7–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Planning & Performance Management; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Department of the Interior.

ACTION: Notice and request for comment.

SUMMARY: To comply with the requirements of the Paper Reduction Act (PRA) of 1995, we are inviting comments on an information collection request (ICR) that we will submit to the Office of Management and Budget (OMB) for review and approval. The ICR is entitled ''DOI Programmatic Clearance for Customer Satisfaction Surveys.'' The Department of the Interior (DOI) is soliciting comments on this ICR concerning the development and use of voluntary customer satisfaction surveys to gather input and feedback from the public.

DATES: Please submit written comments by October 9, 2001.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Office of Policy, Management and Budget; Office of Planning and Performance Management; Attention: Alan Turco; Mail Stop 5258; 1849 C Street, NW., Washington, DC 20240. If you wish to email comments, the email address is: Alan_Turco@os.doi.gov. Reference ''DOI Programmatic Clearance for Customer Satisfaction Surveys'' in your email subject line. Include your name and return address in your email message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alan Turco, Office of Planning and Performance Management, telephone (202) 219–2257. You may also contact Alan Turco to obtain a copy at no cost of the collection of information that will be submitted to the Office of Management and Budget.

SUPPLEMENTARY INFORMATION:

Title: DOI Programmatic Clearance for Customer Satisfaction Surveys.

OMB Control Number: 10XX–XXXX.

Abstract: The mission of DOI is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities. DOI's Strategic Plan Overview (FY 2000–2005) lays out five goals: (1) Protect the environment and preserve our Nation's natural and cultural resources; (2) provide recreation for America; (3) manage natural resources for a healthy environment and a strong economy; (4) provide science for a changing world; and (5) meet our trust responsibilities to Indian Tribes and our commitments to island communities. Each bureau has established goals requiring collaboration and communication with the public—our partners and customers. Part of this communication occurs through surveys of the different users and stakeholders of DOI's products and services.

In the spirit of the PRA, DOI is consolidating its ICRs related to customer surveys for DOI offices and bureaus into one programmatic ICR. This single ICR will ease the public

burden by submitting a generic format and set of standards that all customer-survey-related collections would follow in DOI. Because DOI's bureaus and offices have different customer and stakeholder groups, there will not be one ''boiler-plate'' approach to customer research. The ICR will describe those differences, where apparent. Although, where applicable, similar questions will be asked in the surveys of the bureaus and offices to allow better bench marking of customer service throughout DOI.

Background

The Government Performance and Results Act (GPRA) of 1993 (Pub. L. No. 103–62) sets out to ''improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction'' (Section 2. b. 3). In order to fulfill this responsibility, DOI's bureaus and offices must collect data from their respective user groups to (1) better understand the needs and desires of the public and (2) respond to those needs and desires accordingly.

This course of action is fortified by Executive Order (E.O.) 12862 (September 11, 1993) aimed at ''ensuring the Federal Government provides the highest quality service possible to the American people.'' The E.O. discusses surveys as a means for determining the kinds and qualities of service desired by the Federal Government's customers and for determining satisfaction levels for existing service. These voluntary customer surveys will be used to ascertain customer satisfaction with DOI's bureaus and offices in terms of services and products. Previous customer surveys have provided useful information to DOI's bureaus and offices for assessing how well we deliver our services and products, making improvements, and reporting on annual performance goals as set out in GPRA-related documents. The results are used internally, and summaries are provided to OMB on an annual basis and are used to satisfy the requirements and spirit of E.O. 12862.

Furthermore, E.O. 12862 requires agencies to provide a ''means to address customer complaints.'' To that end, bureaus and offices may use customer comment cards as an opportunity for customers to provide feedback to the agencies on the service they have received. Other methodologies discussed below also can meet this need.

In addition to GPRA and E.O. 12862, the statutes, regulations, and Secretarial Orders that created each of the bureaus and offices further enhance the need to engage the public and deliver quality products and services to our customers. Agency policies and procedures seek to promote quality customer service.

DOI's bureaus and offices anticipate performing their customer surveys under one ICR. In this proposal, DOI would request that OMB review the procedures and question areas for these surveys as a program, rather than reviewing each survey individually. Each bureau and office will then develop a survey instrument from the topic areas discussed below. Under the procedures proposed here, DOI would conduct the necessary quality control, including assurances that the individual survey comports with the guidelines in this proposed programmatic ICR, and submit the particular survey instruments and methodologies for expedited review to OMB.

Participating Bureaus and Offices

The proposed ICR covers most of the organizational agencies in DOI. However, the National Park Service, which has one of the most mature social science programs in the Federal Government, will continue under its own separate clearance given the complexity and specificity of their program. DOI's bureaus and offices covered under the proposed ICR include:

- Bureau of Indian Affairs
- Bureau of Land Management (BLM)
- Bureau of Reclamation
- US Fish & Wildlife Service
- Office of Insular Affairs
- Minerals Management Service
- Office of the Secretary
- Office of Surface Mining
- US Geological Survey (USGS)

Current Actions

The request to OMB will be for a 3-year clearance to conduct customer satisfaction surveys by DOI's bureaus and offices. USGS and BLM, who have developed customer research programs, are currently operating under 3-year programmatic clearances. Other participating bureaus and offices have handled their ICRs on a case-by-case basis.

For example, under existing approvals, USGS in 2000 surveyed users of the on-line National Atlas, State and Federal land managing and natural resource agencies, customers of Eros Data Center (digital data and maps), and customers of Earth Science Information Centers (topographic maps, USGS publications). Over the last 3 years, BLM has surveyed users of recreation areas, grazing permittees, oil and gas permittees, stakeholders and partners, and public room users, as well as conducted focus groups with various customer groups. These collections occur through one of six methodologies: (1) Intercept (a customer interacting in person with one conducting the survey); (2) telephone interviews; (3) mail surveys; (4) web-based surveys; (5) focus groups; and (6) voluntary use of comment cards.

Examples of previously conducted customer surveys are available upon request. Our planned activities in the next 3 fiscal years reflect our increased emphasis on and expansion of these activities throughout DOI.

Methodology

Customer Surveys: In all customer research, the goal of DOI is to employ the best statistical models that, in turn, will lead to the best data from which sound management decisions can be made. To that end, a 70 percent response rate has been set as a base threshold, with a goal of achieving an 80 percent response rate.

Different user and stakeholder groups function and interact with the respective bureaus and offices in different ways. In order to meet the response rate goal, six different methodologies will be available for use. The methodology will be chosen based on achieving statistical accuracy while keeping the cost as low as possible. The six methodologies that DOI's bureaus and offices will employ are: (1) Intercept, (2) telephone interviews, (3) mail surveys, (4) web-based surveys, (5) focus groups, and (6) comment cards. In all cases, the goal is to achieve a 95 percent confidence level for a specified degree of statistical accuracy. The total number of respondents sought for each survey will be based on achieving this level. In most cases, the respondent base will be pulled from a randomized sample of the user population, and where necessary, a stratified sample will be used to achieve accurate statistical measures at the appropriate National, State, or regional level. In some cases where the user population is small, the entire population will need to be surveyed.

Intercept: In a face-to-face situation, the survey instrument is provided to a respondent who completes it while on site and then returns it. The survey proctor is prepared to answer any questions the respondent may have about how to fill out the instrument but does not interfere or influence how the respondents answer the questions. This methodology provides the highest response rate—typically between 90–95 percent.

Telephone: Using existing databases, an interviewer will contact customers who have had a specific experience with the agency. The interviewer will dial back until the customer has been reached. Once contacted, the survey respondent is given a brief introduction to the survey, including its importance and use. The interviewer will then expeditiously move through the survey questions. When this methodology is employed, the typical response rate is between 70 and 85 percent, depending on the customer group.

Mail: Using existing lists of customer addresses, a three contact-approach based on Dillman's ''Tailored Design Method'' will be employed. The first contact is a cover letter explaining that a survey is coming to them and why it is important to the agency. The second contact will be the survey instrument itself along with a postage-paid addressed envelope to return the survey. The third contact will be a reminder postcard sent 10 days after the survey was sent. Finally, the respondents will receive a letter thanking them for the willingness to participate in the survey and reminding them to return it if they have not already done so. At each juncture, the respondents will be given multiple ways to contact someone with questions regarding the survey (including phone, FAX, web, and email). If the survey has been lost, the respondent can request that another be sent to them. Electronic mail is sometimes used instead of postal mail to communicate with customers. Although this is a cost-effective mode to survey a large group of people, it does not usually generate the best response rate. Telephone calls to non-respondents can be used to increase response rates.

Web-based: For products or services that are provided through electronic means, whether e-commerce or web-based information, a web survey may be most appropriate. During the course of their web interaction, users can volunteer to add their name to a list of future surveys. From this list, a respondent pool will be selected in accordance with the sampling procedures outlined above. An email will be sent to them explaining the need and importance of the survey with a web link to the survey. Within 5 days, a follow-up email will be sent to the respondents reminding them to complete the survey. Finally, the respondents will receive an email thanking them for the willingness to participate in the survey and reminding them to complete it if they have not already. The respondent will always have the option to submit the survey in paper form, should they elect to do so.

Focus Groups: Some data and information are best collected through more subjective, conversational means. A focus group is an informal, small-group discussion designed to obtain in-depth qualitative information. Individuals are specifically invited to participate in the discussion. Participants are encouraged to talk with each other about their experiences, preferences, needs, observations, or perceptions. A moderator whose role is to foster interaction leads the conversation. The moderator makes sure that all participants are encouraged to contribute and that no individual dominates the conversation. Furthermore, the moderator manages the discussion to make sure it does not stray too far from the topic of interest. Focus groups are most useful in an exploratory stage or when the bureau/office wants to develop a deeper understanding of a program or service.

Using the best in focus group research practices, groups will be constructed to include a cross-section of a given customer group. The questions and additional probes used during the focus groups will be consistent with the ''guideline menu'' discussed below.

Comment Cards: As discussed in the Background section above, agencies have been instructed to provide a means to address customer complaints. To facilitate this, comment cards may be employed. Comment cards, when provided to a customer at the time a product or service is provided, offer an excellent means to give the bureaus and offices feedback. A comment card should have a limited number of questions and an opportunity to comment. These comment cards provide managers and service providers with direct, specific, and timely information from their customers about new service problems as they crop up, or extraordinary performance, that could not be obtained through any other means.

Electronic users may be offered the opportunity to complete a comment card via a ''pop-up'' window (or other web-enable means that may be available). The ''pop-up'' window will not appear for every user; rather, the users will be randomly selected to receive the survey. This practice is widely used in private industry. In other instances, the electronic user may be offered the option to self-select in answering the electronic comment card.

Whether using paper or electronic comment cards, the intent is to provide a timely feedback mechanism. The data are not intended to be statistically significant. Although questions may include numeric scales, those data should be considered only in an anecdotal fashion and not reported as a significant measure.

Remuneration/Incentives: A great deal of the literature related to customer satisfaction research recommends that incentives, monetary and non-monetary, be used to increase response rates. Bureaus and offices acting in a regulatory role would not seek to provide remuneration to their permittees, for example. Bureaus and offices, though, that operate in a more service-related mode, such as wildlife refuge visitation, may find incentives to be both helpful and appropriate. Specific remuneration/incentives are not being proposed here, but we are interested in the public's input as to their need and appropriateness.

Topic Areas. DOI's bureaus and offices propose to survey customers in the following general categories:

- Authorized public land users (rights-of-way, land management transactions, mining, recreation, oil and gas, grazing, wildlife photographers, hunters, fishers, etc.)
- Coal operators
- Contractors/venders
- Disabled persons and groups representing disabled persons
- Educators/researchers
- Environmental groups
- Government representatives (State, local, and foreign)
- Grant recipients
- Indian Tribes/Alaskan Natives/Native Americans
- Industry groups (i.e., mining, oil and gas)
- Insular governments
- Interested publics/special interest groups
- Law enforcement authorities, customs brokers, and brokers' associations
- Local communities
- Public information center users
- Scientific data users and technical assistance recipients
- State wildlife agencies' representatives
- Trade organizations
- Utilities' representatives
- Visitors/Recreation
- Volunteers (past, present, prospective)

See ''Table: Customer Types by Participating Bureau/Office'' for details. This table shows the likely groups that would be surveyed by each bureau and office but is not intended to limit the bureau and office to only these groups.

There are 11 topic areas that DOI's bureaus and offices are proposing to voluntarily obtain information from its customers and stakeholders. No one survey will cover all the topic areas;

rather, this serves as a ''guideline menu'' from which the agencies would develop their questions. Example(s) of the types of questions that would be asked under each topic are provided. Under the proposed ICR, the agencies could use these specific questions or develop questions that fit within the generally understood confines of the topic area.

With the exception of the general demographic questions, the questions will be answered on a Lichert Scale (i.e., choose one of the following: strongly agree, agree, not sure, disagree, strongly disagree; on a scale of 1 to 5, 1 being very poor and 5 being excellent, etc.), from a preset list of options (i.e., yes, no, not applicable), or as an open-ended question. For questions that use the Lichert scale and a preset list of options, the data will be reported in a numeric fashion, including average response and percent favorable. Open-ended questions will be subjected to a content analysis and be reported on accordingly.

1. Communication/information/education:

a. Providing consistent and timely information to the public.

b. Where did you obtain your information about this site?

c. Making it easy for people to find out about proposed changes.

d. Educating people about particular processes.

e. Providing accurate, detailed and affordable maps and brochures.

f. Providing useful web site, signs, publications, and exhibits

g. Charging an appropriate fee for the information/material provided.

h. The information provided was effective and helpful.

i. Providing quality web-based information.

j. Engaging the public in the planning process.

2. Disability accessibility:

a. Do you or does someone in your party have a disability?

b. If yes, how well does the agency make buildings, facilities, and trails accessible to people with disabilities?

c. Accessibility to the programs and activities that address my needs.

3. Facilities:

a. Maintaining roads and trails.

b. Maintaining a clean recreation site.

c. Providing entrance/directional signs to sites and facilities.

d. Providing a facility that is conducive to meeting specific user needs.

4. Management practices:

a. Responding to issues and problems in a timely manner.

b. Providing access to a supervisor to resolve the problem.

c. Understanding my needs.

d. If you could make one improvement to XXX service, what would it be?

5. Resource protection and use:

a. The extent to which the natural resources are used and cultural resources are protected.

b. Getting public input when identifying critical areas for preservation and use.

c. Preserving water resources and habitat for fish, wildlife, plants, and other uses.

6. Rules, regulations, policies:

a. Ensuring public awareness of rules and regulations.

b. Ensure fair and consistent policies for all users.

c. The rules, regulations, and policies are clear and in plain language.

d. Providing adequate protest and appeal policies to resolve issues and disputes.

7. Service delivery:

a. Provided a single point of contact.

b. The staff I interacted with are courteous and friendly.

c. The staff I interacted with are knowledgeable about the rules and regulations.

d. The staff I interacted with are able to answer my questions about natural, historic, and cultural resources.

e. The staff listened to and considered my ideas.

f. The training I received provided the information I needed.

g. The response was timely.

8. Technical assistance:

a. Provides unbiased scientific and technical support products and services.

b. Reflects reasonable pricing.

c. Quality of the execution of the analysis and interpretation.

d. Considered alternative interpretations.

e. Provides useful information.

9. Program-specific: (These questions will reflect the specific details of the program that pertain to the customer respondents. The questions will be developed to address very specific and/or technical issues related to the program. The questions will be geared toward gaining a better understanding about how to provide specific products and services as well as the priority the public would give to specific program objectives; they will not ask the respondents for their opinions about policies.)

10. Overall satisfaction:

a. Everything considered, how would you rate your overall satisfaction with the delivery of XXX program or service?

b. Values my relationship as a customer.

c. Is an agency I will contact or visit again for information and services.

d. Is an agency I trust to do a good job performing XXX mission.

11. General demographics:

a. What is your zip code?

b. How many times have you used this service in the previous 12 months?

c. How many people are in your group?

d. What activities did you participate in?

e. What was your total household income (before taxes) in 2000 (less than $20,000; $20,000 to $39,999; $40,000 to $59,999; $60,000 to $79,999; $80,000 to $99,999; $100,000 to $119,999; $120,000 or more)?

f. What is the highest level of education you have completed (some high school or less; high school graduate or GED; business school, trade school, or some college; college graduate; some graduate school; masters, Ph.D., or professional degree)?

g. What is the primary language spoken at home? (i.e., English, Spanish)

h. In what ethnic group would you place yourself (Hispanic/Latino or non-Hispanic/Latino)?

i. In what race would you place yourself (American Indian, Eskimo, Aleut; Asian or Pacific Islander; Black or African America; White; Native Hawaiian)? Select one or more.

Uses of Data: Chiefly, these data are being collected to improve the service and products that the participating bureaus and offices provide to the public. Managers and program specialists use these data to identify:

- Service needs and priorities of customers
- Strengths and weaknesses of services
- Ideas or suggestions for improvement of services from our customers
- Barriers to achieving customer service standards
- Changes to customer service standards
- Establishing baselines to measure change in improving service delivery over time
- Improving public trust in government

They also use this information to support all aspects of planning, from buildings, roads, and interpretive exhibits, to technical systems. In conducting their management, planning, and monitoring activities, managers also use the information to effectively allocate their limited personnel and financial resources to the highest priority elements.

While the information will not be used for budgetary development, DOI anticipates that the information obtained could lead to reallocation of

resources, revisions in certain agency processes and policies, and development of guidance related to the agency's customer services. Ultimately, these changes should result in improvement in services DOI provides to the public and, in turn, the public perception of DOI.

In fulfilling the requirements of GPRA, DOI and all of its bureaus and offices have created a Strategic Plan in coordination with their respective publics. GPRA requires DOI and its bureaus to annually report on their progress toward achieving the goals outlined in the Annual Performance Plan. Some of the data collected may be used as the basis or in support of specific performance measures.

Frequency: The frequency varies by survey.

Estimated Number and Description of Respondents: See attached ''Table: Customer Types by Participating Bureau/Office'' for list of respondents. This table shows the likely groups that would be surveyed by each bureau and office but is not intended to limit the bureau and office to such groups.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The average public reporting burden for a customer survey is estimated to be 15 minutes per respondent. For comment cards, the average public reporting burden is estimated to be 3 minutes per response. Given these estimates, DOI anticipates a need to budget 18,000 hours per year for these proposed collections. 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 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 information. Please comment on the accuracy of our estimates and how DOI's bureaus and offices could minimize the burden of the collection information, including the use of automated techniques.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour costs'' burdens.

Comments: The PRA provides that a Federal 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. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Furthermore, we are interested in your comments regarding the need for and appropriateness of remuneration/incentives, or other suggestions you may have to increase response rates. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burden.

Agencies must estimate both the ''hour'' burden and ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified any non-hour cost burdens for the information collection aspects of the programmatic customer satisfaction survey. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period of which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you, as a commenter, wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or business, and from individuals identifying themselves as representatives of organizations or businesses, available for public inspection in their entirety.

Dated: July 9, 2001.

Norma Campbell,

Director, Office of Planning and Performance Management.

TABLE—CUSTOMER TYPE BY PARTICIPATING BUREAU/OFFICE

	description	BIA	BLM	BOR	FWS	Insular aff	MMS	OAPM	OEP	OSM	USGS
Authorized public land uses	ROW, Land Mgmt transactions, min	X									
Coal operators										X	
Contractors/venders	concessionaires	X			X			X			
Disabilities			X		X						
Environmental groups			X		X		X				X
Governments	state, local, foreign	X	X	X	X		X				X
Grant recipients								X			
Indian Tribes/Alaskan villages		X			X					X	X
Industry groups			X	X	X		X	X			X
Insular governments						X					
Interested publics	community and specific-interest groups forensics, importers/exporters.			X	X		X			X	X
Law Enforcement					X						
Mining companies											X
Public information centers			X		X						
Scientific data users	GIS				X						
State governments		X	X	X	X		X			X	X
State wildlife agencies	state biologists	X			X						
Universities/Educators				X	X		X	X	X		
Utilities				X							
Visitors/Recreation	visitors to federal land, bird watcher		X	X	X						

[FR Doc. 01–19828 Filed 8–7–01; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Final Restoration Plan and Environmental Assessment

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a Natural Resource Trustee (Trustee), announces the release of the Final Restoration Plan and Environmental Assessment (RP/EA) for Operable Unit 3 (OU–3) of the Asbestos Dump Superfund Site, Morris County, New Jersey. The Final RP/EA describes the DOI's selected action to restore natural resources injured as a result of chemical contamination at the Asbestos Dump Superfund Site.

ADDRESSES: Requests for copies of the Final RP/EA may be made to: U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232.

FOR FURTHER INFORMATION CONTACT: Clay Stern, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232. Interested parties may also call 609–646–9310, x27 or send electronic mail to clay—stern@fws.gov.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), * * * ''[Trustees] may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages.'' Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources. At OU–3 of the Asbestos Dump Superfund Site in Morris County, New Jersey, DOI was the sole natural resource trustee involved in the Federal government's settlement with the National Gypsum Corporation (NGC). The Service, acting on behalf of the DOI, determined that contamination at OU–3 had degraded and injured trust resources within the Great Swamp National Wildlife Refuge. The injuries resulted from the deposition of asbestos containing materials, and mercuric and lead based compounds at the 5.58-acre site.

As part of a Consent Decree requiring remedial actions at OU–3, DOI settled with NGC for natural resource damages. The settlement of approximately $3.6 million was designated for restoration, replacement, or acquisition of the equivalent natural resources injured by the release of contaminants at the site.

The Final RP/EA is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part 11. The Final RP/EA describes several natural resource restoration, acquisition, and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative is to use the settlement funds in a combination of projects aimed to restore, enhance, and protect in perpetuity, fish and wildlife habitat within the Great Swamp Watershed. Details regarding the proposed projects are contained in the Final RP/EA.

The Final Revised Procedures for the DOI in implementing the National Environmental Policy Act were published in the **Federal Register** on January 16, 1997. Under those procedures the DOI has determined that the Preferred Alternative will not have significant environmental effects as described in the Draft RP/EA and the attached Finding of No Significant Impact Statement. Accordingly, the Preferred Alternative described in the Draft RP/EA will not require preparation of an Environmental Impact Statement.

Author

The primary author of this notice is Clay Stern, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Pleasantville, New Jersey, 08232.

Authority

The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*).

Dated: July 24, 2001.

Mamie A. Parker,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 01–19850 Filed 8–7–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Whiskeytown-Shasta-Trinity National Recreation Area, Whiskeytown Unit, Shasta County, CA Notice of Intent To Prepare an Environmental Impact Statement for Fire Management Plan

SUMMARY: Notice is hereby given, in accord with provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), that public scoping has been initiated for a conservation planning and environmental impact analysis effort intended to update the Fire Management Plan (FMP) for the Whiskeytown National Recreation Area. The purpose of the scoping process is to elicit early public comment regarding current issues and concerns, a suitable range of alternatives, the nature and extent of potential environmental impacts, appropriate mitigating measures, and other matters which should to be addressed in the draft Environmental Impact Statement (EIS).

Background: The Whiskeytown-Shasta-Trinity National Recreation Area was created by Congress in 1965. The Whiskeytown Unit is administered as a unit of the National Park Service (NPS), with the Shasta and Trinity units of the National Recreation Area administered by the USDA Forest Service. Research has shown that fire is a significant natural process across a large portion of the 42,500 acres within the authorized boundaries of the park. Following several decades of total fire suppression, a fire management program was begun in the 1970s and has continued to the present time. Three forms of wildland fire management have been used to achieve natural and cultural resource management and hazard fuel reduction goals; aggressive suppression of unwanted wildfires; prescribed burning; and mechanical fuel reduction.

The last revision of the FMP was based upon completion of an Environmental Assessment process, which culminated in a Finding Of No Significant Impact approval of the program in 1993. However, since that time a broad range of new issues, improved information and technology, and unforeseeable limitations have emerged which have the potential to affect the future direction of the fire management program within the park. Some of these issues include but are not limited to: a continued decline in ecosystem health due to fire suppression; increased hazardous fuels buildup; expanding uses and development at the wildland-urban interface; increased risks and costs

associated with fire suppression; increased interest in mechanical manipulation, especially in accessible areas; and more stringent air quality regulations.

Comment Process: As noted, the NPS will undertake a conservation planning and environmental impact analysis effort to identify issues and alternatives for fire management on land administered by the Whiskeytown Unit. The FMP scoping phase will build upon preliminary outreach made for public comments on fire management planning conducted during this past winter (2000–2001), as well as relevant information from the General Management Plan (approved in 2000). Public concerns expressed recently with regard to the Whiskeytown Unit's FMP address air quality, the wildland/urban interface zone, public safety, and the ecological role of fire. A summary of public concerns compiled to date is available at the address below. The park seeks to elicit a wide range of comments from organizations, individuals, agencies, Tribes, and other entities to fully inform the preparation of the draft EIS. All scoping comments must be received by September 15, 2001. Periodic updates and other information will be announced via local and regional media, as well as posted on the parks website at *www.nps.gov/whis/exp/newslinks.htm.*

During the scoping period a public meeting will held to: present information developed to date; to answer questions about the existing FMP, pending update, and planning process; and to solicit and accept comments from the public. This meeting will be held in the Redding area in a public hall. The location, date and time of this meeting will be announced on the above website, and via local and regional media. All interested individuals, organizations, and agencies are invited to attend this meeting or\and provide written comments or suggestions during the scoping period.

All scoping comments should be submitted in writing, and must be postmarked or transmitted not later than September 15, 2001. Please send all comments to: Superintendent, Whiskeytown National Recreation Area, P. O. Box 188, Whiskeytown, CA 96095 (Attn: Fire Management Plan). Electronic comments may be transmitted to *whis_planning@nps.gov* (in the subject line type: Fire Management Plan Scoping).

If individuals submitting comments request that their name or\and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondents identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: The official responsible for a final decision regarding the Fire Management Plan is the Regional Director, Pacific West Region, National Park Service. The official responsible for implementation is the Superintendent, Whiskeytown-Shasta-Trinity National Recreation Area, Whiskeytown Unit. The draft EIS and fire management plan are expected to be available for public review and comment in the fall of 2001. At this time it is anticipated that the final EIS and fire management plan are to be completed during the winter 2001-spring 2002. Distribution of both the draft and final EIS documents will be duly noticed in the **Federal Register**, as well as via local and regional media.

Dated: July 13, 2001.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 01–19810 Filed 8–7–01; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–440]

In the Matter of Certain 4-Androstenediol; Termination of Investigation; Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation and issued a limited exclusion order.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of the limited exclusion order and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930, 19 CFR part 1337, in the importation and sale of certain 4-androstenediol (a nutritional supplement used by body-builders) on December 19, 2000. 65 FR 79424. On April 19, 2001, complainant LPJ, Inc. of Seymour, Illinois (LPJ) moved pursuant to 19 U.S.C. 1337(a)(1) and 19 CFR 210.16 for an order directing the only respondent, Changzhou Huabang Pharmaceutical Group, Ltd. (Changzhou), to show cause why it should not be found in default for failure to respond to LPJ's complaint. The Commission investigative attorney (IA) supported LPJ's motion. The presiding administrative law judge (ALJ)(Judge Luckern) issued Order No. 8 on April 30, 2001, directing Changzhou to show cause why it should not be found in default. Changzhou did not respond to that order.

On May 24, 2001, the ALJ issued an ID finding Changzhou in default pursuant to 19 CFR 210.16, and ruling that Changzhou had waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. No petitions for review of the ID were filed. The Commission decided not to review the ID on June 8, 2001, thereby allowing it to become the Commission's final determination under 19 CFR 210.42. 66 FR 32374 (June 14, 2001). On June 25, 2001, pursuant to 19 U.S.C. 1337(g)(1) and 19 CFR 210.16(c)(1), complainant LPJ filed a declaration seeking limited relief against the defaulting respondent. In its declaration, LPJ requested that the Commission issue a limited exclusion order against Changzhou.

The Commission solicited comments from the parties, interested government agencies, and other persons concerning the issues of remedy, the public interest, and bonding. 66 FR 95809 (July 9, 2001). Complainant and the IA filed proposed remedial orders and addressed

the issues of remedy, the public interest, and bonding. No comments were filed by government agencies or other interested persons.

Section 337(g)(1) of the Tariff Act of 1930 provides that the Commission shall presume the facts alleged in a complaint to be true, and upon request issue a limited exclusion order and/or cease and desist order if: (1) A complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited to that person. Such an order shall be issued unless, after considering the effect of such exclusion, the Commission finds that such exclusion should not be issued.

The Commission found that each of the statutory requirements for the issuance of a limited exclusion order was met with respect to defaulting respondent Changzhou. The Commission further determined that the public interest factors enumerated in section 337(g)(1) did not preclude the issuance of such relief. Finally, the Commission determined that bond under the limited exclusion order during the Presidential review period shall be in the amount of twenty-nine (29) percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.16 (c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.16.

Issued: August 2, 2001.
By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–19834 Filed 8–7–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; aircraft/vessel report.

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 October 9, 2001.

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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Aircraft/Vessel Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–92 Inspection Division, 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. This form is part of the manifest requirements of Sections 231 and 251 of the 1 & N Act and is used by the INS and other agencies for data collection and statistical analysis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 11 minutes (1.83) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 129,600 annual burden hours.

If you have additional connects, 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 4034, 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. Ricahrd 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, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20536.

Richard A. Sloan,

Director, Department Clearance Officer, United States Department of Justice, Immigration and Naturlization Service.

[FR Doc. 01–19865 Filed 8–7–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; application for waiver of grounds of excludability.

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 October 9, 2001.

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: Extension of a currently approved information collection.*

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–690. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information on the application will be used by the Service in considering eligibility for legalization under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21 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 4034, 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, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: July 26, 2001.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 01–19866 Filed 8–7–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on-Employee, Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an ''Advisory Council on Employee Welfare and Pension Benefit Plans'' (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multi employer plan); three representations of employers (at least one of whom shall be representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs institute under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her function under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress ERISA.

The terms of five members of the Council expire on November 14, 2001. The groups or fields they represented are as follows: employee organizations, insurance, accounting, employers and the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a board-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 2001. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC, this 2nd day of August, 2001.

Ann L. Combs,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration.

[FR Doc. 01–19868 Filed 8–7–01; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 16, 2001 through July 27, 2001. The last biweekly notice was published on July 25, 2001 (66 FR 38756).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 7, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: May 24, 2001.

Description of amendment request: Generic Letter 96–04 informed all licensees of the issues concerning the use of Boraflex in spent fuel storage racks. In an October 15, 1996, response to the generic letter, the licensee stated that a reevaluation of the criticality analysis for the Oyster Creek fuel racks would be performed to consider Boraflex degradation including boron carbide loss. A reevaluation of the Oyster Creek criticality analysis including consideration of Boraflex degradation has been performed and the licensee is asking for review and approval of the proposed change to its licensing basis of spent fuel racks containing Boraflex.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident of concern is a fuel bundle drop onto the top of a storage rack as described in DPR–16 License Amendment No. 76 dated September 17, 1984 and DPR–16 License Amendment No. 121. This accident was previously considered in an analysis that calculated the reactivity of two unpoisoned fuel assemblies separated only by water. The analysis shows a separation of 2.5 inches results in a reactivity $k\infty$ of 0.90. For a fuel assembly lying horizontally on the top of a rack, the separation distance would be $\simeq$ 14 inches. Since only water separation is considered and no credit is taken for Boraflex, there is no effect on this accident as described in the SAR [Safety Analysis Report].

The SAR identifies that k_{eff} for the spent fuel shall not exceed 0.95 accounting for uncertainties. This criticality analysis, which includes consideration of Boraflex degradation, shows the spent fuel pool K_{eff} will remain below 0.95 with a 95% probability at the 95% confidence level. Therefore, the revised criticality analysis for Boraflex degradation does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The change does not involve any plant systems associated with plant operation so safe plant operation will not be affected. This analysis does include a new consideration (dissolution of the Boraflex in the fuel racks) that had not been previously considered.

Nuclear safety is not effected [affected] since the required margin to criticality is maintained with consideration of Boraflex degradation. The current analysis uses the conservative assumption of coplanar gaps (i.e., all gaps occurring at the same axial plane). This is a very conservative assumption given gap measurement data at Oyster Creek and in the industry that shows an axial distribution of gaps.

The proposed criticality analysis utilizes an axial distribution of gaps. The analysis is based on the same fuel design and enrichment as the previous analysis, a GE7 8x8 fuel design having 4.0% enrichment and seven rods containing 3.0% Gd_3O_8 depleted to peak reactivity. The analysis assumes shrinkage up to 4.2% of panel length, gaps of 5.89 inches occurring in 75% of the panels, and 10% thinning (4 mils) of the panel thickness. The analysis conforms to regulatory and industry guidelines for criticality analyses and the calculated k_{eff} provides 95% probability at the 95% confidence level. The design limit is 0.9410 (5.0% design margin plus calculational uncertainity) and the spent fuel pool k_{eff} is 0.9381 including manufacturing uncertainties. This establishes the acceptability of the assumed Boraflex degradation against design limits.

The analysis, which includes the effect of Boraflex degradation, demonstrates that k_{eff} in the fuel racks remains below the license requirement of 0.95. The possibility of a new or different kind of accident from any accident previously evaluated is not created since k_{eff} remains below 0.95 when Boraflex degradation mechanisms are considered and the change does not involve any plant systems or procedures associated with plant operation.

(3) Involve a significant reduction in a margin of safety.

As stated in Oyster Creek Technical Specification Section 5.3.1, the fuel pool k_{eff} is limited to 0.95 to assure [ensure] an ample margin to criticality. The new analysis demonstrates this margin is maintained given the Boraflex degradation assumed in the analysis that is based on industry and Oyster Creek specific observations and testing. The new analysis revises the Boraflex gap assumption to use a random axial distribution of gaps rather than a more conservative coplanar (gaps in same location in all fuel bundles) distribution. The axial distribution is more representative of actual gap locations observed at Oyster Creek (based on Blackness and BADGER testing) and other plants with similar rack designs. The assumption remains conservative since all Boraflex gaps are assumed to occur in the upper three-quarters of the rack height. This results in an over estimation of gaps in a smaller area that increases the reactivity penalty. Since the required k_{eff} limit of 0.95 is not exceeded, and the analysis remains conservative, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Richard Correia, Acting.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: June 15, 2001.

Description of amendments request: The proposed amendments delete requirements from the Technical Specifications (TSs) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were

generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated June 15, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 17, 2001.

Description of amendment request: By letters dated October 4, 2000, and December 14, 2000, Carolina Power & Light Company (CP&L) submitted license amendment requests to revise the Harris Nuclear Plant (HNP) Operating License and Technical Specifications (TS) to support steam generator replacement (SGR) and to allow operation at an uprated reactor core power level of 2900 megawatts thermal (Mwt). CP&L, in its letter of July 17, 2001, proposed to revise the Final Safety Analysis Report (FSAR) Chapter 15 accident analyses, which had been previously submitted as part of the October 4, 2000, SGR amendment request. The proposed revision to the accident analyses would adopt the alternate source term (AST) methodology, using the guidance of Nuclear Regulatory Commission (NRC) Regulatory Guide 1.183.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The licensee's analysis is limited to its request to use the AST methodology for the accident analyses. The NRC staff's proposed no significant hazards consideration determination for the SGR amendment request, published in the **Federal Register** on November 1,

2000 (65 CFR 65338), and the Notice of Consideration of Issuance to Amendment to Facility Operating License and Opportunity for Hearing for the power uprate, published on February 6, 2001 (66 CFR 9110), remain valid for the other aspects of the SGR and power uprate amendment requests.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

An alternative source term calculation has been performed for HNP which demonstrates that dose consequences remain below limits specified in NRC Regulatory Guide 1.183 and 10 CFR 50.67. The proposed change does not modify the design or operation of the plant.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change is the implementation of the alternate source term methodology consistent with NRC Regulatory Guide 1.183. The proposed change does not significantly affect any of the parameters that relate to the margin of safety as described in the Bases of the TS or FSAR. Accordingly, NRC Acceptance Limits are not significantly affected by this change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Patrick M. Madden, Acting.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: July 16, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 3.1.A, ''Reactor Coolant System Operational Components,'' 3.1.B, ''Reactor Coolant System [RCS] Heatup and Cooldown,'' 3.2, ''Chemical and Volume Control System,'' 3.3.A, ''Engineered Safety Feature Safety Injection and Residual Heat Removal Systems,'' and 4.3, ''Reactor Coolant System Integrity Testing,'' to incorporate revised reactor pressure vessel pressure-temperature limits to allow operation up to 25 effective full-power years (EFPY). The proposed amendment would also make changes to the associated TS Bases sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. There are no physical changes to the plant being introduced by the proposed changes to the heatup and cooldown limitation curves. The proposed changes do not modify the RCS pressure boundary. That is, there are no changes in operating pressure, materials, or seismic loading. The proposed changes do not adversely affect the integrity of the RCS pressure boundary such that its function in the control of radiological consequences is affected. The proposed heatup and cooldown limitation curves were generated in accordance with the fracture toughness requirements of 10CFR50 Appendix G, and ASME B&PV Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code], Section XI, Appendix G in conjunction with ASME Code Cases N–640 and N–588. The proposed heatup and cooldown limitation curves were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of RPV [reactor pressure vessel] beltline materials. Use of this methodology provides compliance with the intent of 10CFR50 Appendix G and provides margins of safety that ensure non-ductile failure of the RPV will not occur.

The proposed heatup and cooldown limitation curves prohibit operation in regions where it is possible for non-ductile failure of carbon and low alloy RCS materials to occur. Hence, the primary coolant pressure boundary integrity will be maintained throughout the limit of applicability of the curves, 25 EFPY. Operation within the proposed OPS [overpressure protection system] limits ensures that overpressurization of the RCS at low temperatures will not result in component stresses in excess of those allowed by the ASME B&PV Code Section XI Appendix G.

Consequently, the proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes to the heatup and cooldown limitation curves were generated in accordance with the fracture toughness requirements of 10CFR50 Appendix G and ASME B&PV Code, Section XI, Appendix G in conjunction with ASME Code Cases N–588 and N–640. Compliance with the heatup and cooldown limitation curves will ensure that conditions in which non-ductile failure of the RCS pressure boundary materials is possible will be avoided. Compliance with the proposed OPS limits will ensure that the RCS will be physically protected against overpressurization events during low temperature operation when the fracture toughness properties of the carbon and low alloy components are at their lowest.

No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Further, the proposed changes to the heatup and cooldown limitation curves and the OPS limits do not affect any activities or equipment other than the RCS pressure boundary and are not assumed in any analysis to initiate or mitigate any accident sequence. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The proposed TS changes do not involve a significant reduction in the margin of safety.

The revised heatup and cooldown limitation curves and OPS limits provide more operating flexibility than the current heatup and cooldown limitation curves. Industry experience since the inception of pressure-temperature limits in the 1970s confirms that some of the original methodologies used to develop the heatup and cooldown limitation curves are overly conservative. Accordingly, ASME Code Cases N–588 and N–640 take advantage of the acquired knowledge by establishing more realistic methodologies for development of the heatup and cooldown limitation curves. Therefore, operational flexibility is gained and an acceptable margin of safety to reactor pressure vessel non-ductile type fracture is maintained.

The revised heatup and cooldown limitation curves and OPS limits are established in accordance with current regulations and the ASME B&PV Code 1996 version. These proposed changes are acceptable because the ASME B&PV Code maintains the margin of safety required by

10CFR50.55(a). Because operation will be within these limits, the RCS materials will continue to behave in a ductile manner consistent with the original design bases.

The proposed changes to the allowable operation of charging and safety injection pumps when OPS is required to be operable is consistent with the IP2 [Indian Point 2] licensing bases but implements the licensing bases in a more conservative manner than the current TS. The change in OPS surveillance frequency has been previously evaluated by the NRC to involve an insignificant increase in risk. That insignificant increase in risk is offset by the adverse effects of the alternatives of either 1.) delaying forced cooldowns until OPS testing is complete; 2.) complicating cooldown operations by imposition of limits required when OPS is inoperable; or 3.) conducting OPS testing periodically while at power.

Therefore, Con Edison has concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: Richard P. Correia (Acting).

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 31, 2001.

Description of amendment request: The proposed amendment would increase the allowed outage time (AOT) for one inoperable emergency diesel generator (EDG) from 72 hours to 14 days to allow the performance of various maintenance and repair activities while the plant is operating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to increase the EDG AOT from 72 hours to 14 days will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The EDGs are not accident initiators, and extending the EDG AOT will not impact the frequency of any previously evaluated accidents. The design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 Final Safety Analysis Report (FSAR). In addition, extending the EDG AOT will not impact the consequences of an accident previously evaluated. The consequences of previously evaluated accidents will remain the same during the proposed 14 day AOT as during the current 72 hour AOT. The ability of the remaining EDG to mitigate the consequences of an accident will not be affected since no additional failures are postulated while equipment is inoperable within the Technical Specification AOT. The remaining EDG is sufficient to mitigate the consequences of any design basis accident. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to allow verification of offsite circuit(s) within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. Performing a verification of the offsite circuits does not require any equipment manipulations or operator actions that could cause a previously evaluated accident to occur. Providing the flexibility to verify offsite circuit availability before removing equipment from service will reduce the potential to establish an adverse plant configuration. The design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 FSAR. In addition, allowing an early verification of offsite circuit(s) will not impact the consequences of an accident previously evaluated. The consequences of previously evaluated accidents will remain the same whether the verification is performed immediately after, or just before, an EDG or offsite circuit is removed from service. The ability of the remaining power sources to mitigate the consequences of an accident will not be affected since no additional failures are postulated while equipment is inoperable within the Technical Specification AOT. The remaining power sources are sufficient to mitigate the consequences of any design basis accident. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes associated with the requirements for the pressurizer heaters to be supplied by emergency power will not result in any change in plant design. These components will continue to be powered from Class 1E power sources. As a result, the operation and reliability of the pressurizer heaters will not be affected by the proposed changes. In addition, operation of the pressurizer heaters is not assumed to mitigate any design basis accident. The proposed changes will not cause an accident to occur and will not result in a change in the operation of any accident mitigation equipment. The design basis accidents remain the same postulated events described in the Millstone Unit No. 2 FSAR. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

The additional change to add the requirement to verify that the steam driven auxiliary feedwater (SDAFW) pump is operable when one EDG is inoperable will ensure sufficient auxiliary feedwater capability is available if a loss of offsite power were to occur. Operation of the SDAFW pump will not be affected by the proposed change, and the SDAFW pump is not an accident initiator. Verifying operability of the SDAFW pump will not impact the frequency of any previously evaluated accidents. The design basis accidents will remain the same postulated events described in the Millstone Unit No. 2 FSAR. The ability of the SDAFW pump to mitigate the consequences of an accident will not be affected. Therefore, the proposed change will not increase the probability or consequences of an accident previously evaluated.

The additional proposed changes to renumber action requirements and remove a footnote that is no longer valid will not result in any technical changes to the current requirements. Therefore, these additional proposed change[s] will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component in a manner that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operators following an accident will not be significantly different. In addition, the proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification change to increase the EDG AOT from 72 hours to 14 days and allow verification of offsite circuit(s) within 1 hour prior to or after entering the condition of an inoperable offsite source or inoperable EDG does not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed Technical Specification change, in conjunction with the administrative controls, provides adequate assurance of the capability to supply power to the safety related Class 1E electrical loads thereby ensuring the accident mitigation functions will be

maintained. The availability of offsite power combined with the availability of the Millstone Unit No. 3 Station Blackout diesel generator and the use of the Configuration Risk Management Program required by 10 CFR 50.65(a)(4) provide adequate compensation for the small incremental increase in plant risk of the proposed EDG AOT extension. This small increase in plant risk while operating is offset by a reduction in shutdown risk resulting from the increased availability and reliability of the EDGs during refueling outages, and avoiding transition risk incurred during unplanned plant shutdowns. In addition, the calculated risk measures associated with the proposed AOT are below the acceptance criteria defined in Regulatory Guide 1.177, An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' dated August 1998. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The proposed Technical Specification changes associated with the requirements for the pressurizer heaters to be supplied by emergency power do not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The emergency power requirement for the pressurizer heaters, which came from the Three Mile Island (TMI) action item requirement item ll.E.3.1, Emergency Power Requirements for Pressurizer Heaters,'' of NUREG–0737, ''A Clarification of TMI Action Plan Requirements,'' will continue to be met. The pressurizer heaters are permanently connected to Class 1E power supplies as described in the Millstone Unit No. 2 FSAR. Therefore, these changes will not result in a significant reduction in a margin of safety.

The additional more restrictive change to add the requirement to verify that the SDAFW pump is operable when one EDG is inoperable will not adversely affect equipment design or operation, and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. Operation of the SDAFW pump will not be affected by the proposed change. Therefore, this change will not result in a significant reduction in a margin of safety.

The additional proposed changes to renumber action requirements and remove a footnote that is no longer valid will not result in any technical changes to the current requirements. Therefore, these additional changes will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385 Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 2, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TS) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated July 2, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 2, 2001.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TS) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated July 2, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation,

procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 9, 2001.

Description of amendment request: This Technical Specification (TS) change removes TS requirements that will no longer be applicable following replacement of the part-length control element assemblies (PLCEAs) with five-element full-length control element assemblies (CEAs) and removal of the four-element CEAs on the core periphery.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature and maintain the conservative restrictions on the operation of the CEAs. Chapter 15 of the Waterford 3 [Waterford Steam Electric Station, Unit 3] Safety Analysis Report identifies the analyses associated with the CEAs. These analyses are evaluated in the development of the Reload Analysis for each fuel cycle, and the appropriate limitations to insure acceptable analysis results are incorporated in the Core Operating Limits Report (COLR) for the fuel cycle. The modifications replacing the part-length CEAs with full-length CEAs and removing the four-element CEAs will be evaluated under the 10 CFR 50.59 process prior to implementation. The Reload Analysis and changes to the COLR are also evaluated under the 10 CFR 50.59 process prior to incorporating the identified changes.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes introduce no new mode of plant operation and are considered to be administrative in nature. Operating experience has shown that the full-length CEAs are capable of controlling the axial power distribution function intended for the part-length CEAs. The part-length CEAs will be replaced with the same type of full-length CEAs used in the shutdown and regulating CEA groups. Removal of the four-element CEAs provides no mechanism for creating a new or different kind of accident.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed changes may improve overall safety margins. Replacements of the part-length CEAs with full-length CEAs will allow Entergy [Operations, Inc.,] to credit these CEAs in the shutdown margins calculations. The worth of the four-element CEAs being removed from the core is relatively small in the modern low-leakage core design used at Waterford 3. Therefore, the removal of the four-element CEAs in combination with the replacement of the part-length CEAs with full-length CEAs will result in an overall increase in the net CEA worth. This will result in an increase in the available shutdown margin during reactor operation.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N. S. Reynolds, Esquire, Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: June 26, 2001.

Description of amendment request: The proposed amendments would extend the dates specified in Operating License Sections 2.C(8) and 3.P, ''Pressure-Temperature Limit Curves,'' for Dresden Nuclear Power Station, Units 2 and 3, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to the operating license to extend the limitations on the use of the [Pressure-Temperature] P–T limits does not affect the operations or configuration of any plant equipment. Thus, no new accident initiators are created by this change.

The proposed change extends the use of the pressure-temperature (P–T) limits for an additional cycle of operation on each unit. The P–T limits are based on the projected reactor pressure vessel (RPV) neutron fluence at 32 effective full power years (EFPYs) of operation. At the end of the next cycle of operation, the Dresden Nuclear Power Station (DNPS) units will have attained a maximum of 67.5% of the 32 EFPY operating times. Separately, we submitted a license amendment request to permit operation with an extended power uprate (EPU). Even with an approximately 17% increase in reactor power for one cycle due to the EPU, this provides significant margin to ensure that the current 32 EFPY fluence projection of 5.1×10^{17} n/cm^2 will not be exceeded. This ensures that the basis for proposed applicability of the P–T limits is conservative and that the RPV integrity is protected under all operating conditions. Therefore, neither the probability nor the consequences of an accident are increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the operating license to extend the limitations on the use of the P–T limits does not affect the operation or configuration of any plant equipment. The current P–T limits will remain valid and conservative during the proposed extension. Thus, no new or different accidents are created by this proposed change.

Therefore, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change extends the use of the P–T limits for an additional cycle of operation on each unit. The P–T limits are based on the projected RPV neutron fluence at 32 EFPYs of operation. At the end of the next cycle of operation, the DNPS units will have attained a maximum of 67.5% of the 32 EFPY operating times. In a separate license amendment request, ComEd submitted a license amendment request to permit operation with an extended power uprate (EPU). Even with an approximately 17% increase in reactor power for one cycle due to the EPU, this provides sufficient margin to ensure that the current 32 EFPY fluence projection of 5.1×10^{17} n/cm^2 will not be exceeded. This ensures that the basis for the P–T limits is conservative and therefore ensures that the reactor pressure vessel integrity is protected under all operating conditions. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 15, 2001 (RS–01–117).

Description of amendment request: The proposed amendments would allow the use of ATRIUM 10 fuel from Framatome Advanced Nuclear Fuel, Inc.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to LaSalle County Station, Unit 1 and Unit 2 Technical specification (TS), add the fuel analytical methods to TS Section 5.6.5, ''Core Operating Limits Report (COLR),'' that support insertion of Framatome Advanced Nuclear Fuel, Inc. (i.e., Framatome) ATRIUM 10 fuel.

LaSalle County Station Unit 1, is scheduled to load ATRIUM 10 fuel during its upcoming outage in November 2001. The proposed changes to TS Section 5.6.5 will add the fuel analytical methods that support the initial insertion of ATRIUM 10 fuel tot he list of methods used to determine the core operating limits. The addition of approved methods to TS Section 5.6.5 has no effect on any accident initiator or precursor previously evaluated and does not change the manner in which the core is operated. The NRC approved methods have been reviewed to ensure that the output accurately models predicted core behavior, have no affect on the type or amount of radiation released, and have no affect on predicted offsite doses in the event of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to TS Section 5.6.5 do not affect the performance of any LaSalle County Station structure, system, or component credited with mitigating any accident previously evaluated. The insertion of a new generation of fuel which has been analyzed with NRC approved methodologies will not affect the control parameters governing unit operation or the response plant equipment to transient conditions. The proposed changes do not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes to TS Section 5.6.5 will add the ATRIUM 10 fuel analytical methods to the list of methods used to determine the core operating limits. The additional methods have been previously approved by the NRC for use by licensees. The proposed changes do modify the safety limits or setpoints at which protective actions are initiated, and do not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Robert Helfrich, Senior Counsel, Nuclear, Mid-West regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, IL 60515.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 15, 2001 (RS–01–118).

Description of amendment request: The proposed amendments would modify Technical Specification (TS) Section 3.5.1, ''ECCS–Operating,'' Surveillance Requirement (SR) 3.5.1.8. The proposed changes will eliminate the requirement that the Automatic Depressurization System (ADS) designated Safety/Relief Valves (S/Vs) open during the manual actuation of the ADS and changes the SR frequency to require the testing of all required ADS manual actuation solenoids during the performance of SR 3.5.1.8 in lieu of on a staggered basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes modify Technical Specifications (TS) Section 3.5.1, ''ECCS—Operating,'' Surveillance Requirement (SR) 3.5.1.8. The proposed changes will eliminate the TS requirement that the Automatic Depressurization System (ADS) designated Safety/Relief Valves (S/RVs) open during the manual actuation of the ADS and rewords the SR frequency to require the testing of all required ADS manual actuation solenoids during the performance of SR 3.5.1.8 in place of testing on a staggered basis. The performance of ADS valve testing is not a precursor to any accident previously evaluated and does not change the manner in which the ADS is operated. Thus, the proposed changes to the performance of SR 3.5.1.8 do not have any affect on the probability of an accident previously evaluated.

The testing provides assurance that the ADS will functions as designed when actuated to depressurize the Primary Coolant System (PCS). The proposed changes to the surveillance requirement provide the same level of assurance regarding ADS reliability as the previous surveillance requirements. Accordingly, the consequences of an accident previously evaluated where the ADS was credited with mitigation is unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to SR 3.5.1.8 do not affect the performance of any LaSalle County Station structure, system, or component credited with mitigating any accident

previously evaluated since the proposed changes will provide the same level of confidence concerning the functioning of the ADS as the current requirements. Furthermore, the proposed changes do not install any new equipment, introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed changes do not create the possiblility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes to SR 3.5.1.8 will allow the uncoupling of the ADS valve lever from the other components associated with the manual actuation of the ADS valve. The proposed changes will allow the testing of the manual actuation electrical circuitry, manual actuation solenoid and air control valve, and the actuator without causing the ADS valve to open. The ADS valves will continue to be manually actuated by the bench-test valve control system of the setpoint testing program. The proposed changes do not affect the valve setpoint or the operational criteria that directs the ADS valves to be manually opened during plant transients.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Robert Helfrich, Senior Counsel, Nuclear, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, IL 60515.

NRC Section Chief: Anthony J. Mendiola.

Exelon Energy Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 23, 2001

Description of amendment request: The proposed change would delete the loose parts monitoring system (LPMS) and the associated Technical Specifications (TSs) and Bases currently contained in the Limerick Generating Station, Units 1 and 2 Technical Specifications. The licensee bases its proposal to delete the LPMS on the conclusions of the Boiling Water Reactor Owners' Group Tropical Report NEDC–32975P, ''Regulatory Relaxation for BWR Loose Parts Monitoring Systems''.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

This Technical Specification (TS) Change Request will delete the Loose Parts Monitoring System and the associated Technical Specifications and Bases currently contained in the Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications. The Loose Parts Monitoring System (LPMS) is not an accident initiating system. The LPMS was designed in conformance with Regulatory Guide 1.133 (''Loose-Parts Detection Program for the Primary System of Light-Water-Cooled Reactors,'' Revision 1, May 1981), to detect and alarm for loose parts in the reactor coolant system. A secondary function of the system is to assist the operators in locating the detected loose parts. The LPMS is used for information purposes only and is not a safety-related system. The operators do not rely solely on this system or information provided by this system for the performance of any safety-related action. Review of the Updated Final Safety Analysis (UFSAR) indicates that this system is not relied upon by other systems for input or data. This is a monitoring system that does not perform any automatic or control functions, and is not relied upon for any accident or transient evaluation. The removal of the LPMS from operation will not increase the need for operator intervention or increase operator burden to support any system used to mitigate an accident under normal or off normal conditions. Therefore, the proposed changes will not significantly increase the probability of an accident previously evaluated.

The removal of the LPMS will not change or degrade the physical barriers or systems designed to contain radiation, and will have no affect on the on-site or off-site radiological conditions. Therefore, the proposed TS changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This TS Change Request will delete the Loose Parts Monitoring System and the associated Technical Specifications and Bases currently contained in the LGS, Units 1 and 2, Technical Specifications. Removal of this system will not create a new mode of operation of the plant. The LPMS is a nonsafety-related monitoring system. The proposed changes do not create a system-level failure mode different than those that already exist. In addition, there are no operation or failure modes of the LPMS that are accident initiators. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

This TS Change Request does not affect any safety limits or analytical limits. Also there are no changes to accident or transient core thermal hydraulic conditions, or fuel or reactor coolant boundary design limits, as a result of these proposed changes. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

Date of amendment request: June 1, 2001.

Description of amendment request: The proposed amendment would revise the Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TS) 3.6.1.7 drywell average air temperature limit from 135 °F to 145 °F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The increase in the allowable drywell average air temperature does not make any physical changes to the plant; it only permits the plant to operate at a higher drywell average air temperature, and therefore, does not increase the probability of an accident previously evaluated.

The LGS Mark II containment design was evaluated during Power Rerate using an initial temperature of 150 degrees Fahrenheit for the Loss-of-Coolant Accident (LOCA) due to an instantaneous double-ended rupture of a recirculation suction line. The results of this evaluation showed that the drywell air temperature does not exceed the limit of 340 degrees Fahrenheit post-accident and that the peak drywell pressure does not exceed the design

limit of 55 psig. In addition, the containment analysis performed for Power Rerate also bounds the small break LOCA.

Since the proposed change allows a drywell air temperature that remains within the design analysis value, this proposed change does not increase the consequences of an accident previously evaluated in the Safety Analysis Report (SAR). This proposed change does not adversely affect mitigating systems, structures or components (SSC), and does not adversely affect the initial conditions of any accidents. Redundancy and diversity of mitigating systems are unchanged as a result of this proposed change. This proposed change does not affect onsite or offsite radiological consequences of any accident previously evaluated in the SAR.

Based on the above discussion, this proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the drywell average air temperature proposed by this TS change does not change any SSC of the plant. This TS change does not create new operating or failure modes.

Based on the above discussion, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in the margin of safety.

This proposed change will allow the plant to operate at a higher drywell average temperature during normal operation. This change does not create additional heat loads or change the way any of the equipment is operated. The equipment will remain within the limitations of the equipment qualification (EQ) program, which is qualified/maintained based on operation at an average annual temperature of 145 degrees Fahrenheit.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Beaver County, Pennsylvania

Date of amendment request: March 28, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements to credit the soluble boron in the fuel storage pool analyses. This amendment would revise the index, modify TS 3.9.14, ''Fuel Storage—Spent Fuel Storage Pool,'' add TS 3.9.15, ''Fuel Storage Pool Boron Concentration,'' modify applicable Bases and revise Design Feature Section 5.3.1.1, ''Criticality.'' TS 3.9.14 would be modified by separating this specification into two specifications to support crediting soluble boron in the fuel storage pool. The revised TS 3.9.14 would provide controls for fuel assembly enrichment and burnup in the spent fuel pool and also include an increase in the maximum enrichment from 4.85 weight percent (w/o) to 5.0 w/o. A new TS 3.9.15 would provide control for soluble boron requirements in the spent fuel pool. Separating this specification into two specifications follows the general guidance provided in the improved standard TS (ISTS) of NUREG–1431.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Because of the Boraflex deterioration that has been observed, the spent fuel racks have been reanalyzed neglecting the presence of Boraflex to allow storage of Westinghouse 17 x 17 fuel assemblies with nominal enrichments up to 5.0 weight percent (w/o) using credit for checkerboarding, burnup and soluble boron. The proposed changes will not have a significant impact on the safety of the plant or on the spent fuel storage pool and are consistent with the NRC approved changes identified for other plants (i.e., Prairie Island Units 1 and 2, Vogtle Units 1 and 2). Criteria set forth in Table 3.9–1 provide qualification requirements for fuel assembly storage to ensure the NRC acceptance criteria and accident analysis assumptions are satisfied. Increasing the enrichment from 4.85 w/o up to and including 5.0 w/o U–235 [uranium 235] has minor effects on the radiological source terms and subsequently the potential releases, both normal and accidental, are not significantly affected.

The proposed Technical Specification changes credit the use of soluble boron in the spent fuel pool criticality analyses. These criticality analyses were performed using the NRC approved methodology developed by the Westinghouse Owners Group (WOG) and described in WCAP–14416–NP–A, Revision 1, ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology,'' November 1996. The analysis includes evaluations that factor in the axial burnup bias correction and utilizing identified conservatisms in the analysis demonstrate that K_{eff} remains less than or equal to the design limits.

The proposed changes do not involve a change to plant equipment and do not affect the performance of plant equipment used to mitigate an accident. They do not affect the operation of the spent fuel pool cooling system or any other system and are consistent with applicable analyses including [those associated with postulated] fuel handling accidents. They will not affect the ability of any system to perform its design function; therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There are no hardware changes associated with this license amendment nor are there any changes in the method by which any safety-related plant system performs its safety function. No new accident scenarios, transient precursors, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed changes do not introduce any adverse effects or challenges to any safety-related systems.

The potential criticality accidents have been reanalyzed to demonstrate that the pool remains subcritical. Soluble boron has been maintained in the fuel storage pool water since its initial operation. The possibility of a fuel storage pool dilution is not affected by the proposed changes to the Technical Specifications. Therefore, implementation of Technical Specification controls for the soluble boron will not create the possibility of a new or different kind of accidental pool dilution.

With credit for soluble boron now a major factor in controlling subcriticality, an evaluation of fuel storage pool dilution events was completed. This evaluation concluded that no credible events would result in a reduction of the criticality margin below the 5% margin recommended by the NRC. In addition, the No Soluble Boron 95/95 probability/confidence level criticality analysis assures that dilution to 0 ppm [parts per million] will not result in criticality.

The proposed Technical Specification changes ensure the maintenance of the fuel pool boron concentration and storage configuration. Therefore, the proposed changes will not create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not affect the acceptance criteria for any analyzed event

nor impact any plant safety analyses since the analysis assumptions are not changed. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since the proposed changes do not affect equipment required to mitigate design basis accidents described in the Updated Final Safety Analysis Report. The Technical Specifications continue to assure that applicable operating parameters are maintained within required limits.

The proposed changes to the fuel storage pool boron concentration and storage requirements will provide adequate margin to assure that the fuel storage array will always remain subcritical by the 5% margin recommended by the NRC. These limits are based on a criticality analysis performed in accordance with NRC approved Westinghouse fuel storage rack criticality analysis methodology.

While criticality analysis utilized credit for soluble boron, the storage configurations have been defined using K_{eff} calculations to ensure that the spent fuel rack K_{eff} will be less than 1.0 with no soluble boron. Soluble boron credit is used to offset off-normal conditions (such as a misplaced assembly) and to provide subcritical margin such that the fuel storage pool K_{eff} is maintained less than or equal to 0.95.

The spent fuel pool boron dilution analysis concludes that an unplanned or inadvertent event which would result in dilution of the spent fuel pool boron concentration from 2000 ppm to 450 ppm is not a credible event. This conclusion is based on the substantial volume of unborated water required to dilute the pool and the fact that a large dilution event would be readily detected by plant personnel via alarms, flooding in the fuel handling building or detected during normal operator rounds through the spent fuel pool area.

The margin of safety depends upon maintenance of specific operating parameters within design limits. The Technical Specifications continue to require that these limits be maintained and provide appropriate remedial actions if a limit is exceeded. The maintenance of these limits continues to be assured through performance of surveillances. Therefore, the plant will be maintained within the analyzed limits and the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard P. Correia, Acting.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station (DBNPS), Unit 1, Ottawa County, Ohio

Date of amendment request: May 22, 2001.

Description of amendment request: The proposed amendment would revise the once-through steam generator (OTSG) tube repair roll requirements to (1) Utilize updated limiting tensile tube loads, (2) define new exclusion zones within the steam generator in which the application of the repair roll is prohibited, (3) allow the repair roll to be used in the lower tubesheet area, (4) remove the limitation of only one repair roll per OTSG tube, and (5) replace the requirement that the repair roll be one inch in length with a requirement that the repair roll be installed in accordance with Framatome Technologies Incorporated Report BAW–2303P, revision 4, ''OTSG Repair Roll Qualification Report.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1a. Not involve a significant increase in the probability of an accident previously evaluated because testing and analysis have shown the once-through steam generator (OTSG) tube repair roll process under the proposed revised Technical specification (TS) Surveillance Requirement (SR) 4.4.5.4 ensures the new pressure boundary joint created by the repair roll process provides adequate structural and leakage integrity for all normal operating and accident conditions. In addition, the removal of the name ''Babcock & Wilcox'' is an administrative change to reflect that Framatome ANP has succeeded the Babcock & Wilcox Company. Therefore, the proposed changes to SR 4.4.5.4 will not increase the probability of a previously evaluated accident.

The proposed change to TS Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not involve an increase in the probability of an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the repair roll process under the proposed revised SR 4.4.5.4 ensures the new pressure boundary joint created by the repair roll process provides adequate structural and leakage integrity under all accident conditions. Any leakage resulting from repair roll joint slippage under accident conditions will be accounted for to ensure that the post-accident OTSG leakage will not exceed that assumed in the accident analyses. Should a repaired tube fail, the radiological consequences would be bounded by the existing Steam Generator Tube Rupture analysis.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not involve an increase to the consequences of an accident previously evaluated.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because there will be no change in the operation of the steam generators or connecting systems as a result of the repair roll process added by the proposed changes to SR 4.4.5.4. The physical changes in the steam generators associated with the repair roll process have been evaluated and do not create the possibility for a new or different kind of accident from any accident previously evaluated, i.e., the physical change in the steam generators is limited to the location and accident slip behavior of the primary to secondary boundary within the tubesheet. Accordingly, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not create the possibility of any new or different kind of accident.

3. Not involve a significant reduction in a margin of safety because tubes with primary system to secondary system boundary joints created by the repair roll process have been shown by testing and analysis to satisfy all structural, leakage, and heat transfer requirements. The additional testing of tubes repaired by the repair roll process under existing SR 4.4.5.9 provides continuing inservice monitoring of these tubes such that inservice degradation of tubes repaired by the repair roll process will be detected. Therefore, the changes to SR 4.4.5.4 to modify the repair process do not reduce and margin of safety.

The proposed change to Bases 3/4.4.5 reflects the changes proposed to its associated SR, and does not reduce the margin of safety.

On the basis of the above, the Davis-Besse Nuclear Power Station has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: July 18, 2001.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.9.4, Containment Penetrations. TS 3.9.4.a. requires that the containment equipment door be closed during core alterations or movement of irradiated fuel within containment. The proposed changes to TS 3.9.4.a. would allow the containment equipment door to be open during core alterations and movement of irradiated fuel in containment provided: (a) The equipment door is capable of being closed with four bolts, (b) the plant is in MODE 6 with at least 23 feet of water above the reactor vessel flange, and (c) a designated crew is available to close the door. The basis for the proposed changes is a reanalysis of the limiting design basis Fuel Handling Accident, using an Alternate Source Term in accordance with 10 CFR 50.67 and Regulatory Guide (RG) 1.183.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3.9.4 would allow the containment equipment door and both doors of each containment airlock to be open during fuel movement or core alterations. Currently, the equipment door is closed with four (4) bolts during fuel movement or core alterations to prevent the escape of radioactive material in the event of an in-containment fuel handling accident. The containment equipment door is not an initiator of an accident. Whether the containment equipment door is open or closed during fuel movement and core alterations has no effect on the probability of any accident previously evaluated.

Allowing the containment equipment door to be open during fuel movement or core alterations does not significantly increase the consequences from a fuel handling accident. The calculated offsite doses are well within the limits of 10 CFR Part 50.67 and RG 1.183. In addition, the calculated doses are larger than the expected doses because the calculation does not incorporate the closing of the containment equipment door after the containment is evacuated, which would occur in much less than the two hours assumed in the analysis.

The changes being proposed do not affect assumptions contained in other plant safety analyses or the physical design of the plant, nor do they affect other Technical Specifications that preserve safety analysis assumptions. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Technical Specification 3.9.4, ''Containment Building Penetrations,'' affect a previously evaluated fuel handling accident. Both the current and the revised fuel handling accident analyses assume that all of the iodine and noble gases that become airborne, escape and reach the site boundary and low population zone with no credit taken for filtration, for the containment building barrier, or for decay or deposition. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety has not been significantly reduced. The calculated dose is well within the limits given in 10 CFR Part 50.67 and RG 1.183. The proposed changes do not alter the bases for assurance that safety-related activities are performed correctly or the basis for any Technical Specification that is related to the establishment of or maintenance of a safety margin. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Patrick M. Madden.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: July 18, 2001.

Description of amendment request: The proposed amendments would change the title of the corporate executive responsible for overall plant nuclear safety from ''President-Nuclear Division'' to ''Chief Nuclear Officer,'' in Technical Specification (TS) Section 6.0.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature, changing the title of the corporate executive responsible for overall plant nuclear safety, and would not involve a significant increase in the probability or consequences of an accident previously evaluated. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect TS that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS are administrative in nature, changing the title of the corporate executive responsible for overall plant nuclear safety in the Turkey Point Units 3 and 4 TS, and would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature, changing the title of the corporate executive responsible for overall plant nuclear safety in the Turkey Point Units 3 and 4 TS, and would not reduce any of the margins of safety. The operating limits and functional capabilities of the affected systems, structures, and components remain unchanged by the proposed amendments.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420

NRC Section Chief: Patrick M. Madden.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: April 11, 2001.

Description of amendment request: The proposed action would modify Technical Specification (TS) sections 4.2, ''Fuel Storage,'' and 5.6.5, ''Spent Fuel Pool Water Chemistry Program,'' by adding applicability statements that these sections apply only when irradiated fuel is stored in the fuel storage pool. The applicability statements will allow timely dismantlement of the fuel storage pool following removal of the last irradiated fuel assembly from the fuel storage pool to the onsite independent spent fuel storage installation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The requested license amendment involves addition of applicability statements to the design features for fuel storage and the program requirements for the spent fuel pool water chemistry program. These applicability statements will make the respective design features and program requirements applicable whenever irradiated fuel is stored in the fuel storage pool. Once irradiated fuel has been completely removed from the fuel storage pool and transferred to certified dry storage containers under a general [10 CFR] Part 72 license, these design features and program requirements for the fuel storage pool are no longer necessary. These design features include: the maximum allowable Uranium-235 enrichment in fuel assemblies stored in racks; minimum acceptable margin to criticality allowed in the design of the spent fuel racks; the nominal fuel cell spacing in the spent fuel rack design; the minimum allowable drainage prevention design elevation; the fuel assembly loading capacity of the fuel storage pool and the specified storage locations within the fuel storage pool for different fuel enrichments and burnup periods; and the maximum allowable number of standard fuel assemblies in consolidated form. The program requirements consist of the establishment, implementation and maintenance of a water chemistry program for the fuel storage pool to minimize the potential effects of corrosion.

The corresponding design features and program requirements for fuel storage in dry storage containers are specified in the container's certificate of conformance and safety analysis report. The corresponding design features currently include: fuel loading positions; fuel assembly limits including consolidated fuel and minimum cooling times versus burnup/initial enrichments. Descriptions of other design features of the UMS [Universal Multipurpose System] Storage System are found in the NAC [Nuclear Assurance Corporation]—UMS ® SAR [Safety Analysis Report]. The corresponding program requirements currently include specifications for canister vacuum drying pressure and helium backfill pressure which ensure that a sufficiently inert environment is produced within the canister to preclude or inhibit corrosion.

Since the design features and program requirements associated with fuel storage in the fuel storage pool do not significantly contribute to accident prevention or mitigation following the complete removal of irradiated fuel and since the corresponding design features and program requirements for fuel storage in dry storage containers are specified and controlled under other applicable license documents, these changes do not significantly increase the probability or the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested amendment involves the addition of applicability statements which will have the effect of making certain design features and program requirement associated with the fuel storage pool inapplicable when the fuel storage pool is no longer used for fuel storage. The corresponding design features and program requirements for fuel storage in dry storage containers are adequately specified in applicable license documents. The elimination of these design features and program requirements following complete removal of irradiated fuel from the fuel storage pool does not result in any new or different accident initiators from those already assumed in accidents previously evaluated, nor does it exacerbate any such accidents. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The safety margins produced as a result of the specification of design features and program requirements for fuel storage in the fuel storage pool are adequately maintained in corresponding design features and program requirements associated with fuel storage in dry storage containers. These corresponding design features and program requirements are specified in the dry storage container's certificate of conformance and safety analysis report. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Joseph Fay, Esquire, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, Maine 04578.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: April 6, 2001.

Description of amendment request: The proposed amendment would revise technical specification (TS) 5.5.10, ''Technical Specifications Bases Control Program,'' to provide consistency with the changes to 10 CFR 50.59 as published in the **Federal Register** (64 FR 53582) dated October 4, 1999. TS 5.5.10.b.2. would be revised to state: ''A change to the updated final safety analysis report or Bases that requires Nuclear Regulatory Commission approval pursuant to 10 CFR 50.59.'' In TS 5.5.10.b, a minor editorial change replaces the phrase ''changes do not involve'' with ''changes do not require.'' This change is consistent with the Nuclear Energy Institute Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–364 Revision 0, ''Revision to TS Bases Control Program to Incorporate Changes to 10 CFR 50.59.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deletes the reference to unreviewed safety question as defined in 10 CFR 50.59. Deletion of the definition of unreviewed safety question was approved by the NRC with the revision of 10 CFR 50.59. Consequently, the probability of an accident previously evaluated is not significantly increased. Changes to the TS Bases are still evaluated in accordance with 10 CFR 50.59. As a result, the consequences of any accident previously evaluated are not significantly affected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no direct effect on any safety analyses assumptions. Changes to the TS Bases that result in meeting the criteria in paragraph 10 CFR 50.59 (c)(2) will still require NRC approval pursuant to 10 CFR 50.59. This change is administrative in nature based on the revision to 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Al Gutterman, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Claudia M. Craig.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 26, 2000, as supplemented on October 6, 2000, and May 21, 2001. This notice supersedes a previous notice (65 FR 69065) published on November 15, 2000, that was based on the licensee's application for amendment dated September 26, 2000, as supplemented on October 6, 2000.

Description of amendment request: The proposed change would amend the Salem Nuclear Generating Station (Salem) Unit Nos. 1 and 2 Technical Specifications (TSs) to increase the as-found setpoint tolerance for the Pressurizer Safety Valves (PSV) from ±1% to ±3%; increase the as-found setpoint tolerance for the Main Steam Safety Valves (MSSV) from ±1% to ±3%; change the required action for reducing power when one or two MSSVs are inoperable; change the required action for three inoperable MSSVs to include a requirement to decrease the Power Range Neutron Flux High trip setpoint in addition to reducing power; and remove specifications and references related to plant operation with three Reactor Coolant System loops. The associated TS Bases sections will also be amended to reflect the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Changing the pressurizer and main steam safety relief valve lift setpoint tolerance from ±1% to ±3% does not significantly increase the probability of any accident previously evaluated. The only events initiated by the opening of these safety valves are the accidental depressurization of the Reactor Coolant System and accidental depressurization of the Main Steam System. These events are a result of an inadvertent lifting of these valves and do not depend on the safety valve lift setpoint or tolerance. Therefore, the likelihood that either of these events will occur has not been increased.

Analyses associated with the limiting overpressurization transients (Loss of External Electrical Load and/or Turbine Trip, and Single Reactor Coolant Pump Locked Rotor) have been performed that demonstrate that increasing the Pressurizer Safety Valve and Main Steam Safety valve lift setpoint tolerance to ±3% would result in primary and secondary side pressure responses less than the acceptance criteria of 110% of the design pressure. Therefore, since the proposed setpoint tolerance increase would not adversely impact current accident analysis assumptions, the proposed change would not result in an increase in consequences of an accident previously evaluated.

For operation with one or two inoperable main steam safety valves in one or more steam generators, changing the required action from a reduction of the power range high neutron flux trip setpoint to a reduction of the allowable reactor power level will not increase the consequences of any accident. With one or two inoperable Main Steam Safety Valves, the Loss of External Electrical Load and/or Turbine Trip event becomes limiting in terms of secondary side pressurization. The high flux trip does not provide any mitigation for this event. Other events limiting at power, that require the power range trip for mitigation, assume a safety analysis trip setpoint of 118% (based on a nominal trip setpoint of 109%) regardless of the initial power level. Therefore, the proposed change does not impact any of the accident analysis assumptions.

During an RCCA (Reactor Cluster Control Assembly) Bank Withdrawal at Power event, the Main Steam Safety Valves may lift to ensure secondary side pressure remains below the allowable limit. This is especially true for events initiated from partial power conditions and slow reactivity insertion rates, where the reactor trip is from Overtemperature ΔT (OTDT). Protection for this event is provided by a reactor trip on OTDT, not by the power range—high neutron flux trip. Thus, the proposed change does not affect the mitigative actions for this accident. Therefore, the consequences of an RCCA are unaffected.

For three inoperable main steam safety valves in one or more steam generators, the addition of a requirement for a lower Power Range Neutron Flux High trip setpoint ensures the proposed change does not increase the consequences of this postulated accident.

The current Salem licensing basis for the Spurious Activation of the Safety Injection System credits operator action to unblock a pressurizer Power Operated Relief Valve prior to the water solid pressurizer reaching the safety valve lift setpoint. The analyses that determined the time at which the safety valve would reach its pressure setpoint covered the −3% tolerance. Since this would conservatively result in the earliest opening time, there was no need to consider the positive side of the tolerance. The results of the analyses indicate that the allowable operator action time has not changed, such that water relief continues to occur through the Power Operated Relief Valves and not through the PSVs. As such the consequences of this event have not changed as a result of the proposed change.

Increasing the MSSV lift setting tolerance may result in increased secondary side backpressure for the Auxiliary Feedwater Pumps. However, analyses have demonstrated that with the elevated backpressures that could result from increasing the MSSV setpoint upper tolerance to +3%, the Auxiliary Feedwater Pumps would still provide greater than the minimum flow required to mitigate events in which normal feedwater is not available, a Loss of Normal Feedwater and a Loss of Offsite Power to Station Auxiliaries.

In terms of radiological consequences, the current design and licensing basis analyses that include steaming through the MSSV bound the proposed lift setpoint tolerance change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposal will result in a change in the allowed Pressurizer Safety Valve and Main Steam Safety Valve lift setpoint tolerance range. No physical changes to these valves or to their nominal lift setpoint is required. These valves are assumed to malfunction only as the initiator for the accidental depressurization of the existing Reactor Coolant System or Main Steam System accident analyses. An increased lift setpoint tolerance range does not change the assumption of these depressurization events nor create a new type of event.

Requiring a reduction in reactor thermal power or a reduction in reactor thermal power in conjunction with a reduction in Power Range Neutron Flux High Trip setpoint in the event of inoperable MSSV is consistent with the existing analysis assumptions. Initiation of any Salem Updated Final Safety Analysis Report (UFSAR) analyzed event at a power level less than full power is bounded by those events analyzed at full power, or specifically analyzed at the limiting power level, and does not constitute a new or different kind of accident. Also, no changes are being made to the power range high flux trip setpoint that will make it inconsistent with any analytical assumption.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

Analyses performed demonstrate that the proposed increase in the Pressurizer Safety Valve and MSSV lift pressure setpoint tolerance from ±1% to ±3% will provide primary and secondary side pressure responses to the anticipated operational occurrences and design basis accidents that are within the existing margins of safety. The limiting overpressurization transients, Loss of External Electrical Load and/or Turbine Trip, and Single Reactor Coolant Pump Locked Rotor, stay well within the acceptance criteria of 110% of the design pressure.

For operation with one or two inoperable MSSVs in one or more steam generators, the proposed reduction in reactor thermal power will ensure that current margins are maintained. The current requirement to reduce the power range high neutron flux trip setpoint does not affect the margin of safety since this trip does not provide any mitigation for the limiting secondary system pressurization event, Loss of External Electrical Load and/or Turbine Trip with one or two inoperable MSSVs.

Specific accident analyses for RCCA Bank Withdrawal at Power scenarios demonstrate that a reactor trip on OTDT, in conjunction with the available relief capacity that exists with up to two inoperable safety relief valves on each steam generator, results in a secondary side pressurization within existing margins.

For three inoperable MSSVs in one or more steam generators, thermal reactor power must be reduced in conjunction with a reduction in the Power Range Neutron Flux High trip setpoint to ensure pressurization of the main steam system remains within current analysis margins.

The current licensing basis for the Spurious Activation of the Safety Injection System credits operator action to unblock a pressurizer Power Operated Relief Valve prior to the water solid pressurizer reaching the Pressurizer Safety Valve lift setpoint. As the PSVs are not designed for water relief, failure to unblock a Power Operated Relief Valve before reaching the Pressurizer Safety Valve lift setpoint would result in water relief and likely failure of the Pressurizer Safety Valve to reseat. This condition would escalate the Spurious Activation of the Safety Injection System (Condition II event) into a small break Loss Of Coolant Accident (Condition III event). The analyses that determined the time at which primary system pressure would reach the Pressurizer Safety Valve setpoint bound the −3% tolerance. Since the Pressurizer Safety Valve would not fail due to water relief, there is no reduction in the margin of safety for this event.

Increasing the Main Steam Safety Valve lift setpoint tolerance may result in increased secondary side backpressure for the Auxiliary Feedwater System. However, analyses have demonstrated that under degraded Auxiliary Feedwater Pump performance, and with secondary side backpressure corresponding to 103% of the lowest MSSV setpoint, the Auxiliary Feedwater System can provide greater than the minimum flow required to mitigate those events where normal feedwater is not available, a Loss of Normal Feedwater and a Loss of Offsite Power to Station Auxiliaries.

Therefore the proposed changes to the Technical Specifications do not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric &Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 24, 2001.

Description of amendment request: The Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) Surveillance Requirement (SR) 4.7.1.2 would be revised to include the emergency feedwater system automatic isolation valves into the SRs. SR 4.7.1.2.b would include verification of the functional capability of the check valves in the instrument air system supplying the six new automatic isolation valves. SR 4.7.1.2.c.2 would include the six new automatic isolation valves into the requirement that assures critical valves can be closed and held closed when normal instrument air is unavailable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change addresses necessary changes to the VCSNS Technical Specification[s] (TS) 4.7.1.2.b and 4.7.1.2.c.2 associated with the installation of six new automatic isolation valves in the EF [emergency feedwater] system. The TS [need] to be changed to assure the same level of operability for the EF system as exists with the present day configuration.

The only Final Safety Analysis Report (FSAR) analyzed accident for which the EF system could contribute as an initiator would be minor secondary line break, as described in Section 15.3.2. The addition of isolation valves in the EF piping to the steam generators will not increase the likelihood of a pipe break, since the addition will be in accordance with the same codes and standards as the corresponding, existing portions of the system. Piping stress analyses have demonstrated the addition of these valves does not result in the need to postulate any additional pipe breaks.

The accidents analyzed in the FSAR, which rely on EF to mitigate consequences, are loss of normal feedwater, loss of off-site power, and major secondary system pipe ruptures. The addition of these automatic isolation valves will eliminate the need for operator action to manually close a flow control valve in response to a major secondary system line break. The elimination of operator manual action is accomplished by the addition of a new pneumatically operated isolation valve in series with each of the six existing flow control valves. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change does not result in changes to actual operating pressures, flow rates, flow paths, or system interfaces. There are no alterations to system operability requirements. The existing system alarm setpoints are not affected, as is the information available to the operators. The addition of six new isolation valves will not change system design criteria and the surveillance testing will be the same as for the existing flow control valves.

This change does not introduce any new or different kind of failure mechanisms or limiting single failures. Piping analysis has concluded that no new pipe break locations or break sizes will result from this change. Equipment protection features are not impacted, the frequency of pump and valve operation remains the same. Independence and redundancy are actually improved. Therefore, this proposed change would not create the possibility of an accident of a different type.

3. Does this change involve a significant reduction in margin of safety?

The design basis for the EF system is to assure the required flow and pressure to remove decay heat from the core under the worst postulated conditions. An additional function of the system is to isolate flow to a faulted SG [steam generator] within the time assumed in the safety analysis. The proposed change eliminates the need for operators to take actions to manually close the flow control valves in the event of a single failure.

The proposed change will create a surveillance requirement for the new isolation valves that is the same as the existing flow control valves. The acceptance criteria will assure the operability of these valves. The design and installation of these isolation valves will maintain the requirements for independence, redundancy, separation and testability. The margins assumed in the safety analysis will be enhanced by this proposed change. Due to the automatic isolation capability, additional water will be available for the intact SGs and a reduced mass will be available to be released into the containment building. No credible single failure will be capable of preventing isolation of a faulted SG upon a high flow signal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Uni No. 1, Fairfield County, South Carolina

Date of amendment request: June 19, 2001.

Description of amendment request: This request proposes to change Technical Specification (TS) Section 3.4.6.2, including its Bases, to increase the allowed operational leakage for Reactor Coolant System (RCS) Pressure Isolation Valves (PIV). The present criteria of 1 gallon per minute for all size valves would be changed to the industry standard of 0.5 gallons per minute per nominal inch of valve size, up to a maximum of 5 gallons per minute per valve, consistent with NUREG–1431. This request also proposes to revise Table 3.4–1 to reflect the allowable leakage rates for each PIV.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change provides a more appropriate Pressure Isolation Valve (PIV) allowable leakage criteria in consideration of the safety significance and design capabilities of the plant as determined by the improved standard technical specification industry effort.

The TS leakage limit for PIVs is 0.5 gallon per minute per nominal inch of valve size with a maximum limit of 5 gallons per minute. The previous criteria of 1 gallon per minute for all valve sizes imposed an unjustified penalty on the larger valves without providing information on potential valve degradation and can result in higher personnel radiation exposures due to unwarranted rework and retesting. An NRC sponsored study concluded a leakage rate limit based on the valve size was superior to a single allowable value.

The revision to a leakage criterion related to valve size is acceptable because associated systems that have larger valves also have greater pressure relief capability. The new criteria allows for leakage above 1 gallon per minute, although limited to a maximum of 5 gallons per minute, because the isolated low pressure system will not be overpressurized based on [its] relief capacity being greater than [its] allowed leakage limit. Therefore, the proposed change to the Limiting Condition for Operation will result in lower radiation exposures to personnel and a superior leak rate limit based on valve size as compared to a single allowable value.

Since this proposed revision would continue to support the required safety functions, without modification to the plant features, neither the probability nor the consequences of an accident are increased.

2. This proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision is not a result of changes to plant equipment, system design, testing methods, or operating practices. The modified LCO [limiting condition for operation] requirement will allow some relaxation of the current operability criteria for the PIVs, consistent with NUREG–1431. This change provides a more appropriate requirement in consideration of the safety significance and design capabilities of the plant as determined by the improved standard technical specification industry effort. Since the functions of the associated systems will continue to perform without change, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This proposed change does not involve a significant reduction in a margin [of] safety.

The proposed revision to the PIV leakage acceptance criteria will not result in changes to system design or setpoints that are intended to ensure timely identification of plant conditions that could be precursors to accidents or potential degradation of accident mitigation systems. These systems will continue to operate without change and only the associated allowable leakage criteria has been altered.

Since the setpoints and design features that support the margin of safety are unchanged and actions for inoperable systems continue to provide appropriate time limits and compensatory measures, the proposed changes will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of amendment request: July 25, 2001 (TS–415).

Description of amendment request: The proposed amendment would delete Technical Specification Action Statement 3.3.1.1.I.2, which limits plant operation to 120 days in the event of the inoperability of the Oscillation Power Range Monitor (OPRM) trip system at Browns Ferry Nuclear Plant, Unit 3 (BFN). For this situation, the proposed change would allow plant operation to continue if the existing TS Required Action 3.3.1.1.I.1, to implement an alternate means to detect and suppress thermal hydraulic instability oscillations, were taken.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The OPRM function is not considered as an initiator of any previously analyzed accident. Therefore, this proposed change does not significantly increase the probability of such accidents. This proposed change would allow the use of existing well-established alternate methods to detect and suppress thermal hydraulic instability oscillations. Considering that multiple Boiling Water Reactors plants, including BFN, have satisfactorily operated using alternate stability monitoring methods for extended periods of operation prior to the installation of OPRM systems, it is concluded these measures are adequate. Therefore, the consequences of a previously analyzed accident would not be significantly increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

This proposed change would allow the use of existing alternate methods to detect and suppress thermal hydraulic instability oscillations to continue to operate the reactor in the event of the inoperability of the OPRM system. Considering that multiple Boiling Water Reactors plants, including BFN, have satisfactorily operated using alternate stability monitoring methods for extended periods of operation, it is concluded these measures are adequate, and that the proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Section Chief: Patrick M. Madden (Acting).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 1, 2001, as supplemented on June 27, 2001.

Brief description of amendment: The proposed amendment revised the Technical Specifications (TSs) to change the frequency of closure time testing of the main steam isolation valves (MSIVs). These tests may now be conducted during each cold shutdown unless this test has been performed within the past 92 days.

Date of Issuance: July 17, 2001.

Effective date: 7/17/01 and shall be implemented within 30 days of issuance.

Amendment No.: 221.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 18, 2001 (66 FR 19999).

The June 27, 2001, letter provided ''camera-ready'' TS pages and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 17, 2001.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1

Date of amendment request: October 5, 2000, as supplemented by letters dated June 27, 2001.

Brief description of amendment: The amendment revised Technical Specification Sections 3.2.1.a, 3.2.1.e, and 3.2.1.f to relocate administrative controls to the Quality Assurance Program Description.

Date of issuance: July 23, 2001.

Effective date: 30 days from the date of issuance.

Amendment No: 49.

Facility Operating License No. DPR–5: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 29, 2000 (65 FR 71134) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 2001.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 8, 2001.

Brief description of amendment: The amendment revises the frequency of the Technical Specification (TS) surveillance requirement to check the movement of the control rods. Specifically, the frequency listed for this requirement in TS Table 4.1–3, ''Frequencies for Equipment Tests,'' is changed from ''every 31 days'' to ''quarterly during reactor critical operations.''

Date of issuance: July 18, 2001.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 217.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 12, 2001 (66 FR 31704).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: December 27, 2000, as supplemented on March 28, April 12, June 9, June 13, and June 29 (3), 2001. The addition of a Technical Specification (TS) Bases control program was requested on March 28, 2001.

Brief description of amendments: These amendments allow: (1) Revisions to reactor trip and engineered safety feature actuation setpoints and allowable values, (2) implementation of the revised thermal design procedure, (3) relocations of TS requirements to the core operating limits report, (4) relocation of TS requirements to the licensee requirements manual, (5) miscellaneous editorial changes. In addition, License Condition 2.(C).(3) regarding less than 3-loop operation was deleted.

Date of issuance: July 20, 2001.

Effective date: Immediately and to be implemented within 120 days.

Amendment Nos.: 239 and 120.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** April 18, 2001 (66 FR 20002) for the December 27, 2000, amendment request. A portion of a March 28, 2001, amendment request was also issued in this amendment. The date of the initial notice for the March 28, 2001, amendment request was June 20, 2001 (66 FR 33111).

The March 28, April 12, June 9, June 13, and June 29 (3), 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 2001.

No significant hazards consideration comments received: No.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: January 4, 2001, as supplemented by letters dated March 12 and April 4, 2001.

Brief description of amendment: The amendment revises License Condition 2.B.(6)(d) to reference revisions to the Physical Security Plan, Guard Training and Qualification Plan, and Safeguards Contingency Plan.

Date of issuance: July 25, 2001.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 165.

Facility Operating License No. DPR–36: The amendment revised the License.

Date of initial notice in **Federal Register:** March 7, 2001 (66 FR 13805).

The March 12, 2001, supplemental letter superseded certain aspects of the January 4, 2001, amendment request, as described in the original **Federal Register** notice (FRN), but did not change the initial no significant hazards consideration determination (NSHCD). The April 4, 2001, supplemental letter provided clarifying information that did not change the scope of the original FRN or the initial NSHCD.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2001.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of application for amendment: February 5, 2001; as supplemented on April 19, 2001.

Brief description of amendment: The amendment revises Section 3.6.1.3, ''Primary Containment Isolation Valves,'' those portions regarding requirements for excess flow check valve surveillance testing.

Date of issuance: July 12, 2001.

Effective date: As of the date of issuance and shall be implemented prior to startup from Refueling Outage 8, currently scheduled for approximately spring 2002.

Amendment No.: 96.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 21, 2001 (66 FR 15927).

The April 19, 2001, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 5, 2000, as supplemented June 28, 2001.

Brief description of amendment: The amendment implements programmatic controls for radiological effluent technical specifications (RETS) in the administrative section of the Technical Specifications (TSs) and relocates the procedural details of the RETS to the offsite dose calculation manual, the process control program, or other new programs, consistent with the guidance of Standard TSs (NUREG–1433) and Nuclear Regulatory Commission Generic Letter 89–01.

Date of issuance: July 24, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 120.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 7, 2001 (66 FR 9385).

The June 28, 2001, supplement provided corrected TS pages to reflect the inclusion of amendments approved subsequent to the December 5, 2000, application, to correct a typographical error on one TS page, and to make a terminology change from ''site'' to ''unit'' on one TS page. The supplemental information did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: December 13, 2000, as supplemented July 3, 2001.

Brief description of amendment: The amendment revises Technical Specification 3.8/4.8 to clarify the air ejector offgas activity sample point and operability requirements.

Date of issuance: July 25, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 121.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 2001 (66 FR 7685).

The supplemental information did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2001.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 4, 2001.

Brief description of amendments: The amendments deletes Technical Specifications (TS) Section 5.5.3, ''Post Accident Sampling,'' for Diablo Canyon Nuclear Power Plant, Units 1 and 2, and thereby eliminate the requirements to have and maintain the post-accident sampling systems (PASS). The amendment for Unit 1 also deletes PASS-related License Condition 2.C(6).e from Facility Operating License DPR–80.

Date of issuance: July 13, 2001.

Effective date: July 13, 2001, to be implemented within 90 days from the date of issuance.

Amendment Nos.: Unit 1—149; Unit 2—149.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications and Facility Operating License DPR–80.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31712).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 13, 2001.

No significant hazards consideration comments received: No.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 23, 2000, and supplemental letters dated January 11 and April 16, 2001.

Brief description of amendment: The amendment deletes the definitions of Site Boundary and Unrestricted Area from the technical specifications and makes related conforming changes.

Date of issuance: July 13, 2001.

Effective date: July 13, 2001, to be implemented within 30 days from the date of issuance.

Amendment No.: 128.

Facility Operating License No. DPR–54: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 7, 2001 (66 FR 13806).

The January 11 and April 16, 2001, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 2001.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: May 14, 2001 (TS 01–02).

Brief description of amendments: This amendment revised License Condition 2.C.(9)(d) in Operating License DPR–77 for the Sequoyah Nuclear Plant. The revised license condition now references a licensee letter that specifies a minimum voltage threshold for steam generator tube eddy current inspections.

Date of issuance: July 18, 2001.

Effective date: July 18, 2001.

Amendment Nos.: 270.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the Operating License.

Date of initial notice in **Federal Register:** May 30, 2001 (66 FR 29362).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2001.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a

nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to pdr@nrc.gov.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 7, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555–001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Tennessee Valley Authority, Docket Nos. 50–260, Browns Ferry Nuclear Plant, Units 2 Limestone County, Alabama

Date of amendment request: July 25, 2001.

Brief description of amendment: The proposed amendment deletes TS Required Action 3.3.1.1.I.2, which limits plant operation to 120 days in the event of the inoperability of the Oscillation Power Range Monitor trip system. For this situation, the proposed change would allow plant operation to continue if the existing TS Required Action 3.3.1.1.I.1, to implement an alternate means to detect and suppress thermal hydraulic instability oscillations, were taken.

Date of issuance: July 25, 2001.

Effective date: July 25, 2001.

Amendment No.: 273.

Facility Operating License No. NPF–90: Amendment revises the TS. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration, are contained in a Safety Evaluation dated July 25, 2001.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902.

NRC Section Chief: Patrick M. Madden (Acting).

Dated at Rockville, Maryland, this 31st day of July 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–19746 Filed 8–7–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin (BL) 2001–01 to all holders of operating licenses for pressurized-water nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel. BL 2001–01 addresses the recent discoveries of cracked and leaking reactor pressure vessel head (VHP) nozzles at several pressurized water reactors (PWRs) and the concerns raised about the structural integrity of VHP nozzles throughout the PWR industry. The purpose of the bulletin is to (1) request PWR licensees to provide information related to the structural integrity of the VHP nozzles for their respective facilities, including the extent of VHP nozzle leakage and cracking that has been found to date, the inspections and repairs that have been undertaken to satisfy applicable regulatory requirements, and the basis for concluding that their plans for future inspections will ensure compliance with applicable regulatory requirements, and (2) require PWR licensees to provide to the NRC a written response in accordance with the provisions of 10 CFR 50.54(f). This information request is necessary to permit the assessment of plant-specific compliance with NRC regulations. The information will also be used by the NRC staff to determine the need for and to guide the development of additional regulatory actions to address cracking in VHP nozzles.

DATES: The bulletin was issued on August 3, 2001.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Allen L. Hiser, Jr., at 301–415–1034 or by e-mail to *alh@nrc.gov.*

SUPPLEMENTARY INFORMATION: Bulletin 2001–01 may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* The ADAMS Accession No. for the bulletin is ML012080284.

If you do not have access to ADAMS or if there are problems in accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or 1–800–397–4209, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of August 2001.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 01–19891 Filed 8–7–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–13862]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC; (Dia Met Minerals Ltd., Class A Subordinate Voting Shares, Without Par Value and Class B Multiple Voting Shares, Without Par Value)

August 1, 2001.

Dia Met Minerals Ltd., a British Columbia, Canada Corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Subordinate Voting Shares, without par value and Class B Multiple Voting Shares (''Securities''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the province of British Columbia, Canada, in which it is organized, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

In making the decision to withdraw the Securities from listing and registration on the Amex, the Issuer considered the cost associated with continued Amex listing and registration and decided that it is in the best interest of the shareholders to terminate its listing on the Amex. In addition, the Issuer represents that it has recently

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

been subject to a tender offer by Tortilla Acquisition Inc., an indirect wholly owned subsidiary of BHP Limited (''BHP'') that resulted in the Securities being held of record by less than one hundred (100) persons resident in the United States. BHP currently holds over 90% of the outstanding Class B Shares, and the Issuer expects that upon completion of a statutory acquisition procedure under Canadian law, BHP will acquire the remaining Class A Shares not tendered in the tender offer. BHP will be the sole holder of the Class A Shares. BHP currently holds nearly 90% of the Class B Shares as a result of the tender offer, so that the public float of the Class B Shares has been significantly reduced. The Issuer also has determined that it presently does not intend to engage in future capital raising activities in the United States.

The Issuer's application relates solely to the Securities' withdrawal from listing and registration on the Amex and shall not affect its obligation to be registered under Section 12(g) the Act.[3] The Issuer states that the Issuer's Class B Shares will continue to be listed on the Toronto Stock Exchange. The Issuer represents that shareholders who are United States residents would still have access to an active trading market and would be able to obtain information about the Issuer though access to filings made under Canadian securities laws.

Any interested person may, on or before August 23, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–19830 Filed 8–7–01; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting: Notice of Application To Withdraw From Listing and Registration on the Boston Stock Exchange (Nevada Gold & Casinos, Inc., Common Stock, $.12 Par Value) File No. 1–5517

August 1, 2001.

Nevada Gold & Casinos, Inc., a Nevada corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 [1] (''Act'') and Rule 12d2–2(c) thereunder,[2] to withdraw it from Common Stock, $.12 par value (''Security'') from listing and registration on the Boston Stock Exchange (''BSE'').

The Issuer stated in its application that the Security has been quoted on the OTC Bulletin Board since 1994. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer considered the liquidity provided by the BSE and the cost associated with maintaining such listing. The Issuer believes that market makers will continue to quote the Security on the OTC Bulletin Board so that holders of the Security are provided with accessible and liquid markets. The Issuer's application relates solely to the Security's withdrawal from listing and registration on the BSE and shall not affect its obligation to be registered under Section 12(g) of the Act.[3]

Any interested person may, on or before August 23, 2001 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–19829 Filed 8–7–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(c).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44647; File No. SR–Amex–00–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC To Require the Use of Handheld Computers by Floor Brokers and Registered Options Traders and To Update the Exchange's Audit Trail Rules

August 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 11, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 15, 2001, Amex submitted No. 1 to the proposal.[3] On July 27, 2001, Amex submitted Amendment No. 2. [4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rules 153, 180, and 220: (i) To require the use of handheld computers by floor brokers and Registered Options Traders (''ROTs''); (ii) to require the immediate systemization, upon receipt on the floor, of orders that are eligible for input into Amex's electronic order processing facilities (''CMS-eligible orders'') and that are not already systematized; and (iii) to update the Exchange's rules regarding records of orders.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, date May 15, 2001 (''Amendment No. 1''). In Amendment No. 1, Amex revised the proposal to clarify that its new Hand Held Terminal Policy would apply to both wired as well as wireless terminals, and to make technical corrections to the proposed rule text.

[4] *See* letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2001 (''Amendment No. 2''). In Amendment No. 2, Amex resubmitted its statement of the purpose of, and the statutory basis for, the proposed rule change. However, Amex did not make any revisions to the proposed rule text.

The text of the proposed rule change is set forth below. New text is in italics; deleted text is in brackets:

Record of Orders

Rule 153. (a) Every member or member organization shall maintain a record of every order *and every modification and cancellation of such order* transmitted [by him] to the Floor of the Exchange, which record shall include the name, amount and price of the security and the time when such order, *modification or cancellation* was so transmitted.

(b) Every member *or member organization* shall maintain a record of every order *and every modification and cancellation of such order* [originating on the Floor of the Exchange given to such member for execution, and of every order originating off the Floor, transmitted by any person other than a member or a member organization or a member, officer or employee therein, to such member on the Floor,] *received by such member or member organization on the Floor of the Exchange.* [which] *Such* record shall include the name, amount and price of the security and the time when such order *modification or cancellation* was *received.* [so given or transmitted.] *With respect to orders that are eligible for input into the Exchange's electronic order processing facilities, members and member organization shall comply with their record keeping obligations under this Rule by inputting immediately upon receipt eligible orders, modifications and cancellations that are not already systematized into the Exchange's electronic order processing facilities and retaining the record of such orders provided to them by the Exchange for this purpose.*

(c) *Rescinded.* [Every member shall maintain a record of every order received, either orally or in writing, and carried by him to the floor of the Exchange, which record shall include the name and amount of the security, the terms of the order, and the time when such order was so received; provided, however, that the Exchange may, upon application, for cause shown, grant exemptions from the provisions of this paragraph.]

(d) Every member *or member organization* shall preserve for at least *three years* [twelve months] a record of every commitment or obligation to trade issued form the Floor *and cancellation thereof*, which record shall include the name, amount, and price of the security, the destination market center, and the time when such commitment was issued *or cancelled.*

(e) Every member *or member organization* shall maintain *for at least three years* a record of every order *and every modification and cancellation of such order* entered [by such member or member organization] into the After-Hours Trading Facility (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term), which record shall include the name and amount of the security, the terms of the order, the time when it was so entered, and the time at which a report of execution was received. *Every specialist shall maintain for at least three years reports of all executions and modifications and cancellations of orders placed with the specialist through the After-Hours Trading Facility.*

(f) [Whenever a cancellation is entered with respect to an order, commitment or obligation covered by paragraph (a), (b), (c), (d) or (e) of this rule, or a] *Every member of member organizations shall maintain a record for at least three years of every* report of the execution of [such] an order, commitment or obligation *covered by paragraph (a), (b), (d) or (e) of this rule* [is received, there shall be preserved for at least 12 months,] in addition to the record required by such paragraphs, [a record of the cancellation of the order, commitment or obligation or of the receipt of such report] which shall include the time of [the entry of such cancellation or of] the receipt of such report.

(g) Before any order, commitment or obligation covered by paragraph (a),(c), [(c),] (d) or (e) of this rule is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order, commitment or obligation is to be executed; no change in such account name or designation shall be made unless the change has been authorized by any member or officer in the member organization or authorized representative thereof who shall, prior to giving his approval of such change, be personally informed of the essential facts relative thereto and shall indicate his approval of such change in writing on the order.

(h) All records required to be maintained under this rule shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders.

(i) The term ''order'' as used in this Rule 153 includes any modification to or cancellation of such order.

* * * * *

Must Keep Record of Orders

Rule 180. *Rescinded.* [Every specialist shall keep a legible record of all orders placed with him in the securities in which he is registered as a specialist and of all executions, modifications and cancellations of such orders. Such records shall include such information and shall be preserved for such period as required by the Securities Exchange Act of 1934 and the rules thereunder relating to the requirements for the retention of orders. The specialist shall retain for a period of a least three years reports of all executions and modifications and cancellations of orders placed with him through the ''After-Hours Trading Facility'' (as Rule 1300 (After-Hours Trading: Applicability and Definitions) defines that term).]

* * * * *

Communications to and on the Floor

Rule 220. No change.

*** * * Commentary**

.01 through .03. No change.

.04 *Hand Held Terminal (''HHT'')* [Wireless Communications Infrastructure] Policy. [The Exchange has filed with, and received SEC approval for, the development of a wireless communications Infrastructure (the ''Infrastructure'') and associated Exchanged policy designed to implement the Infrastructure (''Wireless Communications Policy''). (SR–Amex 97–40, approved May 21, 1998, Exchange Act Release No. 34–40019.) Violations of the Wireless Communications Policy may result in disciplinary action by the Exchange pursuant to Article V of the Exchange Constitution or Exchange Rules 345 or 590 as appropriate.[5]

The Exchange for many years has had rules and policies governing communications to and *between locations on* [from] the Trading Floor. [In 1987, the Exchange filed its current communications policies with the SEC.[1]] These policies[, embodied in Rule 220,] give the Exchange broad authority to review telephonic and other electronic communications *both* between the Floor and other locations *and between points on the Floor.* [In 1996, the Exchange amended Rule 220

[5] In its present form, Commentary .04 to Amex Rule 220 has only a single paragraph. The additional paragraphs that appear below constitute the Exchange's existing Wireless Communications Policy, which is being amended and added to Amex's rulebook. The proposed edits are shown below as if the Wireless Communications Policy were already a part of Amex's rulebook.

[[1] See Exchange Act Release No. 34–33735, dated March 8, 1994, approving SR–Amex–87–33.]

to allow it to regulate communications between points on the Floor and adopted a policy regarding wireless communications (the ''Wireless Communications Policy''). At the same time, the Exchange adopted related amendments to Exchange Rule 60.[2] In 1997, the Exchange amended its Wireless Communications Policy.[3]]

[Design and Implementation of Infrastructure]

There have been significant developments in data transmission technology since the Exchange formalized its communications policies. *In light of these changes, the Exchange promulgated its Hand Held Terminal Policy and* [in 1987. The Exchange's staff, assisted by the Committee on Trading Technology Policy, has studied the questions raised by the new communications technologies. As a result of this ongoing review, the Exchange determined to build] built a [wireless] data communications infrastructure (the ''Infrastructure''). *The Exchange undertook these regulatory and systems initiatives* in order to: (i) Facilitate the execution of orders on the Exchange, (ii) facilitate the execution by Amex members of hedging and other permitted transactions in other markets, (iii) facilitate risk management, trade comparison and transaction reporting, (iv) facilitate the transmission of options analytics to Amex members, (v) provide appropriate oversight of [wireless] *data* communications, (vi) ensure the safety and efficient operation of the Exchange's trading systems, (vii) provide fair access for all members and the Exchange to the finite supply of available radio frequencies *and system capacity*, and (vii) promote a fair, orderly and efficient market for securities on the Exchange.

[The Exchange has contracted with Symbol Technologies, Inc. (''Symbol''), an experienced vendor of wireless equipment, to design (in accordance with specifications provided by the Exchange), build, test and service the Infrastructure. The Infrastructure consists of two systems: (1) the Base Station System which will consist of the base stations and antennas that establish communications with the hand held terminals ''HHTs'') on the Floor, and (2) the Wireless Network Management System which will allow the staff of the Exchange to monitor radio frequency (''RF'') capacity usage. The two systems will be connected by a wired network (the ''LAN'').]

[The Exchange will require] All members using *proprietary HHT* [wireless] technology on the Floor *must* [that have not already done so to] conform their proprietary technologies at their cost to the requirements of the Infrastructure *and the Exchange's other systems.* For example, members *are* [will be] required to use the Exchange's antennas, base stations and *Exchange specified* [Symbol's] radio cards for their *wireless* HHTS. Members also *are* [will be] required to conform to physical interface standards specified by the Exchange.

The Exchange will require members to conform their proprietary technologies at their cost the requirements of any enhancements to, or replacements of, the Infrastructure *or any other Exchange system* should this be deemed necessary by the Exchange. The Exchange may also require members to link their *HHT* [wireless] system hosts to the Exchange's trade comparison, reporting or other systems, or implement entirely new technologies should this be more efficient or cost effective for the operations of the Exchange. The members will be responsible for bearing all costs associated with any such changes.

To further advance the policy objectives underlying the Hand Held Terminal Policy and the Infrastructure, the Exchange will require all members acting as brokers and all Registered Options Traders ''ROTs'') to use HHTs in conducting business on the Exchange Floor. (Specialists acting as broker in their specialty securities will not be required to use HHTs). The Exchange currently is developing a standard application that will reside on an HHT that it will issue to brokers for their use. Once this Exchange provided HHT system is operational, all brokers will be required to use it at all times. The Exchange, moreover, will require all ROTs to use HHTs to conduct their business. Since the Exchange does not currently plan to develop an HHT application for ROTs, ROTs must either develop or secure HHTs for their own use at such time as may be specified by the Exchange with the following minimum capabilities:

- *ROTs must be able to receive execution report on their HHTs during a trading session with respect to trades executed against their accounts automatically (e.g. Auto-Ex and Book trades).*
- *ROTs must be able to report their trades within time limits prescribed by the Exchange to their clearing agents during a trading session by means of their HHTs.*
- *HHTs used by ROTs must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the person initiating the transmission, all persons receiving the transmission, and the text of the message.*
- *ROTs must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Amex: (1) time of trade (the clocking mechanism must be seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, (6) contra clearing member. ROTs must be able to report this audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.*
- *HHTs used by ROTs must be able to make a record of the following information with respect to orders or quotes initiated by ROTs for securities or futures traded in other markets: (1) date, (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second measurement), (3) the identity of the person initiating the order or quote, (4) security symbol, (5) buy, sell, sell short, short exempt, (6) order type (e.g., market, limit), (7) order or quote size, (8) order or quote price, (9) execution quantity, (10) execution price, (11) market where the order or quote is routed (e.g., NYSE, Nasdaq, CBOE, and Instinet).*
- *All clocking must be done electronically. All clocking mechanisms must by synchronized at least once per business day to the National Time Service or as specified by the Exchange from time to time.*
- *All records required to be made must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.*

[The Amex intends to develop its own HHT applications for its members that are unable or unwilling either to develop their own or acquire them from another source. The Exchange, however, has not yet determined when it will proceed with such an initiative. The Exchange also intends to develop HHT applications for its Trading Floor personnel.]

The Exchange will not require any member that develops a proprietary [wireless] data communications system to make its technology available to other members. The Exchange believes that the enforced sharing of proprietary

[2] See Exchange Act Release No. 34–37728, dated September 26, 1996, approving SR–Amex–96–10.]

[3] See Exchange Act Release No. 34–40019, dated May 21, 1998.]

technology among competitors would be a disincentive to innovation.

Capacity[, Fault Tolerance, Security] and Radio Frequency

[The Infrastructure will be able to support the simultaneous operation of 600 HHTs on the Trading Floor.[4] The specifications of the system, moreover, provide for a message capacity which is substantially greater than anticipated usage as currently estimated. There will be no single point of failure within the Infrastructure. All units, bases, antennas, routers, etc. will be redundant to provide seamless recovery if a component fails. The failure and recovery will be transparent to users without any interruption of service and there will be no requirement for a ''log-out/log-in'' process. The redundant component will automatically take over the processing as soon as a component fails. In the event of failure, messages in transit will be recovered transparently.]

[Whenever an HHT is turned on, the unit will transmit its own identity code to the Wireless Network Management System. This will limit the possibility of unauthorized access to the Infrastructure. In addition, the Exchange will require members to assign passwords to their HHT users. This will provide another means of restricting unauthorized access to the Infrastructure. The Infrastructure also will have firewalls to protect the integrity of the Exchange's other systems.]

The Exchange will use the 2.4 GHz ''unlicensed'' radio frequency for the Infrastructure[and will require members currently using 902 MHz radios to replace these units with Symbol's 2.4 GHz radio cards to conform with the requirements of the Infrasture]. Currently, the Exchange intends to permit persons that have approved wireless capabilities to use up to 1/30 of the available capacity of the 2.4 GHz frequency. [As of September 1997, the Exchange has approved 12 separate wireless applications from 10 unaffiliated firms covering a total of 217 HHTs.] Each unaffiliated applicant that has been approved to use wireless technology currently may use up to 1/30 of the available capacity of the 2.4 GHz frequency. Persons and firms that are affiliated are required to aggregate their frequency usage to determine if they are using a disproportionate amount of RF capacity. Thus, for example, if Firm A and Firm B are under common ownership, they currently only will be permitted to use 1/30 of the available RF capacity. (The term ''affiliate'' means, with respect to any person, any other person who or which controls, is controlled by or is under common control with such person.) In the event that more than 30 separate persons or firms (including the Exchange's Trading Floor personnel) use wireless technology, the Exchange will develop alternative methods for the equitable allocation of RF capacity.

Persons approved to use wireless technology do not acquire any property rights with respect to their use of the 2.4 GHz frequency or any other frequency that the Exchange may approve for wireless communications on the Floor. The Exchange's staff will be able to monitor the level of [wireless] message traffic[through the Wireless Network Management System and will have the following information available on a real-time basis: status of each HHT, users that are currently logged on, the ''traffic'' (i.e., radio frequency use) that each HHT is generating, the traffic that each firm is generating, total radio frequency load, and warning messages in case unauthorized access is attempted]. If the Exchange determines that a firm has exceeded the amount of message traffic that it is permitted to use, it will require that firm to reduce its message traffic immediately. In addition, if the Exchange determines that wireless *or other HHT* message traffic throughout the Exchange is threatening the integrity of the Infrastructure or any of its other systems, the Exchange may require certain or all users to reduce their message traffic immediately. *HHT* [Wireless] users that do not comply with a request to reduce their message traffic *are subject to disciplinary action and* may have their ability to *communicate with their HHTs* [send wireless communications] immediately terminated by the Exchange.

[The Exchange intends to monitor total radio frequency load on an ongoing basis to determine whether steps should be taken to reduce traffic on the 2.4 GHz wavelength to ensure the efficient operation of the system. Among other measures, the Exchange might permit users of wireless data transmission technology to use other frequencies or technologies for certain classes of data transmission. (E.g., the Exchange might permit wireless technology users to transmit options analytics on the 902 MHz radio frequency.) The Exchange may conclude that other radio frequencies are preferable to the 2.4 GHz frequency, or it might decide to implement a multiple frequency approach should this appear advantageous in terms of increasing message capacity, avoiding interference, etc.]

Exchange Review and Approval of Member Wireless Technology Applications

As noted above, the Exchange will permit proprietary *HHTs* [wireless technology] in order to foster innovation and efficiency. However, since the use of nonstandardized, proprietary equipment and applications conceivably could threaten the Exchange's Infrastructure and/or other trading systems, the Exchange will review all proposals for new *HHT* [wireless] technology prior to introduction to the Floor to ensure that the proposed technology is compatible with the Infrastructure, poses no threat to the Exchange's other systems, and satisfies applicable regulatory and other requirements.

Potential users of a proprietary *HHT* [wireless data transmission] technology will have to complete a detailed questionnaire and provide the Exchange with the specifications for their system. [In addition, the Exchange intends to consult with the Committee on Trading Technology Policy in connection with its review of proposals to use new wireless data transmission technology.] The Exchange's staff may approve a proposal in whole or in part, conditionally approve it, or deny an application. Since members are permitted to employ proprietary technology with different applications, the conditions on an approval may vary from user to user. In addition, the Exchange may have to modify the conditions on an approval after it has been granted in view of the Exchange's experience with *HHT* [wireless] technology generally or experience with a particular member's [wireless] system. Members will be required to adhere to all conditions of approval, and violations of the terms of approval will be treated as violation of the [Revised] *Hand Held Terminal* [Wireless Communications] Policy. Following approval of a member's application to use [a] *HHT* [wireless data transmission] technology, the Exchange may inspect the system after installation and subsequently to ensure compliance with the application, approval terms, and other requirements.

Without limiting the scope of the Exchange's review or the factors it may consider in determining whether to approve a proposed *HHT application* [wireless system], the Exchange will not

[4] [The Exchange has 661 regular members (approximately 200 of which are specialists), 203 options principal members and 10 limited trading permit holders. Since specialists are stationed in one place, they will not require HHTs, and a capacity of 600 HHTs on any given day should be sufficient.]

approve any proposed *HHT application* [wireless data transmission technology] if it poses any danger to the efficient operation of the Exchange's existing trading systems or the Infrastructure or if it would interfere with the frequency or capacities assigned to other members or to the Exchange. For example, the Exchange *generally will not permit internet access from an HHT as this may consume excessive message capacity. Likewise, the Exchange generally* will not permit the transmission of images (as opposed to data) through the Infrastructure as image transmission *may* consume[s] a disproportionate amount of *system capacity* [radio frequency resources]. Similarly, the Exchange will not approve any *HHT application* [wireless data communications device] unless it will comply with the Exchange's rules, federal securities laws, government regulations pertaining to wireless communications, and other applicable requirements. Any *HHT* [wireless communications] system must be able to produce and maintain records required by the Exchange's rules and policies, federal securities laws and SEC regulations. (See, for example, Exchange Rules 111 Commentary .04, 114 Commentary .09, 153, 180, 181, 950(c) Commentary .03, and the Exchange's audit trail policies. The rules of the SEC also impose similar record keeping requirements on registered brokers and dealers. See Securities Exchange Act (''SEA'') rules 17a–3(a)(6) and (7), and 17a–4(b)(1).)

[For example,] The Exchange will require persons that have developed HHTs that may be used to initiate orders or enter quotes for financial instruments traded in other markets (e.g., the NYSE, Nasdaq or Instinet) to maintain a log of such orders or quotes. This record would, at the minimum, include the following information: (1) Date, (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second measurement), (3) the identity of the person initiating the order or quote, (4) security symbol, (5) buy, sell, sell short, short exempt, (6) order type (e.g., market, limit), (7) order or quote size, (8) order or quote price, (9) execution quantity, (10) execution price, (11) market where the order or quote is routed (e.g., NYSE, Nasdaq, *CBOE, and* Instinet). The record would be maintained for three years in a readily accessible place. This record of orders and quotes would have to be maintained for both executed and unexecuted orders and quotes. The Exchange also may require persons that have developed HHTs to maintain a record of any transmissions to or from their hand held terminals.

The Exchange will permit members to encrypt options analytics and position information only. No other messages may be encrypted without the permission of the Exchange. In addition, members that choose to encrypt options analytics and/or position information must maintain the key to the code for a three-year period and provide the key to the Exchange on request.

[Exchange Fees]

[The Exchange will impose a fee or fees upon users of wireless technology in order to recover all or part of the cost of building and/or operating the Infrastructure or for other purposes. Thus, the Exchange will introduce a fee for each HHT used on the Floor. The specifics of this fee have not yet been determined, but it will not exceed $250 per month per HHT. (When the Exchange deploys its own HHTs for members, there will be a separate fee for those that use the Exchange-deployed HHTs.)]

[Liability and Indemnification]

[Pursuant to Article IV, Section 1(e) of the Exchange Constitution, ''The Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. . .'' The Exchange, accordingly, shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the Infrastructure. In addition, the Exchange has approved new Commentary .03 to Rule 60 and will extend the current protection that the Exchange has from liability to members and member firms with respect to their use of the Infrastructure to the vendor and its subcontractors developing the Infrastructure for the Exchange, and will require that members and member firms indemnify the Exchange and the vendor and its subcontractors with regard to any third-party claims relating to member and member firm use of the Infrastructure.]

Sanctions for Violations of the [Revised] *Hand Held Terminal* [Wireless Communications] Policy

Violations of any aspect of the foregoing *Hand Held Terminal* [Revised Wireless Communications] Policy may result in disciplinary action pursuant to Article V of the Exchange Constitution or Exchange Rules 345 or 590 as appropriate.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Mandatory Use of HHTs by Brokers and Registered Options Traders

In the mid-1990s, ROTs began to make extensive use of proprietary handheld computer terminals (''HHTs'') that were linked to their home offices by wireless data transmission technologies. Recently, some members have begun using wired, as opposed to wireless, HHTs. Amex believes that HHTs have enhanced the ability to ROTs to conduct their business. The rapid proliferation of these devices, however, raised concerns with broadcast interference, systems disruption, antenna location, exhaustion of system capacity, and appropriate regulatory oversight of data communications. As a result of these considerations and in light of similar developments on other exchanges, Amex determined to build a Data Communications Infrastructure and adopt a Handheld Terminal Policy to regulate the use of these devices.[6]

Amex permitted members to employ custom-designed HHTs, subject to Exchange review and approval of any new handheld technology or application. Amex also required members to use its Data Communications Infrastructure (*i.e.*, Amex antennas, base stations, network, *etc.*) to transmit communications to and from HHTs and to conform their proprietary technologies at their cost to

[6] *See* Securities Exchange Act Release No. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996) (approving Amex's original Wireless Communications Policy); Securities Exchange Act Release No. 40019 (May 21, 1998), 63 FR 29272 (May 28, 1998) (amending Amex's Wireless Communications Policy).

the requirements of the Infrastructure.[7] As a result of the Exchange's initiatives, members (almost all of whom functioned as ROTs) were able to develop or acquire HHTs that provided them with the capabilities that best suited their particular business needs. Amex believes that its approach to implementing the widespread use of HHTs on the Trading Floor has been successful. Currently, more than 400 members are approved to use HHTs.

Amex began the introduction of its Booth Automated Routing System (''BARS'') in late 2000 and anticipates that BARS will be fully deployed by the end of 2001. In conjunction with the implementation of BARS, Amex in the first week of August 2001 introduced a wireless retail application system for brokers (''BRS/HHT'') that the Exchange expects will be fully deployed by the end of the second quarter of 2002.[8] As a member firm is added to BARS, Amex would provide that firm with the appropriate number of BARS/HHTs to efficiently utilize the new system.

According to Amex, BARS would allow member firms to manage their order flow more efficiently by giving member firms a choice of either sending orders and instructions electronically to their booths for further action or using existing order routing systems to send orders directly to the specialist post. BARS/HHT would provide wireless communications between member firm booth personnel and floor brokers using HHTs via an interface to BARS.

Amex believes that the introduction of HHTs devices on the floor: (1) Has significantly improved the ability of ROTs to make markets,[9] and (2) with the introduction of BARS/HHT, promises to significantly enhance the ability of brokers to represent equity and option order.[10] Amex believes that this benefits investors and enhances the Exchange's competitive position relative to other markets. The widespread introduction of HHTs among the broker and ROT populations on the Floor also permits significant enhancements to the Exchange's audit trail and self-regulatory capabilities by instituting comprehensive electronic tracking and ''time stamping'' of orders and executions.[11] The Exchange, accordingly, is proposing to require brokers to use the new BARS/HHT system when it becomes fully operational[12] Amex, similarly, is proposing to require all ROTs to use HHTs with the following minimum capabilities at such times as may be determined by the Exchange:[13]

- HHTs used by ROTs must be able to receive execution reports during a trading session with respect to trades executed against their accounts automatically (*e.g.,* Auto-Ex and Book trades).
- ROTs must be able to report their trades to their clearing agents within time limits prescribed by the Exchange by means of their HHTs.[14]
- HHTs used by ROTs must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the person initiating the transmission, all persons receiving the transmission, and the text of the message.
- ROTs must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Exchange: (1) Time of trade (the clocking mechanism must be in seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, and (6) contra clearing member. ROTs must be able to report his audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.
- HHRs used by ROTs must be able to make a record of the following information with respect to orders or quotes initiated by ROTs for securities or futures traded in other markets: (1) Date; (2) the time the order or quote is send to the other market (the clocking mechanism must be in tenths of a second measurement); (3) the identity of the person initiating the order or quote; (4) security symbol; (5) buy, sell, sell short, or short exempt; (6) order type (*e.g.,* market, limit); (7) order or quote size; (8) order to quote price; (9) quote is routed (for example, the NYSE, Nasdaq, CBOE, and Instinet).[15]

[7] There has been no resistance within Amex's membership to the requirement that members conform their technologies at their cost to the requirements of the Data Communications Infrastructure. This requirement has been part of the Exchange's Policy on HHTs since its inception. As a result, it has been subject to notice in the **Federal Register** and public comment on two prior occasions without any adverse comment. *See supra* note 6.

[8] Telephone conversation between William Floyd-Jones, Assistant General Counsel, Legal and Regulatory Policy, Amex, and Michael Gaw, Special Counsel, Division of Market Regulation, Commission, on August 2, 2001.

[9] Amex states that the benefits derived by ROTs from their HHTs have varied from firm to firm based upon the functionality of the HHTs used by the firm. Among the more common applications has been receiving options analytics (*i.e.,* data used to price options), reporting trades to the home office and clearing firms, and initiating hedging transactions in other markets. Options analytics allow market makers to better value options, which permits them to make tighter and deeper markets in a growing number of options. Reporting executions electronically to the home office or clearing firm facilitates the comparison of trades and centralized risk management. Amex also believes that the ability to initiate hedging transactions from HHTs allows market makers to better manage their risk and, consequently, allows them to make tighter and deeper markets than they would be able to make without the ability to initiate trades from HHTs.

[10] With respect to the benefits that brokers will derive from BARS/HHT, Amex believes that this system speeds the routing of orders from off the floor to the point of trade by automating order processing. BARS/HHT also gives members more control over the execution of their orders by allowing them to determine whether the order should be routed to a floor broker or sent to the specialist book. BARS/HHT also automates the reporting of executions to customers and trade comparison, thus expediting and reducing errors in these processes.

[11] All orders pass through the Amex Order file (''AOF''), the host system of order processing, prior to a BARS booth terminal routing an order to an HHT. AOF includes a repository of all Amex orders, execution information, processing of orders, reports, cancels, and administrative messages. All orders are assigned a unique turnaround number that is referenced on any subsequent cancellations, executions, or administrative messages. Any message affecting an order is logged and time stamped in AOF. The Exchange's order processing systems have been designed so that the clocking mechanisms do not deviate by more than three seconds from the Naval Observatory atomic clock in Washington, DC.

[12] Specialists, when acting as brokers in the securities in which they are registered, will not have to use HHTs because they already have the other systems provided to them by the Exchange for the purpose of fulfilling their responsibilities as specialist. These systems (*e.g.,* Amex Option Display Book and Point of Sale Book) provide audit trail functionality for orders given to specialists for execution.

[13] Since the inception of its HHT Policy, Amex has allowed members to develop their own HHT applications subject to review by the Exchange to ensure compliance with its rules and compatibility with its systems. This Policy has allowed members to develop those systems that best suited their business needs. Over time, almost all Amex ROTs have acquired HHTs. There is no need, accordingly, for the Exchange to develop HHT applications for ROTs, since a variety currently are available to members. In contrast, only one member firm has developed an HHT application for its activities as a broker. Since Amex believes that automating pre-trade order handling would provide better and faster service to its customers, Amex developed the BARS and BARS/HHT systems referenced in this filing. These systems are not being provided free of charge, and users are subject to an Exchange fee. *See* Securities Exchange Act Release No. 44286 (May 9, 2001), 65 FR 27187 (May 16, 2001) (SR–Amex–2001–22.) Amex believes that this provides for a fair allocation of expenses among the various Exchange members.

[14] Trade reporting in this context refers to the reporting of trades to clearing agents for comparison and clearance rather than the reporting of trades for dissemination of last sale information. Trade reporting for purposes of comparison and clearance is subject to Amex Rules 590, Part 2(d)(3); 719(c); 720(a); 960; and 962.

[15] The requirement that HHTs used by ROTs must be able to produce an audit trail with respect to orders and quotes initiated on the Exchange and sent to other markets (outgoing orders) is intended to facilitate surveillance of intermarket trading violations such as front running. Amex states that this requirement has been present in the exchange's HHT Policy since its adoption.

• All clocking must be done electronically. All clocking mechanisms must be synchronized at least once per business day to the National Time Service or as specified by the Exchange from time to time.

• All required records must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.

The Exchange proposes to amend its HHT Policy to accomplish the foregoing objectives. In addition. Amex proposes to incorporate the text of the HHT Policy into the Exchange's Rules as Commentary .04 to Amex Rule 220 to make it more accessible to members and member organizations.[16] The HHT policy also would be revised: (1) To eliminate language that discussed the implementation of the Infrastructure, (2) to remove other features of the policy that are no longer used, and (3) to remove text that is found elsewhere in the Exchange's rues or is inappropriate in a rule.

Audit Trail Enhancements

Amex is proposing a number of changes to its rules regarding records of orders (Amex Rules 153 and 180) to enhance the Exchange's audit trail and self-regulatory capabilities.

• Paragraph (a) of Amex Rule 153 would be amended to explicitly require members and member organizations located off the floor to maintain a record of order modifications and cancellations.

• Paragraph (b) of Amex Rule 153 would be amended to require all members and member organizations to maintain a record of all orders, modifications, and cancellations received by them on the floor. Members and member organizations would be required to systematize any order, modification, or cancellation that is CMS-eligible immediately upon receipt on the floor, if it were not already systematized.[17] Amex would provide members and member organizations with a paper record of all of their systematized orders that they would retain to satisfy their recordkeeping obligations.

• Paragraph (c) of Amex Rule 153 would be rescinded. Amex believes that this rule is archaic since it concerns orders ''carried'' to the Exchange floor, and the substance of the rule would be covered by Paragraph (b) of Amex Rule 153.

• Paragraph (d) of Amex Rule 153 concerns records of ITS commitments. It would be amended to extend recordkeeping obligations to member organizations and the cancellation of ITS commitments. The rule also would be amended to extend the obligation to maintain these records to three years.

• Paragraph (e) of Amex Rule 153 concerns records of orders in the Exchange's After Hours Trading (''AHT'') Facility. The proposed changes would consolidate AHT facility recordkeeping obligations in one place and would conform this provision to the other paragraphs of Amex Rule 153.

• Paragraph (f) of Amex Rule 153 concerns cancellations and reports. Recordkeeping responsibilities with respect to order cancellations would be transferred to the other sections of Amex Rule 153. Paragraph (f) also would be modified to require members and member organizations to keep records of reports for three years instead of 12 months.

• Amex Rule 180 concerns the recordkeeping obligations of specialists. This rule would be deleted as the revisions to Amex Rule 153 would include recordkeeping by specialists as well as other members.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[18] in general and further the objectives of Section 6(b)(5)[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperative and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. Amex believes that the proposed rule change is also consistent with the National Market System goals of Section 11A(a)(C) of the Act[20] in that they will enhance (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity, consistent with the provisions of clauses (1) and (4) above, for investors orders to be executed without the participation of a dealer.

Amex believes that the proposed rule change will further the National Market System objective of Section 11A of, ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets,'' by automating pre-trade order processing on the Exchange. This will strengthen the Exchange's competitive position relative to other markets and benefit investors. Amex believes that the use of Exchange-standard HHT technology for order processing also will allow the Exchange to significantly enhance its order audit trail for both equities and options by allowing the Exchange to electronically track and time stamp all orders, modifications, and cancellations sent to the Exchange.

BARS/HHT has a ''Market Look'' functionality that will allow brokers to electronically transmit information developed as a result of a market probe to the person that requested the information. Amex believes that this capability will ''enhance the availability to brokers, dealers, and investors of information with respect to quotations for * * * securities.'' BARS/HHT also has a functionality that allows brokers to electronically report executions to customers. Amex believes that this capability will ''enhance the availability to brokers, dealers, and investors of information with respect to * * * transactions in securities.'' Amex further believes that BARS/HHT will increase the automation of pre-trade order processing on the Exchange. This will speed and make order processing on the Exchange more efficient and thereby ''enhance the practicality of brokers executing investors' orders in the best market,'' when the best market is provided by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change would impose no burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

[16] Commentary .04 to Amex rule 220 currently references the HHT Policy but does not reprint it.

[17] Currently, percentage and combination order (*e.g.* spread orders) are not CMS-eligible. Amex intends to develop systems that would make these orders CMS-eligible.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–00–60 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19854 Filed 8–7–01; 8:45 am]

BILLING CODE 8010–01–M

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44629; File No. SR–CBOE–2001–36]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. and Amendment No. 1 To Exempt Certain Spread Transactions From the Marketing Fee and To Amend the Definition of Deep-in-the-Money Options To Include a Spread Traded at Maximum Value

July 31, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items the CBOE has prepared. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2001.[3] The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to exempt certain spread transactions from its marketing fee. The text of the proposed rule change is available at the CBOE and at the commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 17, 2001. The CBOE originally submitted the filing pursuant to Section 19(b)(3)(A) of the Act. The CBOE has submitted the amended filing pursuant to Section 19(b)(2) of the Act.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In August 2000, the CBOE imposed a $0.40 per contract marketing fee to collect funds to be used by the appropriate Designated Primary Market Maker (''DPM'') to attract order flow to the CBOE.[4] Initially, this fee was applicable to all market-maker-to-market-maker options transactions. Thereafter, the CBOE determined that the imposition of the marketing fee made it unprofitable for market makers to do banking-type transactions (*i.e.,* reversals and conversions) on the CBOE. Therefore, the CBOE waived the fee for call/put combination transactions used in reversals and conversions.[5]

In May 2001, the CBOE waived imposition of the marketing fee for spread transactions involving a total of at least 400 contracts of ''deep in the money'' options, as well as ''buy write'' and ''synthetic'' transactions involving at least 200 contracts of ''deep in the money'' options bought or sold in a 1-to-1 ratio versus stock.[6] The terms of that filing provided that the waivers contained therein were to become effective on May 1, 2001. The CBOE now proposes to change the effective date of the waivers described in SR–CBOE–2001–18 from May 1, 2001 to July 1, 2001. The effect of this change would be to impose retroactively the marketing fee on the transactions described in SR–CBOE–2001–18 for the months of May and June.[7] These transactions would become exempt from the marketing fee as of July 1, 2001.

Furthermore, the CBOE proposes to exempt from the marketing fee ''deep in the money'' put versus stock spread orders of 200 or more contracts. In the CBOE's view, these transactions, like reversals, conversions, and spread transactions, contribute to market liquidity but they too must be done at a smaller profit margin than other types of trades. The CBOE believes that

[4] *See* Securities Exchange Act Release No. 43112 (August 3, 2000), 65 FR 490040 (August 10, 2000) (approving SR–CBOE–2000–28).

[5] *See* Securities Exchange Act Release No. 4495 (March 23, 2001), 66 FR 17459 (March 30, 2001) (approving SR–CBOE–2001–09).

[6] *See* Securities Exchange Act Release No. 44355 (May 25, 2001), 66 FR 30251 (June 5, 2001).

[7] While this filing retroactively imposes the marketing fee upon the transactions described in SR–CBOE–2001–18, the CBOE notes that it previously collected these fees for the transactions that occurred during May and June 2001. With respect to the transactions described in SR–2001–18, the CBOE states that it will not be necessary to collect any additional monies for the months of May and June 2001.

imposition of the marketing fee makes these transactions unprofitable to execute on an exchange. The CBOE also proposes that the effective date of these exemptions be July 1, 2001.

Finally, the CBOE proposes to amend the definition of ''deep in the money'' options to include ''spreads traded at maximum value,'' which are spreads that trade at a price equal to or greater than the difference between the two strike prices of the affected option series. Currently, the CBOE defines ''deep in the money'' options as those options that are in the money by a minimum of both $10 and 20% of the closing value of the underlying security on either the trade date or the date immediately prior to the trade date. According to the CBOE, if the options series involved in the spread have strike prices that are less than $10 apart, it would be impossible for these positions to be considered ''deep in the money'' under the current definition. Nevertheless, because these positions do trade at maximum value, the CBOE believes that it is appropriate that they be classified as ''deep in the money.''

For purposes of uniformity, the CBOE proposes that all of the fee waivers contained in the footnote 10 of its Fee Schedule would become effective July 1, 2001. Therefore, effective July 1, 2001, the CBOE proposes to waive the 40-cent marketing fee for the following options transactions: (a) Spread transactions involving a total of at least 400 contracts of ''deep in the money'' options; (b) ''buy write'' and ''synthetic'' transactions involving at least 200 contracts of ''deep in the money'' options bought or sold in a 1-to-1 ratio versus stock; and (c) ''deep in the money'' put versus stock spread orders of 200 or more contracts.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) [9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2001–36 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19855 Filed 8–7–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44636; File No. SR–CHX–2001–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Correct Text to CHX Article XX, Rule 10, Interpretations and Policies .02

August 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(b)(6) [4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

The Exchange proposes to correct rule text that was used as the basis for marking the changes to the CHX's clearing the post rule. Those changes were approved in File No. SR–CHX–2001–09.[6] The CHX does not propose any substantive changes at this time; the only proposed changes are to correct inaccurate rule next that was inadvertently used in SR–CHX–2001–09. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with written notice of its intent to file the proposal on July 19, 2001, pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[6] Securities Exchange Act Release No. 44454 (June 20, 2001), 66 FR 33730 (June 25, 2001).

regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 20, 2001, the Commission approved the Exchange's proposal to amend its rules to allow floor brokers to clear the post by telephone.[7] The rule text used as a basis to mark the proposed changes in the Exchange's rules, however, inadvertently did not contain language that had been approved by the Commission several years ago.[8] The Exchange has corrected this oversight by including the correct text as Exhibit A to this proposed rule change. No other changes are made as a result of this proposal.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 40369 (August 26, 1998), 63 FR 47056 (September 3, 1998) (SR–CHX–98–13).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure that this correction is made as soon as possible. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–2001–18 and should be submitted by August 29, 2001.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19856 Filed 8–7–01; 8:45 am]

BILLING CODE 8610–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44646; File No. SR–CHX–2001–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Marketing Fees

August 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2001, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items the CHX has prepared. On July 19, 2001, the CHX submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule effective through December 31, 2001, to provide for assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria described below. The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to change its fee scheduled to include a marketing fee of $.01 per share applicable to transactions occurring on or before December 31, 2001. The marketing fee would apply only to ''Subject Transactions'' [3] in ''Subject Issues,'' [4] and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the fee. The CHX anticipates that, given the criteria that must be satisfied before an issue would qualify as a ''Subject Issue,'' only 3 to 5 issues currently traded on the CHX would be immediately subject to the marketing fee. According to the CHX, some issues may be eligible for only sporadic periods and produce only minimal marketing fees. For this reason, the CHX believes that specialists may opt out of the marketing fee program for an issue that might otherwise qualify as a Subject Issue if the specialist determines that any benefit of the marketing fee is not warranted in the light of the associated administrative burden.

The CHX states that, by imposing the marketing fee, it intends to allocate equitably the financial burden of seeking order flow for Subject Issues. Currently, according to the CHX, the CHX specialist trading a Subject issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as licensing fees assessed by the licensor of the product.[5] Conversely, according to the CHX, market makers participating in transactions in Subject Issues on the CHX currently do not share any of these costs. The CHX states that the proposed rule change would allow a specialist trading a Subject Issue to elect (or decline) assessment of the marketing fee in instances where the specialist believes that it is appropriate for the financial burden of trading the Subject Issue. The CHX anticipates that the proposed rule change, and the corresponding specialist/market maker arrangement described below, will provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

The CHX believes that its proposed marketing fee, and the purposes thereof, closely mirror those of the various options exchanges that have implemented assessment of a marketing fee in the last year. The CHX believes that, like its marketing fee, the marketing fee programs of the options exchanges have sought to establish equitable means to allocate fairly the burdens of attracting order flow in certain issues. In the CHX's view, the Commission's rationale for approval of a marketing fee in the options market context is equally applicable to the CHX's current submission.[6]

The CHX states that it would calculate, bill, and collect the marketing fee and then remit the proceeds to the specialist firm that trades the Subject Issue. The specialist firm would then distribute the funds to order-sending firms in accordance with its payment for order flow arrangements or, in certain instances described below, to market makers who contribute to market share growth. Under the proposal, the CHX would refund unspent marketing fee proceeds every calendar quarter. The CHX proposes to issue the refunds on a *pro rata* basis, in amounts proportional to the amount of fees paid, to the market makers, floor brokers, and specialists that paid the fees. The CHX would not be obligated to refund amounts of $1,000 or less.

The CHX notes that the proposed rule change provides for assessment of the marketing fee on a temporary basis only through December 31, 2001. The CHX believes that a careful analysis of the marketing fee assessment and distribution process during this temporary measuring period will permit it to assess the impact of the marketing fee and to ensure that it meets its stated goals in a fair, equitable, and non-discriminatory manner.

Significantly, the CHX believes that its assessment and collection of the marketing fee may be complemented by independent contractual undertakings between CHX specialist firms and market makers. The CHX believes that, in instances where total market share in the Subject Issue exceeds a threshold percentage upon which the specialist and market makers have agreed, a specialist firm could credit to the market makers an amount equal to the market makers' pro rata portion of the percentage by which market share exceeded the threshold percentage.[7] Conversely, in instances of decreasing market share, the specialist could expect market makers to contribute to the payment for licensing fees to the extent that tape revenue rebates are less than the licensing fee for the product. The CHX anticipates that these arrangements could provide market makers with an additional incentive to help increase CHX market share in Subject Issues and could provide for equitable allocation of the revenues associated with increased market share, just as market makers are required to share the economic burden of attracting order flow for Subject Issues by paying the marketing fee.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] The CHX defines ''Subject Transaction'' to mean (a) any trade with a customer, whether the contra party is a specialist or a market maker, where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] The CHX defines ''Subject Issue'' to mean any issue which meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two-month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] The CHX states that, initially, the marketing fee will most likely be assessed against exchange-traded fund products that have an associated licensing fee.

[6] *See* Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (Order approving International Stock Exchange's payment for order flow rule change proposal, SR–ISE–2000–10).

[7] The CHX states that a CHX specialist is entitled to a transaction credit, applied as a credit against the specialist's monthly invoice due and owing to the CHX, equal to a percentage of tape revenue generated by monthly trades in the issue traded by the specialist. According to the CHX, the percentage of tape revenue to which the specialist is entitled increases if CHX market share in the issue increases. Under the sharing arrangement outlined above, if increasing market share in a Subject Issue resulted in a specialist receiving a larger transaction credit, the specialist could pay a portion of the marketing fee collected on account of such order flow to the market makers contributing to the increase in order flow and corresponding market share increase.

[8] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On May 17, 2001, the CHX received written comment regarding the proposed rule change from Susquehanna Partners, GP, a CHX market maker firm. In its comment letter, Susquehanna raised three principal bases for objecting to the marketing fee and made collateral reference to one possible adverse consequence of the marketing fee.[9]

Two of Susquehanna's objections focus on the issue of revenue and the financial impact of the marketing fee on market makers. Specifically, Susquehanna argues that imposition of the marketing fee is not appropriate because CHX specialists currently receive a portion of the tape revenue generated by transactions on the CHX, whereas market makers do not share in this revenue. As set forth above, the CHX believes that this issue would be resolved to the parties' mutual benefit by agreements between specialists and market makers that provide for a rebate of the marketing fee to market makers who contribute to market share growth.

Susquehanna also argues that because the marketing fee is structured on a pershare basis as opposed to a per-trade basis, providers of large liquidity like Susquehanna will pay a disproportionate amount of the marketing fee. In the CHX's view, this argument ignores that the marketing fee will not be assessed in instances where the order is not the result of payment for order flow. According to the CHX, market makers who participate in large share transactions that arrive at the CHX independently of payment for order flow will not be forced to pay a marketing fee with respect to such trades. The CHX believes that per-share assessment of the marketing fee is appropriate because payment for order flow generally is made on a per share basis, permitting a virtual ''pass through'' of the marketing fee to order-sending firms.

Finally, Susquehanna argues that the CHX would be harmed if Susquehanna departs from the floor, removing a source of liquidity for large-sized orders. The CHX believes that it has adequate sources of liquidity without Susquehanna, should Susquehanna decline to bear its proportionate share of order flow costs by ceasing operations on the CHX floor in order to avoid assessment of the marketing fee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change proposal has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(2) thereunder[11] because the CHX has designate it as establishing or changing a due, fee, or other charge of the CHX. At any time within 60 days after the filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the forgoing, including whether the proposed rule change in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2001–10 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19858 Filed 8–7–01; 8:45 am]

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[9] The CHX states that Susquehanna had raised the same objections at a meeting of the Strategic Planning Subcommittee on Payment for Order Flow on May 8, 2001. The CHX also notes that, following a lengthy exploration of the issue raised by all parties in interest, and notwithstanding market maker opposition to he marketing fee, this subcommittee voted, by clear majority, in favor of the proposed rule change.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] For purposes of calculating the abrogation date, the Commission considers the 60-day period to have commenced on July 19, 2001, the date on which the CHX amended the filing.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44641; File No. SR–ISE–2001–17]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Permanent Approval of Its Allocation Algorithm Pilot

August 2, 2001.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2001, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), a proposed rule change requesting permanent approval of its allocation algorithm pilot.

The proposed rule change was published for comment in the **Federal Register** on July 11, 2001.[3] No comments were received on the proposal. This order approves the proposal on an accelerated basis.

II. Description of the Proposal

The Exchange is proposing to amend Supplementary Material .01 to Rule 713 to adopt the Exchange's current allocation algorithm pilot program on a permanent basis. The Exchange's allocation algorithm pilot was approved by the Commission on May 22, 2000,[4] and recently was extended until August 1, 2001.[5]

ISE Rule 713 provides that customer orders have priority, based on the time priority of such orders. ISE Rule 713(e) provides that if there are two or more non-customer orders or market maker quotations at the Exchange's inside market, after filling all customers at that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44508 (July 3, 2001), 66 FR 36353.

[4] *See* Securities Exchange Act Release No. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000) (''Release No. 42808'').

[5] *See* Securities Exchange Act Release No. 44340 (May 22, 2001), 66 FR 29373 (May 30, 2001) (''Release No. 44340'').

price, executions will be allocated between the non-customer orders and market maker quotations ''pursuant to an allocation procedure to be determined by the Exchange from time to time * * * .'' ISE Rule 713(e) also states that, if the primary market maker (''PMM'') is quoting at the Exchange's inside market, it will have precedence over non-customer orders and competitive market maker (''CMM'') quotes for execution of orders that are up to a specified number of contracts. Supplementary Material .01 to ISE Rule 713 specifies the ISE's allocation procedure for non-customer orders and market maker quotations and defines the size of orders for which the PMM has priority to be those of five contracts or fewer.

The allocation procedure is a trading algorithm programmed in the ISE's electronic auction market system (the ''System'') that determines how to split the execution of incoming orders among professional trading interests at the same price. All public customer orders at a given price are always executed fully before the trading algorithm is applied. Moreover, because the algorithm is applied automatically by the System upon the receipt of an executable order, only those non-customer orders and market maker quotes at the best price that are in the System participate in the algorithm. Thus, there is no opportunity for a market participant to receive an allocation unless it had an order or quote in the System at the execution price at the time the incoming order was received by the System.

Subject to the PMM's participation rights discussed below, allocation of executions to non-customer orders and market maker quotes is based on the size associated with the order or quote relative to the total size available at the execution price. According to the Exchange, because PMMs have unique obligations tot he ISE market,[6] they are provided with certain participation rights. If the PMM is one of the participants with a quote at the best price,[7] it has participation rights equal to the greater of (1) the proportion of the total size at the best price represented by the size of its quote, or (2) 60 percent of the contracts to be allocated if there is only one other non-customer order or market maker quotation at the best price, 40 percent if there are two other non-customer orders and/or market maker quotes at the best price, and 30 percent if there are more than two other non-customer orders and/or market maker quotes at the best price.[8] This allocation procedure has been approved by the Commission on a permanent basis, and the Exchange did not propose any changes to the procedure at this time.[9]

The allocation procedure further provides that the PMM has precedence to execute orders of five contracts or fewer. This means that such orders will be executed first by the primary market maker if it is quoting at the best price. This aspect of the allocation procedure was approved by the Commission on a one-year pilot basis.[10] In its temporary approval of this PMM preference for the pilot period, the Commission stated its intent to monitor the rule's impact on competition during the pilot period and the ISE agreed to provide four types of specific confidential data to the Commission on a quarterly basis. The ISE also committed to lowering the size of the orders to which the PMM is given a preference if the execution of orders for five contracts or fewer by PMMs exceeded 40 percent of total exchange volume (excluding volume from the execution of facilitation orders).

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the ISE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 6 of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission believes that the proposal to provide PMMs with the preference for orders of five contracts or fewer is consistent with Section 6(b)(5) of the Act.[13] Section 6(b)(5) requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In its original approval order for the ISE's allocation algorithm, the Commission, responding to various issues raised by commenters, stated that it intended to use the one-year pilot period to monitor the rule's impact on competition by reviewing the four types of specific data that ISE provided to the Commission on a quarterly basis.[14] During the pilot period and the pilot extension period, the Exchange has provided the statistics required under the terms of the pilot and has monitored the percentage of total ISE volume resulting from execution of orders of five contracts of fewer by the PMMs. The Commission notes that the 40% threshold was not reached during the pilot program and pilot extension period; indeed, the total percentage was substantially lower than 40%. In particular, the Commission notes that throughout the pilot program and pilot extension, a large percentage or orders of five contracts or fewer were executed by participants other than the PMM, and a large percentage of all the volume on

[6] For example, PMMs are responsible for: (1) Ensuring that all ISE disseminated quotations are for at least 10 contracts; (2) addressing customer orders that cannot be automatically executed when another market is disseminating a better quotation; and (3) opening the market. *See* ISE Rule 803(c).

[7] The participation rights are programmed into the trading algorithm, so that they are applied automatically by the System when splitting executions among non-customer orders and market maker quotes after public customer orders at the same price are fully executed, as described above. Consequently, like any other market participant, the PMM cannot receive any portion of an allocation, regardless of its participation rights, unless it is quoting at the best price at the time the executable order is received by the System. Moreover, the size associated with the PMMS quote must be sufficient to fill the portion of the order that would be allocated to it according tot he participation rights. For example, if a PMM would be allocated 30 contracts according to its participation rights, but the size of its quote is only 20 contracts, the PMM would receive an allocation of only 20 contracts. If the size associated with a PMM's quote is only three contracts when an executable order for five contracts is received (assuming there are no public customer orders), the PMM would execute only three contracts.

[8] According to the participation rights, a PMM quoting at the inside market generally is allocated the plurality of an order. For example, if a both a PMM and CMM are quoting at the inside market for 50 contracts each, an incoming order for 10 contracts will be allocated between the two for six and four contracts respectively (a 60% allocation to the PMM). If the PMM is quoting for 50 contracts and there are two CMMs each quoting for 50 contracts, the PMM is allocated four contracts and the two CMMs are allocated three each (40 percent for the PMM, and the remaining 60 percent split equally between the CMMs because they are quoting an equal size.) At a minimum, a PMM will be allocated 30 percent of an order, regardless of the number of other quotes or orders at that price.

[9] *See* Release No. 42808, *supra* note 4.

[10] *Id.* The Commission extended the pilot to August 1, 2001 in order to consider this proposed rule change requesting permanent approval. *See* Release No. 44340, *supra* note 5.

[11] 15 U.S.C. 78f.

[12] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Release No. 42808, *supra* note 4.

the Exchange were executed by participants other than the PMM.

The Commission does not believe that the small order participation right for PMMs (*i.e.,* five contracts of fewer preference) will necessarily result in a significant portion of the Exchange's volume being executed by the PMM, especially in light of the fact that the PMM executes against such orders only if it is quoting at the best price, and only for the number of contracts associated with its quotation. In order to provide a safeguard against the potential for increased PMM executions in the future in excess of the proposed 40% threshold, however, the ISE agrees to continue to maintain the technological capability to compile the sort of data it provided to the Commission during the pilot period and pilot extension, and agrees to compile and provide such data to the Commission at its request.[15] The Commission further notes that the Exchange will continue to evaluate periodically the percentage of the volume executed on the Exchange that is comprised of orders for five contracts or fewer executed by primary market makers, and will reduce the size of the orders included in this provision if such percentage is over 40 percent. Given the existence of these continued safeguards, as well as the lack of anticompetitive statistical trends observed by the Commission during the pilot period and pilot extension, the Commission finds that the proposed rule change is consistent with Section 6(b)(5).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The original filing proposing the ISE's pilot program for small order participation right for PMMs was subject to a full notice and comment period.[16] In addition, this proposal requesting permanent approval of the same provision will, as of the date of this order, have been subject to a full notice and comment period and no comment letters were received by the Commission. Moreover, the one-year pilot period and related reporting obligations by ISE were responsive to the issues raised by commenters to ISE's earlier filing regarding its allocation algorithm.[17] Accordingly, the Commission finds good cause for approving the proposed rule change (SR–ISE–2001–17) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–ISE–2001–17) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19857 Filed 8–7–01; 8:45 am]

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[15] Telephone conversation between Katherine Simmons, Vice President and Associate General Counsel, ISE, Deborah Flynn, Assistant Director, Division of Market Regulation, Commission and Geoffrey, Pemble, Attorney, Division of Market Regulation, Commission, on July 25, 2001.

[16] *See* Release No. 42808, *Supra* note 4.

[17] *Id.*

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44637; File No. SR–PCX–2001–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Accepting Orders from Professional Customers

August 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 6, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to allow PCX Floor Brokers and qualified Floor Clerks of Floor Brokers to accept offers from''Professional Customers''(as defined) for execution on the Exchange's trading floor. The text of the proposed rule change is below. Additions are in italics.

* * * * *

¶ 4963 Options Floor Broker Defined Rule 6.43(*a*)—No change.

(b) Conducting a Limited Public Business

(1) Notwithstanding the provisions of subsection (a) of this Rule, qualified Floor Brokers and Floor Clerks of qualified Floor Brokers may conduct a public business limited to accepting orders directly from Professional Customers, as defined below, for execution on the Floor of the Exchange. Any Floor Broker or Floor Clerk of a Floor Broker seeking to conduct such a limited public business must first:

(A) successfully complete the Series 7 Examination or the Series 7A Examination; and

(B) register and receive approval from the Exchange. The form of registration will be prescribed by the Exchange.

(2) For purposes of this rule, a ''Professional Customer'' includes a bank; trust company; insurance company; investment trust; a state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of any agency of the United States as of a state or political subdivision thereof, or any person (other than a natural person) who has, or who has under management, net tangible assets of at lease sixteen million dollars.

(3) Members who conduct a limited public business pursuant to the provisions of subsection (b) of this Rule 6.43 are strictly prohibited from holding customer funds and/or customer securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose, of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt the requirement that qualified Floor Brokers and Floor Clerks located on the floor of the PCX who wish to accept orders directly from professional investors for execution on the trading floor must take and pass either the Series 7 or Series

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

7A[3] examinations. Currently, PCX Rule 6.43 states that an Exchange Floor Broker may only accept and execute option orders received from members and ''shall not accept an order from any source unless he has registered his individual membership for a member organization approved to transact business with the public in accordance with Rule 9 * * *.'' The PCX now seeks to amend this rule to allow qualified Floor Brokers and Floor Clerks of qualified Floor Brokers to conduct a public business limited to accepting orders directly from professional customers without meeting the extensive requirements set forth in PCX Rule 9.[4] The PCX believes that the limited scope of this business, combined with the sophistication of such ''Professional Customers,'' with respect to option transactions, serves to alleviate some of the regulatory concerns addressed in PCX Rule 9.[5] PCX Rule 9 was implemented in order to provide protections for retail public customers who undertake to transact business on the Exchange. The regulatory concerns related to customer protection are reduced, under the proposed rule, due to the fact that members seeking to conduct such a limited public business will be strictly prohibited from holding customer funds and/or securities. Members will only be allowed to accept orders, immediately execute such orders and transmit the orders to a clearing member. the rule change, as proposed, would allow a Floor Clerk of a qualified Floor Member to accept orders from ''Professional Customers'' for execution on the Exchange's trading floor, so long as the Floor Clerk has successfully completed either the series 7 Examination or the Series 7A Examination. The New York Stock Exchange, Inc.[6] and the Chicago Stock Exchange, Inc.[7] have adopted similar rules to permit execution of ''Professional Customer orders. The proposed rule would also require members seeking to conduct such a limited public business to register with and receive approval from the Exchange. The requirements established under this rule will be phase-in so as to minimize the burden placed on Exchange Membership.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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. 52, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–PCX–2001–26, and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19859 Filed 8–7–01; 8:45 am]

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[3] The Exchange will use the Series 7A Examination that was approved in Securities Exchange Act Release No. 34334 (July 29, 1993) 58 FR 41539 (SR–NYSE–3–10). These examinations will be administered by the National Association of Securities Dealers, Inc. (''NASD'').

[4] The proposed rule defines the term ''professional customer'' to include a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of any agency of the United States as of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible asset of a least sixteen million dollars. *See also* Securities Exchange Act Release No. 43062 (July 21, 2000), 65 FR 46745 (July 31, 2000).

[5] Some of these concerns include: (a) Maintenance of customer records, (b) account supervision, (c) calculation of customer reserves as prescribed by the SEC, (d) maintenance of books and records as required by the SEC and (e) advertisements and sales literature.

[6] *See* Securities Exchange Release Act No. 34334 (July 8, 1994) FR 35964 (SR–NYSE–94–13) (Order approving rule change relating to interpretation to rule 345 establishing a new category of limited registration for floor clerks, and the content outline for the examination module for floor clerks of members engaged in public business with professional customers). *See also* Securities Exchange Act Release No. 42092 (November 2, 1999) 64 FR 61375 (SR–NYSE–99–36) (Order approving proposed rule change to eliminate the Series 7B qualification examination and adopt a new interpretation to rule 345) (Establishing Series 7A as the appropriate examination for conducting business with professional customers).

[7] *See* Securities Exchange Release Act No. 37690 (September 17, 1996) 61 FR 49803 (SR–CHX–96–11) (Order granting approval to proposed rule change relating to examinations). *See also* Securities Exchange Release Act No. 43062 (July 21, 2000) 65 FR 46754 (SR–CHX–00–07) (Order approving proposed rule change by the Chicago Stock Exchange, Inc. relating to examination requirements for floor clerks who may accept orders from professional customers for execution on the exchange's trading floor).

[8] The Exchange will phase-in these new requirements over a designated period of time after the proposed rule change has been approved. This will provide persons subject to the exam with an opportunity to study for and take the new examination without unnecessary business disruption. Members must successfully complete these examination requirements within 180 days of the date that the SEC approves the proposed rule.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44640; File No. SR–SCCP–2001–02]

Self-Regulatory Organizations; the Stock Clearing Corporation of Philadelphia; Order Granting Approval of a Proposed Rule Change Relating to the Deletion of Rule 20

August 1, 2001.

On February 5, 2001, the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–SCCP–2001–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 4, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the filing is to delete SCCP Rule 20. Rule 20 requires SCCP to provide a daily bookkeeping form to margin members that utilize SCCP's omnibus account. SCCP participants must verify the statement upon receipt and promptly report any exceptions or corrections. Additionally, Rule 20 provides that as of the last Friday of each month SCCP requests each participant to respond in writing as to whether their monthly account statement issued by SCCP is accurate for each type of account. If a statement is incorrect, any differences should be reported on research requests and enclosed with the written reply. The reply must be signed by the participant and returned to SCCP by the twentieth day of the month following the date of the statement. Pursuant to the rule, penalties may be imposed on a participant who fails to respond to confirmation requests in a timely manner. The rule provides for a hearing process for such participants.

SCCP believes that Rule 20 is unnecessary because the information provided to participants on a monthly basis is essentially duplicative of information provided daily pursuant to SCCP Rule 6. Moreover, SCCP believes that the participant certification requirement in Rule 20 is unnecessary, burdensome, and inconsistent with general practices in the financial services industry. SCCP Rule 6 provides that all transactions executed on the Philadelphia Stock Exchange, Inc., and all other transactions submitted by a participant to SCCP are subject to SCCP trade recording and confirmation. All transactions are recorded and confirmed to SCCP participants daily. SCCP considers each transaction complete and accurate unless notified by the participant of any inaccuracy prior to settlement date. Participants are liable for any loss resulting from their failure to notify SCCP of any discrepancies. Accordingly, the requirements of SCCP Rule 20 are unnecessary in light of the requirements of SCCP Rule 6.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rule of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The rule change relives SCCP and its participants from providing and reviewing duplicative reports that are unnecessary due to compliance with other SCCP rules. By eliminating the report requirements of SCCP Rule 20, SCCP's rule change fosters more efficient procedures and thereby facilitates a more prompt and accurate clearance and settlement system at SCCP. Therefore, the Commission finds that the rule change is consistent with SCCP's obligation under Section 17A to have rules that are designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for clearance and settlement.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–2001–02) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19860 Filed 8–7–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44129, (March 28, 2001), 66 FR 17983.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 25

This document replaces and supercedes ''Line of Succession Designation No. 1–A, Revision 24.''.

Line of Succession Designation No. 1–A, Revision 25

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) If I am absent from the office, I hereby designate the officials in listed order below to serve as Acting Administrator with full authority to perform all acts and functions which the Administrator is authorized to perform:

(1) Chief of Staff

(2) Counselor to the Administrator

(b) An individual serving in acting capacity in any of the positions listed in paragraph (a) but not acting by designation of the Administrator is not also included in this Line of Succession. Instead, the next official on the list shall serve as Acting Administrator.

(c) This designation shall remain in full force and effect until revoked or superceded in writing by the Administrator.

(d) Serving as Acting Administrator has no effect on the officials listed in paragraph (a), above, with respect to their current authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: August 3, 2001.

Hector V. Barreto,

Administrator.

[FR Doc. 01–19899 Filed 8–7–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of meeting.

DATES: August 22, 2001 1 p.m.—4 p.m.

ADDRESSES: The Grand Ballroom, Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024, (202)484–1000

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting will be open to the public between 1 p.m. and 4 p.m.

Purpose: This is the third deliberative meeting of the Commission. No public testimony will be heard at this meeting.

However, interested parties are invited to attend the meeting.

Agenda: The Commission will meet commencing Wednesday, August 22, at 1 p.m. and ending at 4 p.m. The topic of discussion will be a review of historical experience in administering portable personal accounts.

Future Meeting Dates: October 18, 2001 (Washington, DC, location to be determined); November 9, 2001 (Location to be determined). Public Hearings—September 6, 2001 (San Diego, CA, location to be determined) and September 21, 2001 (East Coast city, location to be determined).

Records are being kept of all Commission proceedings that are subject to public release under the Federal Advisory Committee Act and are available for public inspection at the Commission's office at the address below. Documents such as meeting announcements, agendas, minutes, and Commission reports will be available on the Commission's web page. Anyone requiring information regarding the Commission should contact Commission staff by:

- Internet at *http://www.CSSS.gov;*
- Mail addressed to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503;
- Telephone at (202) 343–1255;
- Email to Comments@CSSS.gov.

Dated: August 1, 2001.

Michael A. Anzick,

Designated Federal Official.

[FR Doc. 01–19840 Filed 8–7–01; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

President's Commission To Strengthen Social Security

AGENCY: Social Security Administration (SSA).

ACTION: Notice; comments requested.

SUMMARY: The President's Commission to Strengthen Social Security is seeking ideas from the public about how to address the financing problems facing Social Security in preparation for its September 2001 public hearings.

DATE: Submissions required by August 15, 2001.

SUPPLEMENTARY INFORMATION: Purpose: At its September 6 and September 21 hearings, the Commission would like to hear from the American people about their ideas for how to address the financial problems facing Social Security. The Commission seeks a broad range of ideas that will help the members craft recommendations to modernize and restore fiscal soundness to the Social Security system, as required by Presidential Executive Order 13210.

The commissioners welcome comment from any individual or organization regarding how best to preserve and strengthen Social Security. Areas of particular interest are:

- How to financially sustain the Social Security system.
- How personal accounts, if they are part of your Social Security solution, should be financed, structured and administered.

Send comments to the Commission:

- Internet at *http://www.CSSS.gov* using address: *Comments@CSSS.gov*; or
- Mail to President's Commission to Strengthen Social Security, 734 Jackson Place, NW, Washington, DC, 20503.

Dated: August 3, 2001.

Michael A. Anzick,

Designated Federal Official.

[FR Doc. 01–19849 Filed 8–7–01; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined that Ethiopia has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act. Therefore, imports of eligible products from Ethiopia qualify for the textile and apparel benefits provided under the AGOA.

EFFECTIVE DATE: August 2, 2001.

FOR FURTHER INFORMATION CONTACT: James Roth, Deputy Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade Development Act of 2000, Pub. L. No. 106–200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Ethiopia as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the United States Trade Representative (USTR) the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Ethiopia has taken, I have determined that Ethiopia has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Ethiopia'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–19869 Filed 8–7–01; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined that Swaziland has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act. Therefore, imports of eligible products from Swaziland qualify for the enhanced trade benefits provided under the AGOA.

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7400 (Jan. 17, 2001), the President designated Swaziland as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 (Oct. 2, 2000) delegated to the United States Trade Representative (USTR) the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Swaziland has taken, I have determined that Swaziland has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Swaziland'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 Fed. Reg. 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 01–19805 Filed 8–7–01; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–221]

WTO Dispute Settlement Proceeding Regarding Section 129(c)(1) of the Uruguay Round Agreements Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on July 12, 2001, Canada requested the establishment of a WTO dispute settlement panel to examine Section 129(c)(1) of the Uruguay Round Agreements Act. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 15, 2001 to be assured of timely consideration by USTR.

ADDRESSES: Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Section 129(c)(1) dispute. Telephone: (202) 395–3592.

FOR FURTHER INFORMATION CONTACT: David J. Ross, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. If a dispute settlement panel is established pursuant to the WTO Dispute Settlement Understanding (DSU), such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Canada

Section 129(c)(1) of the URAA (19 U.S.C. 3538(c)(1)) is provision of U.S. law that addresses the treatment of unliquidated entries of subject merchandise in situations where the United States responds to a WTO panel decision by revoking a U.S. antidumping or countervailing duty order. In its panel request, Canada describes its claims against Section 129(c)(1) in the following manner:

> The measure at issue is Section 129(c)(1) of the URAA (19 U.S.C. 3538(c)(1)). In situations in which the DSB has ruled that an antidumping or countervailing duty determination is inconsistent with the obligations of the United States under the AD Agreement or the SCM Agreement and the United States Trade Representative directs the U.S. Department of Commerce to implement a new determination, section 129(c)(1) of the URAA requires that the new determination shall apply only to entries of imports that are entered or withdrawn from warehouse for consumption on or after the date on which the United States Trade Representative directs the Department of Commerce to implement the new determination. Pursuant to section 129(c)(1), and as confirmed by the Statement of Administrative Action accompanying the URAA (H.R. Doc. No. 103–316. at page 1026 (1994)), unliquidated entries of imports that entered or were withdrawn from warehouse for consumption prior to that date (''prior unliquidated entries'') remain subject to assessment of duties pursuant to the original antidumping or countervailing duty determination, notwithstanding the adverse DSB ruling and notwithstanding that a final determination assessing those duties will be made after the date fixed for compliance in accordance with the DSU.
>
> Accordingly, section 129(c)(1) of the URAA requires that the Department of Commerce make determinations in future administrative reviews to assess duties on prior unliquidated entries pursuant to the original antidumping or countervailing duty determination notwithstanding that such determination has been found to be not in conformity with the AD Agreement or the SCM Agreement. Section 129(c)(1) requires that the United States make duty assessments in a manner that the DSB has ruled to be inconsistent with the requirements of Article VI of the GATT 1994 or the AD Agreement and the SCM Agreement.

Canada asserts on these grounds that Section 129(c)(1) is inconsistent with Articles VI:2, VI:3 and VI:6(a) of the GATT 1994; Articles 10, 19.4, 21.1, 32.1 and 32.5 of the SCM Agreement; and Articles 1, 9.3, 11.1, 18.1 and 18.4 of the AD Agreement. Canada further claims that:

Article 18.4 of the AD Agreement, Article 32.5 of the SCM Agreement and Article XVI:4 of the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') require a Member to bring its laws, regulations and administrative procedures into conformity with its WTO obligations. The DSU . . . provides that a Member found in breach of its WTO obligations is to comply immediately or, where that is not practicable, within the reasonable period of time as determined under Article 21.3. With respect to determinations made after the date fixed for compliance and insofar as such determinations affect entries prior to that date, section 129(c)(1) precludes the United States from complying with a DSB ruling. This prevents rather than ensures compliance by the United States with its WTO obligations.

On these grounds, Canada asserts that Section 129(c)(1) is consistent with Article 18.4 of the AD Agreement; Article 32.5 of the SCM Agreement, Article XVI:4 of the WTO Agreement; and DSU Articles 3.2, 3.7, 19.1, 21.1, and 213.

Public Comment: Requirement for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1)Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 ''F'' St., N.W., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–221, Section 129(c)(1) dispute) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

A. Jane Bradley,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 01–19870 Filed 8–7–01; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Toledo Express Airport; Toledo, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of fourteen parcels of land totaling approximately 58.64 acres for industrial land use. Current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to dispose of this property. The land was acquired under FAA Project No(s). AIP–3–39–0077–1190, AIP–3–39–0077–1692, AIP–3–39–0077–2293, AIP–3–39–0077–2594, and AIP–3–39–0077–2794. Approval does not constitute a commitment by the FAA to financially assist in the sale of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the sale of the airport property will be in accordance with the FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. This proposal is for approximately 58.640 acres in total.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land will be used for warehousing and light commercial/industrial use, which will provide additional jobs and in economically challenged area and enhance the aesthetics of the surrounding community.

The proceeds from the sale of the land will be used for airport improvements and operation expenses at Toledo Express Airport.

DATES: Comments must be received on or before September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–670.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7293. Documents reflecting this FAA action may be reviewed at this same location or at Toledo Express Airport, Toledo, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Lucas County, Ohio and described as follows:

A parcel of land being part of the Southeast quarter of the Southwest quarter of Section 9, also being all of Rosonowski Addition Plat 1 (Plat Volume 94, Page 76), all of Original Lot 3 and part of Original Lots 6 and 7, in Section 16, all in Town 7 North, Range 9 East, Swanton Township, Lucas County, Ohio, and being more particularly described as follows:

Commencing at a found iron bolt at the Northwest corner of said Original Lot 3 also being the intersection of the centerline of Sager Road (right-of-way varies) and Wilkins Road (60 foot right-of-way), said point also being the TRUE POINT OF BEGINNING of the parcel herein described;

Thence North 00° 05′ 55″ East on the centerline of Wilkins Road, also being the West line of the Southeast quarter of the Southwest quarter of Section 9, a distance of 300.00 feet to the intersection with a line drawn 300.00 feet Northerly of and parallel to the

South line of the Southeast quarter of the Southwest quarter of Section 9, also being the centerline of Sager Road as it now exists;

Thence South 89° 44′ 06″ East, on said line being 300.00 feet Northerly of and parallel to the South line of the Southeast quarter of the Southwest quarter of Section 9, a distance of 275.00 feet to the intersection with a line drawn 275.00 feet Easterly of and parallel to the West line of the Southeast quarter of the Southwest quarter of Section 9, also being the centerline of Wilkins Road;

Thence North 00° 05′ 55″ East, on said line 275.00 feet Easterly of and parallel to the West line of the Southeast quarter of the Southwest quarter of Section 9, a distance of 194.01 feet to the intersection with the Southwesterly right-of-way line of the U.S. 20A (right-of-way varies);

Thence on the Southwesterly right-of-way line of U.S. 20A the following six calls:

On an arc to the left, a distance of 829.46 feet to a point, said arc having a radius of 1487.40 feet, a central angle of 31° 57′ 05″, and a chord bearing of South 54° 47′ 13″ East, 818.76 feet;

South 00° 15′ 54″ West, a distance of 25.00 feet to a point;

South 89° 44′ 06″ East, a distance of 147.82 feet to a point;

South 00° 15′ 54″ West, a distance of 30.00 feet to a point;

South 84° 17′ 41″ East, a distance of 158.21 feet to a point;

North 86° 01′ 58″ East, a distance of 67.81 feet to the intersection with the East line of said Original Lot 3;

Thence South 00° 51′ 16″ West, on the East line of Original Lot 3, a distance of 1289.57 feet to a Northeast corner of Original Lot 7;

Thence South 00° 51′ 16″ West, on the East line of Original Lot 7, a distance of 443.19 feet to the intersection with the South line of the North one-third of Original Lot 7;

Thence North 89° 45′ 41″ West, on said South line of the North one-third of Original Lot 6, and Original Lot 7, Section 16, a distance of 1319.70 feet to the intersection of the West line of Original Lot 6, also being the center line of Wilkins Road;

Thence North 00° 54′ 28″ East, on the West line of Original Lot 6 and the centerline of Wilkins Road, a distance of 443.35 feet to the Southwest corner of Original Lot 3;

Thence North 00° 54′ 28″ East, on the West line of Original Lot 3, and the centerline of Wilkins Road, a distance of 1330.04 feet to the TRUE POINT OF BEGINNING of the parcel herein described, said parcel containing 58.640 acres of land, more or less, subject to all easements, zoning restrictions of record and legal highways.

The bearings used herein are for the purpose of describing angles only and are not referenced to true or magnetic North.

Issued in Belleville, Michigan, June 15, 2001.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 01–19367 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, Grosse Ile Municipal Airport, Grosse Ile, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport land from aeronautical use to non-aeronautical use. The proposal consists of two parcels of land; one 1.412 acre parcel designated as building Parcel and one parcel designated as Grazing Parcel, together totaling approximately 7.539 acres. Current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to lease the property. The land was acquired as part of transferred surplus property formerly known as the Naval Air Station, Grosse Ile; Quitclaim Deed dated December 3, 1970. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with the FAA Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999. This proposal is for approximately 7.539 acres in total.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land will be leased (Building Parcel) to allow for the construction of a 5,000 square foot barn facility solely for the purpose of breeding and raising of alpacas and related purposes and to (Grazing Parcel) allowing for the grazing of alpacas. The proposed land is South of Groh Road and West of East River Road. The proposed building and other structures will not exceed Part 77 standards. The proposed property location does not impact current safety areas or future airport development. The proceeds from the lease of land will be used for airport improvements and operation expenses at Grosse Ile Municipal Airport.

DATES: Comments must be received on or before September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Migut, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7278. Documents reflecting this FAA action may be reviewed at this same location or at Grosse Ile Municipal Airport, Grosse Ile, Michigan.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property:

Building Parcel. Commencing at a monument in a monument box at the intersection of the North line of Private Claim 554 and the centerline of East River Road, thence Due West along the said North Line 1234.34 feet and Due South 75.00 feet to the Point of Beginning, proceeding thence Due East 240.62 feet, thence Due South 255.62 feet, thence Due West 240.62 feet, thence Due North 255.62 feet to the Point of Beginning, containing 1.412 acres.

Grazing Parcel. Commencing at a monument in a monument box at the intersection of the North line of Private Claim 554 and the centerline of East River Road, thence Due West along said North Line 1234.34 feet and Due South 330.62 feet to the Point of Beginning, proceeding thence Due East 240.62 feet, thence Due North 255.62 feet, thence Due East 290.00 feet, thence South 24 Degrees 37 Minutes 36 Seconds West 530.03 feet, thence South 16 Degrees 51 Minutes 00 Seconds West 223.39 feet, thence Due West 180.00 feet, thence South 56 Degrees 36 Minutes 05 Seconds West 218.00 feet, thence Due West 178.00 feet, thence North 28 Degrees 04 Minutes 21 Seconds East 340.00 feet, thence North 59 Degrees 58 Minutes 54 Seconds East 155.91 feet, thence Due North 182.00 feet to the Point of Beginning, containing 6.127 acres.

Issued in Belleville, Michigan, May 15, 2001.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 01–19366 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Jackson County-Reynolds Airport, Jackson, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport land from aeronautical use to non-aeronautical use. The proposal consists of one parcel of land, totaling approximately 15.8 acres. Current use and present condition is vacant grassland. There are no impacts to the airport by allowing the airport to lease the property. The land was acquired through a warranty deed to Jackson County Airport from the Michigan Department of Highways on January 12, 1978; then conveyed to the County of Jackson when the City of Jackson sold the airport to the County on March 24, 1983. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with the FAA Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999. This proposal is for approximately 15.8 acres in total.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose. The proposed land will be leased to allow for a new commercial development to accommodate the construction of a 203,750 square foot building for commercial retail development. The proposed land is North of I–94 and West of US 127 in the extended approach to Runway 24. Proposed building will not exceed 35 feed above ground level at the site including light standards according to current Blackman Township Zoning Ordinances. A maximum allowable of 50 feet of height is the limit allowed by the Airport Zoning Ordinance. The proposed property is not contiguous to the airport itself. The location does not impact current safety areas of future airport development. The proceeds from the lease of land will be used for airport improvements and operation expenses at Jackson County-Reynolds Airport.

DATES: Comments must be received on or before September 7, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Migut, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.2, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487–7278. Documents reflecting this FAA action may be reviewed at this same location or at Jackson County-Reynolds Airport, Jackson, Michigan.

SUPPLEMENTARY INFORMATION: Following are legal descriptions of the property:

LAND IN SECTION 28, TOWN 2 SOUTH, RANGE 1 WEST, BLACKMAN TOWNSHIP, JACKSON COUNTY, MICHIGAN, described as follows:to-wit: That part of the following described land lying East of a line which is 200.0′ West of the Southeast corner of the Recorded Plat of BERTON WOODS SUBDIVISION NO. 2 and parallel with the North & South ¼ line of said Section 28: All that part of the Southeast ¼ of the Northeast ¼ and West 123′ of the Southwest ¼ of the Northeast ¼ of Section 28, Town 2 South, Range 1 West, Blackman Township, Jackson County, Michigan, which lies Northwesterly of a line described as: Commencing at the North ¼ corner of said Section 28, thence N–89°–47′–33″–E along the North line of said Section 28, a distance of 745.49′, thence S–28°–36′–04″–E, 1153.73′ to the POINT OF BEGINNING, thence S–61°–23′–56″–W, 218.13′ thence S–39°–50′–20″–W, 681.81′, thence S–54°–58′–50″–W, 559.67′ thence S–67°–22′–11″–W, 285.25′, thence S–71°–22′–56″–W, 794.42′ to the point of curvature of a 5579.65′ radius curve to the right (chord bearing S–80°–42′–46″–W); thence Southwesterly along the arc of said curve 1817.28′ to a point of ending. Containing 15.8 acres, more or less.

Issued in Belleville, Michigan, May 15, 2001.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 01–19368 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public of the third meeting of the FAA Aircraft Repair and Maintenance Advisory Committee. The purpose of the meeting is for the Committee to continue working towards accomplishing the goals and objectives pursuant to its congressional mandate.

DATES: The meeting will be held Tuesday, August 21, 2001, 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Bessie Coleman Conference Center, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ellen Bowie, Federal Aviation Administration (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–9952; fax (202) 267–5115; e-mail Ellen *Bowie@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aircraft Repair and Maintenance Advisory Committee to be held on August 21, at the Federal Aviation Administration, 800 Independence Avenue, SW., Bessie Coleman Conference Center, Washington, DC 20591.

The agenda will include:

- Introduction of any new designated alternate members
- Committee administration
- Reading and approval of minutes
- Review of open/additional action items
- Working group status review
- Balance of Trade—Sarah MacLeod
- Oversight/Safety—Nelson Dewees
- International Agreements—Susan Parson
- Statements of members of the public
- Review of Committee workscope vs. mandate (inclusion of general aviation)
- Review desire for Committee extension
- Plan/discuss next steps/agenda and timeline
- Closing remarks and adjournment

Attendance is open to the public but will be limited to the availability of meeting room space. Persons desiring to

present a verbal statement must provide a written summary of remarks. Please focus your remarks on the tasks, specific activities, projects or goals of the Advisory Committee, and benefits to the aviation public. Speakers will be limited to 5-minute presentations. Please contact Ms. Ellen Bowie at the number listed above if you plan to attend the meeting or to present a verbal statement.

Individuals making verbal presentations at the meeting should bring 25 copies to give to the Committee's Executive Director. These copies may be provided to the audience at the discretion of the submitter.

Issued in Washington, D.C. on August 2, 2001.

Barry R. Basse,

Acting Assistant Manager, Continuous Airworthiness Maintenance Division.

[FR Doc. 01–19861 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Oxnard Airport, Oxnard, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Oxnard Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 7, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Smith, Director of Airports of the county of Ventura at the following address: 555 Airport Way, Camarillo, CA 93010. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Ventura under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David Delshad, Airports Program Engineer, Standards Section, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261, Telephone: (310) 725–3627. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Oxnard Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101—508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 20, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the county of Ventura was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 20, 2001. The following is a brief overview of the impose and use application No. 01–01–C–00–OXR.

Level of proposed PFC: $4.50.

Proposed Charge effective date: December 1, 2001.

Proposed charge expiration date: May 1, 2007.

Total estimated PFC revenue: $872,000.

Brief description of proposed projects: Revise/Amend Update to Airport.

Master Plan and Part 150 Noise Study, Rehabilitate Airport Pavement, Runway 7/25 and Exit Taxiways, Rehabilitate Terminal Loop Road Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR INFORMATION CONTACT** and at the FAA Regional Airports office located at 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the county of Ventura, Department of Airports, Administration office.

Issued in Hawthorne, California, on July 20, 2001.

Ellsworth Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–19863 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lewis and Clark & Jefferson Counties, MT

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 in accordance with the National Environmental Policy Act for proposed transportation improvement along the I–15 corridor in Helena, Lewis and Clark & Jefferson Counties, Montana. The FHWA, in cooperation with the Montana Department of Transportation (MDT), invites public comment and will be holding public scoping meetings prior to commencing work on the environmental impact statement.

Mail, fax or e-mail written comments to: Mr. Joel Marshik, P.E., Montana Department of Transportation, Environmental Services Manager, 2701 Prospect Avenue, Helena, Montana 59620–1001, Fax: 406–444–7245, e-mail:jmarshik@state.mt.us.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Paulson, Program Development Engineer, FHWA Montana Division, 2880 Skyway Drive, Helena, Montana 59602; Telephone (406) 449–5302, extension 239; or Mr. Joel Marshik, Manager, Environmental Services, Montana Department of Transportation, 2701 Prospect Avenue, Helena, Montana 59620–1001; Telephone (406) 444–7632.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Montana Department of Transportation (MDT), hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), Public Law 910190, 83 Stat. 85291969), as amended, for corridor improvements to I–15 through Helena, in Lewis and Clark & Jefferson Counties, Montana. This EIS will evaluate the No Build and other Build Alternatives for proposed improvements to I–15 in Lewis and Clark & Jefferson Counties and determine the estimated costs and potential impacts associated with each. The project study area is approximately 13 miles along I–15 between the Montana City and Lincoln Road interchanges. The project includes public involvement, agency coordination, technical analysis, and preparation of the environmental document to record the decision.

Interstate 15 is the only North-South interstate highway in Montana. It is part of the National Highway System and has become critically important in regional, interstate, and international travel and commerce.

Increases in population and changes in land use patterns in the Helena area have resulted in increased traffic volumes on Interstate 15 and on East-West roadways since its construction in 1962. This increased traffic has decreased the operating efficiency of the interchanges on I–15 and on the East-West roadways crossing the highway corridor. I–15 has become a barrier to East-West travel, including pedestrians, bicyclists, and emergency access.

The purpose of the project is to accommodate anticipated traffic volumes safely and efficiently, while similarly considering the movement of east-west traffic crossing the I–15 corridor. The project will address safety and operating efficiencies at I–15 interchange and east-west roadways crossing I–15 between Lincoln Road and Montana City. The crossing roadways will be studied to the extent necessary to ensure their ability to collect and distribute anticipated traffic to and from I–15.

The public involvement program will include the following:

- Public Workshops and Meetings
- Meetings and Presentations to Neighborhood Groups and Business Organizations
- Formation of an Advisory Committee of Local Citizens and Agencies
- Project Web Site (www.I-15helenaeis.com)
- Telephone Information 'Hotline' (406–458–4789)
- Project Newsletter
- Public Opinion Survey

The FHWA and MDT invite interested individuals, organizations, Federal, State, and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, and environmental issues relating to the alternatives. An information packet describing the purpose and need for the project, the areas and issues to be evaluated, the citizen and agency involvement program, and the preliminary project schedule will be available at the public scoping meeting. These scoping materials may be requested by contacting Mr. Joel Marshik at the address and phone number above. Scoping comments may be made verbally at the public scoping meeting or in writing. The public will receive notices on the location and time of the scoping meeting through newspaper advertisements and/or individual correspondence.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Joel Marshik as previously described.

(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.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on date: July 31, 2001.

Dale W. Paulson,

Program Development Engineer, Montana Division, Federal Highway Administration, Helena, MT.

[FR Doc. 01–19809 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9561]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 22 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: August 8, 2001.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

Twenty-two individuals petitioned the FMCSA for an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are: Roger D. Anderson, Joey E. Buice, Ronald D. Danberry, Paul W. Dawson, Lois E. DeSouza, Richard L. Gandee, Steven A. Garrity, Chester L. Gray, Waylon E. Hall, Jeffery M. Kimsey, Gerald L. Phelps, Doyle E. Ramsey, Michael J. Risch, Tim M. Seavy, Kim L. Seibel, Edd J. Stabler, Randy D. Stanley, Lee T. Taylor, James Melvin Tayman, Sr., Wesley E. Turner, Edward W. Yeates, Jr., and John C. Young.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the FMCSA has evaluated the 22 petitions on their merits and made a determination to grant the exemptions to all of them. On June 6, 2001, the agency published notice of its receipt of applications from these 22 individuals, and requested comments from the public (66 FR 30502). The comment period closed on July 6, 2001. One comment was received, and its content was carefully considered by the FMCSA in reaching the final decision to grant the petitions.

Vision And Driving Experience of the Applicants

The vision requirement provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. 49 CFR 391.41(b)(10)

Since 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FHWA–98–4334.)

The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 22 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 5 of the applicants were either born with their vision impairments or have had them since childhood. The 5 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL or non-CDL, these 22 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 45 years. In the past 3 years, the 22 drivers had 4 convictions for traffic violations among them. Three of these convictions were for speeding. The other conviction was for stopping on the highway in a CMV. Two drivers were involved in an accident in a CMV, but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a June 6, 2001, notice (66 FR 30502). Since the docket comment did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group is supported, with one exception, by the information published at 66 FR 30502. After the FMCSA published its notice of receipt of applications, the agency received additional information from its check of these applicants' motor vehicle records that Mr. Westley E. Turner had an accident in a CMV, but did not receive a citation. According to the police report for the accident, the other driver was cited for ''Changed Lanes Within 100 Feet of Intersection.''

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 22 applicants receiving an exemption, we note that cumulatively the applicants have had only two accidents and four traffic violations in the last 3 years. The two accidents did not result in the issuance of citations against the applicants. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas

exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 22 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) that each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below. The Louisiana Department of Public Safety and Corrections wrote the FMCSA regarding the status of Mr. Waylon E. Hall's CDL. Louisiana commented that on August 29, 2000, it downgraded Mr. Hall's Class A CDL to a non-CDL license because he did not meet the minimum physical qualification requirements in 49 CFR 391.41(b)(10). The Class A Louisiana CDL issued to Mr. Hall on January 9, 1997, was issued in error. However, Louisiana indicated that it will reissue the CDL to Mr. Hall if the FMCSA grants him an exemption from the Federal vision requirements.

Conclusion

After considering the comment to the docket and based upon its evaluation of the 22 exemption applications in accordance with the Rauenhorst decision, the FMCSA exempts Roger D. Anderson, Joey E. Buice, Ronald D. Danberry, Paul W. Dawson, Lois E. DeSouza, Richard L. Gandee, Steven A. Garrity, Chester L. Gray, Waylon E. Hall, Jeffery M. Kimsey, Gerald L. Phelps, Doyle E. Ramsey, Michael J. Risch, Tim M. Seavy, Kim L. Seibel, Edd J. Stabler, Randy D. Stanley, Lee T. Taylor, James Melvin Tayman, Sr., Wesley E. Turner, Edward W. Yeates, Jr., and John C. Young from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: August 1, 2001.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 01–19897 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–4334 (formerly FHWA–98–4334)]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in 49 CFR 391.41(b)(10) for six individuals.

DATES: This decision is effective August 8, 2001. Comments from interested persons should be submitted by September 7, 2001.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at http://dmses.dot.gov/submit. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may see all comments online through the Document Management System (DMS) at: http://dmses.dot.gov/submit.

Background

Six individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Tomie L. Estes, Jay E. Finney, Britt D. Hazelwood, Jerome R. Jessen, Marvin L. Swillie, and Larry J. Waldner. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the FMCSA has evaluated the six petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

On April 5, 1999, the agency published a notice of final disposition announcing its decision to exempt 23 individuals, including these six applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (64 FR 16517). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 63 FR 66226 (December 1, 1998). One comment was received, and its contents were carefully considered by the agency in reaching its final decision to grant the petitions (64 FR 16517). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continued to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the six applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 63 FR 66226; 64 FR 16517), and each has requested timely renewal of the exemption. These six applicants have submitted evidence showing that the vision in their better eye continues to meet the standard specified at 49 CFR 391.41(b)(10), and that the vision impairment is stable. In addition, a review of their records of safety while driving with their respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Discussion of Comments

The Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, the AHAS objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by the AHAS were addressed at length in 66 FR 17994 (April 4, 2001). We will not address these points again here, but refer interested parties to that earlier discussion.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Tomie L. Estes, Jay E. Finney, Britt D. Hazelwood, Jerome R. Jessen, Marvin L. Swillie, and Larry J. Waldner, subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance of the six applicants here and extends their exemptions based on the evidence introduced. The agency will review any comments received concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). While comments of this nature will be entertained at any time, the FMCSA requests that interested parties with information concerning the safety records of these drivers submit comments by September 7, 2001. All comments will be considered and will be available for examination in the docket room at the above address. The FMCSA will also continue to file in the docket relevant information which becomes available. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: August 1, 2001.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 01–19898 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; Volkswagen

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of a petition for modification of a previously approved antitheft device.

SUMMARY: On May 13, 1993, this agency granted in full Volkswagen of America's (Volkswagen) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Volkswagen Jetta and Cabrio car lines. Additionally, on April 10, 1995 and December 22, 1995, the agency granted in full Volkswagen's petition for exemption for the Golf and Passat car lines, respectively. On March 12, 2001, Volkswagen petitioned the agency for modification of a previously approved antitheft device for the Jetta, Cabrio, Golf and Passat car lines beginning with the 2002 model year. The agency grants Volkswagen's petition for modification because it has determined, based on substantial evidence, that the modified antitheft device described in Volkswagen's petition to be placed on the car lines as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2002.

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) 493–2290.

SUPPLEMENTARY INFORMATION: In May 1993, NHTSA published in the Federal Register a notice granting the petition from Volkswagen of America, Inc. (Volkswagen) for an exemption from the parts-marking requirement of the Theft Prevention Standard for the Volkswagen Jetta and Cabrio car lines beginning with model year (MY) 1994 (see 58 FR 28434, May 13, 1993). In April 1995, NHTSA published in the **Federal Register** a notice granting the petition for an exemption from the parts-marking requirement of the Theft Prevention Standard for the Volkswagen Golf car line beginning with MY 1996 (see 60 FR 18164, April 10, 1995). In December 1995, NHTSA published in the **Federal Register** a notice granting the petition for an exemption from the parts-marking requirement of the Theft Prevention Standard for the Volkswagen Passat car line beginning with MY 1997 (see 60 FR 66575, December 22, 1995). The agency determined that the antitheft device which Volkswagen installed on its Jetta, Cabrio, Golf and Passat car lines as standard equipment were likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-making requirements. Specifically, the current antitheft system for the Jetta, Cabrio and Golf car lines incorporates central-locking, an engine starter-interrupt feature and an audio and visual alarm. The current antitheft system for the Passat car line incorporates central-locking, an engine starter-interrupt feature and an optional audio and visual alarm.

By letter dated March 12, 2001 Volkswagen submitted a petition for modification of its previously approved antitheft systems for the Volkswagen Cabrio, Jetta, Golf and Passat car lines, beginning with MY 2001.

On July 11, 2001, the agency contacted Volkswagen by telephone and obtained additional information which clarified the nature of the changes to the antitheft systems for its Cabrio, Jetta, Golf and Passat car lines. The information Volkswagen supplied to NHTSA by letter and telephone is considered a complete petition, as required by 49 CFR 543.9(d), in that it meets the general requirements contained in 49 CFR 543.5 and the specific content requirements of 49 CFR 543.6.

Volkswagen stated that it has modified its system by adding an electronic engine immobilizer feature to its standard antitheft system as described in its original petitions for exemption for the Jetta, Cabrio, Golf and Pasat car lines. Additionally, Volkswagen proposes to delete the starter-interrupt feature of its current system because the electronic engine immobilizer will perform the same intended functions. Volkswagen acknowledged that it had not notified the agency in advance of this added feature because it believed that there was no change to the basic system for which the exemptions had been granted. The agency notes Volkswagen's neglect to inform it of the changes it contemplated in making to its original antitheft device. In accordance with § 543.9(c)(2)(ii) the manufacturer must request permission to use an antitheft device similar to, but different from the standard equipment antitheft device which it installed under the exemption. For future exemption modifications, the agency fully expects Volkswagen to notify the agency of its intention to modify or change its antitheft system from that installed under the original exemption.

Volkswagen's electronic engine immobilizer has a three generation phase-in and its components include an immobilizer control unit, a warning lamp in the dash panel insert, a reading coil on the ignition key and an engine control unit. Volkswagen stated that the advancement between its Generation I and Generation II engine immobilizer systems used in the Golf and Jetta car lines consisted of integration of the immobilizer control unit in the dash panel insert and the addition of a coding feature. The Generation II system used in the Cabrio differs from that used in the Golf and Jetta car lines in that the immobilizer control unit is not integrated into the dash panel, but is separate. Volkswagen stated that it equipped the Passat car line with the Generation III system in MY 2001. Additionally, the optional alarm currently offered on the Passat line will be included as a standard feature of the modified system.

In MY 2002, all four car lines will be installed with the Generation III system. Volkswagen stated that the Generation III system modifies the mode of communication between the engine control module and the immobilizer control unit, so that the engine control unit also actively participates with the immobilizer control unit for calculating and verifying the correct key code for starting the engine.

Activation and deactivation of the modified system for all four car lines will remain the same as it is in the current systems. Specifically, automatic activation of the system occurs when the driver/operator removes the key from the ignition and normally locks the doors.

The modified system will require use of a correctly coded-key to start and unlock the vehicle. Volkswagen stated that the key looks like a normal coded-key with internal milling, but has a small read/write transponder built into the body or head, of the key. A data read coil has also been added to the ignition lock cylinder. The reading coil energizes the transponder in the key, reads its code and sends the key's code to the

evaluation unit. When the ignition key is turned to the ''ON'' position, the key's transponder, the immobilizer control unit and the engine control unit initiate a set of tests to determine if the vehicle should start. The transmission of the code initiates arithmetic operations in the key transponder and the immobilizer control unit to determine if the key is the correct one for authorized starting of the vehicle. A new variable code is generated every time the vehicle is started or starting is attempted so that duplicating a key to start the vehicle is impossible. If the initiated tests fail, such as if when an incorrect key is used, the owner/operator will be unable to start the vehicle. The car will only start when the ignition is unlocked both mechanically and electronically.

Volkswagen stated that the modified device will also continue to monitor the vehicle's doors, hood and trunk. If the system is armed and unauthorized entry is subsequently attempted from any of the protected areas, the antitheft device will be triggered, causing activation of a visual and audible alarm.

Volkswagen also provided a detailed description of the identity, design and location of the components of the antitheft system including diagrams of the components and their location in the vehicle beginning with the 2002 MY. To prevent defeat of the antitheft system, Volkswagen stated that all system components are inaccessibly located.

In order to ensure the reliability and durability of the device, Volkswagen stated that it conducted tests of the modified antitheft device, including electrical and mechanical durability, and certifies that it passed all of the performance requirements of the tests conducted.

The agency believes that there is substantial evidence indicating that the modified antitheft device to be installed as standard equipment on the MY 2002 Volkswagen Cabrio, Golf, Jetta and Passat car lines will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the Theft Prevention Standard (49 CFR Part 541). This determination is based on the information that Volkswagen submitted with its petition and other available information. The agency believes that the modified device will continue to provide five types of performance listed in 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR 543.6(a)(4), the agency also finds that Volkswagen has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information Volkswagen provided on its antitheft system. This information included a description of reliability and functional tests conducted by Volkswagen for its antitheft device and its components.

The agency has evaluated Volkswagen's MY 2002 petition for modification of the previous exemptions granted for the Cabrio, Golf, Jetta and Passat car lines from the parts-marking requirements of 49 CFR Part 541. The agency has determined that the modified device to be installed on the Volkswagen Cabrio, Golf, Jetta and Passat car lines are likely to be as effective as parts marking in preventing and deterring theft of these vehicles, and therefore qualifies for a full exemption under 49 CFR Part 543.

For the foregoing reasons, the agency hereby grants Volkswagen's petition for modification of the exemptions previously granted to the Jetta, Cabrio, Golf and Passat car lines beginning with the 2002 model year.

If, in the future, Volkswagen decides not to use the exemption for the car lines that are the subject of this notice, it should formally notify the agency. If such a decision is made, the car line(s) must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volkswagen wishes in the future to modify the device on which this exemption is based, it may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, 543.9(c)(2) provides for the submission of petitions ''(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden which 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis.

Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50

Issued on: August 3, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 01–19864 Filed 8–7–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–101 (Sub–No. 16X)]

Duluth, Missabe and Iron Range Railway Company—Abandonment Exemption—in St. Louis County, MN

On July 19, 2001, Duluth, Missabe and Iron Range Railway Company (DMIR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 1.3–mile line of railroad known as the Hull Rust Line, extending from milepost 14.8 to milepost 16.1, in the city of Hibbing, St. Louis County, MN. The line traverses U.S. Postal Service Zip Code 55746. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in DMIR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 6, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 28, 2001. Each trail use request must be accompanied

by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–101 (Sub–No. 16X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) DMIR's attorney, Thomas R. Ogoreuc, 135 Jamison Lane, Monroeville, PA 15146. Replies are due on August 28, 2001.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 1, 2001.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–19892 Filed 8–7–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3911

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3911, Taxpayer Statement Regarding Refund.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft or destruction of a tax refund, and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 520,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 43,160.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–19906 Filed 8–7–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–399–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–399–88 (TD 8434), Treatment of Dual Consolidated Losses (§ 1.1503–2).

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–

3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Dual Consolidated Losses.

OMB Number: 1545–1083.

Regulation Project Number: INTL–399–88.

Abstract: Internal Revenue Code section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. This regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign country and if an agreement is attached to the income tax return of the dual resident corporation or group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 3 hr., 14 min.

Estimated Total Annual Burden Hours: 1,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–19907 Filed 8–7–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
August 8, 2001

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010313063–1063–01; I.D. 121200A]

RIN 0648–AO20

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes revisions to several sections of regulations that pertain to permits, recordkeeping, and reporting requirements for crab and groundfish fisheries off Alaska. The proposed changes are necessary to remove obsolete text, clarify and simplify existing text, facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the fishery management programs for crab and groundfish fisheries off Alaska.

DATES: Comments must be received by September 7, 2001.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska and the crab fisheries in the EEZ of the Bering Sea and Aleutian Islands area according to fishery management plans (FMPs) prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600.

This action proposes revisions to several sections of the implementing regulations for these FMPs that pertain to permits, recordkeeping and reporting. Most of the proposed revisions are technical edits and clarifications to existing recordkeeping and reporting (R&R) requirements and are described under the section-by-section analysis. The balance of the proposed revisions are more substantial and are highlighted in this document. They would alter current R&R procedures.

Proposed Changes

Several terms would be standardized in this proposed rule and others would be corrected for uniformity wherever they appear. ''Central GOA regulatory area'' would replace in regulatory text: ''Central area of the GOA'', ''Central Gulf'', ''Central regulatory area of the GOA'', and ''GOA central area''. ''Western GOA regulatory area'' would replace: ''Western area of the GOA'', ''Western Gulf'', ''Western regulatory area of the GOA'', and ''GOA western area''. ''Eastern GOA regulatory area'' would replace: ''Eastern area of the GOA'', ''Eastern Gulf'', ''Eastern regulatory area of the GOA'', and ''GOA eastern area''. ''Stationary floating processor'' would replace ''Vessel of the United States operating solely as a mothership in Alaska State waters''. ''BSAI'' would replace ''Bering Sea and Aleutian Islands management area''. ''GOA'' would replace ''Gulf of Alaska management area''. ''Maximum retainable amount'' would replace ''Maximum retainable bycatch amount''. ''Exempted fishery'' would replace ''Experimental fishery''. The term ''Bycatch'' would be replaced with ''Incidental catch'' when the meaning is fish caught while targeting on some other fish, but does not include discard of fish that were released or returned to the sea, regardless of whether such fish are brought fully on board a fishing vessel.

The term ''ADF&G Number'' would be replaced by ''ADF&G vessel registration number''. The term ''ADF&G processor number'' would be replaced by ''ADF&G processor code''. In certain logbooks, the term ''ADF&G vessel No.'' would be replaced by ''ADF&G processor code.''

The term ''CDQ delivery number'' would be replaced by ''Date fishing began'' wherever it appears in regulatory text, logbooks, and forms. The term ''CDQ observer'' would be replaced in appropriate regulatory text by ''Level 2 observer'' to comply with changes in the American Fisheries Act (AFA) program and observer requirements. The gear type ''jig/troll'' would be separated into two separate gear types, ''jig'' and ''troll.''

Cross references and parenthetical notes would be added for clarity and to point the reader to other sections for additional information.

Figures

Figure 19 would be added to describe Shelikof Strait Conservation Area (SSCA), and the text at § 679.22(b)(3)(iii)(B) would be changed to refer to Figure 19.

Figure 20 would be added to describe the Steller Sea Lion Conservation Area (SCA) of the Bering Sea, and the text at § 679.22(a)(11)(iv)(B) would be changed to refer to Figure 20.

Tables

Table 1—Product and Delivery Codes would be revised.

Relevant to the Individual Fishing Quota (IFQ) Program, the introductory paragraph under IFQ codes would be revised to explain that only two product codes would be authorized for IFQ or CDQ Pacific halibut and that all of the product codes on Table 1 are authorized for IFQ or non-IFQ sablefish.

To accomplish a more accurate accounting of IFQ species weight, effective January 1, 2002, the IFQ landing reporting system (includes automated terminals (ATMs) and manual landings) would require an additional question about whether the fish species weight includes ice and slime, ''YES'' or ''NO.'' If YES, the program would calculate a 2-percent deduction from the weight debited from the IFQ permit account. Those fish which have been washed prior to weighing would not be eligible for a positive ice-and-slime response or 2-percent deduction. It is anticipated that any future ice-and-slime products could be easily calculated using the 2-percent approach, without causing disruption to persons submitting reports or to the database.

Also effective January 1, 2002, the following ice-and-slime codes would be removed: 51—Whole fish/food fish with ice & slime; 54—Gutted, head on, with ice & slime; 55—Gutted, head off, with ice & slime; 57—Headed and gutted, Western cut, with ice & slime; 58—Headed and gutted, Eastern cut, with ice

and slime. Removal of the ice-and-slime product codes would keep NMFS' product codes consistent with the Alaska Department of Fish & Game (ADF&G) product codes while meeting the needs of the IFQ program for accurate account management.

Product code 02 would be revised by removing two words—''processed for''—from the description of ''Whole fish/bait. Processed for bait. Sold'' to read ''Whole fish/bait. Bait. Sold''. The existing definition mentions processing, which is not appropriate, because no processing takes place.

Product code 11 would be revised from ''kirimi'' to read ''kirimi (steaks)'' to further align with ADF&G descriptions.

Product codes 41 and 42, which currently appear on Table 1, would be moved from the discard/disposition section into the general use code section.

Code 88 would be added to mean ''Whole fish, discard, infested. Flea-infested fish, parasite-infested fish.''

Code 89 would be added to mean ''Whole fish, discard, decomposed. Decomposed or previously discarded fish.''

Code 96 would be removed and replaced by codes 88 and 89. Code 96 meant ''discard, decomposed. Flea-infested fish, parasite-infested fish, decomposed, or previously discarded fish''.

Because five major systems use the same product codes, it is necessary that the product codes be uncomplicated, simple, and consistent: (1) When IFQ products are entered through the IFQ reporting system; (2) when groundfish products are reported electronically, either through the shoreside processor electronic logbook report (SPELR) (with the SPELR, the computer keeps track of balances based on the product code itself and does not require separate sections for summary as is the case for the logbooks) or the electronic weekly production report (WPR); (3) when groundfish products are reported in logbooks and WPRs to NMFS; (4) when groundfish products are reported on ADF&G fish tickets; and (5) when groundfish products are reported on the State of Alaska (State) Commercial Operator's Annual Report (COAR). These revisions to Table 1 would place all of the required codes together in one location.

An explanatory footnote (1) and appropriate codes marked with the footnote (1) would be added to use whole fish codes to record round weight of a fish, even if the whole fish is not used (*e.g.*, bait, eaten on board).

The regulatory descriptions of product designations would be removed from the Definitions section, § 679.2 and added to Table 1. Regulatory text discussing use of codes at § 679.5(a)(6)(iii)(F)(*2*), (*3*), (*4*), (*5*), (*6*) and (*7*) would be removed and added to Table 1 as a series of notes within each appropriate code.

Table 2—Species Codes. The species codes would be arranged in alphabetical order for easier reference.

A footnote would be added to Table 2 to revise the code categories formerly called ''federally managed'' and ''State code'' to read ''FMP species'' and ''non-FMP species''. This revision would allow a finer description of species that have complex management. For example, black and blue rockfish were removed from the Gulf of Alaska (GOA) FMP but are still part of the Bering Sea and Aleutian Islands Management Area (BSAI) FMP, and come under the ''other rockfish'' Total Allowable Catch (TAC). Codes 142 (black rockfish, BSAI) and 167 (blue rockfish, BSAI) are added as FMP species. Codes 142 (black rockfish, GOA) and 167 (blue rockfish, GOA) are added as non-FMP species. Jellyfish presents another problem, since it is not federally managed; yet it is not represented by a State code. Another problem is that some species are federally managed at times, and State managed at other times (e.g., Pacific cod). Regulations at § 679.5 require that FMP species be recorded and reported in logbooks and forms. Non-FMP species may be recorded and reported at the discretion of the participant. A note would be added to the table title to explain which species codes are defined as FMP species (Federal groundfish and Federal prohibited species).

The code for Pacific herring would be changed from 230 to 235. Code 230 is the code for a directed fishery; code 235 is the code for prohibited species.

Code 260*, a non-FMP species code, would be revised from ''Codling, Pacific flatnose'' to read ''Pacific flatnose'' to agree with the State species description.

Code 701* would be changed to an FMP species code and would read ''701—skate, longnose''.

Code 888, a species code used only with the product transfer report (PTR) meaning ''mixed species tote'', would be removed because use of this code is in opposition to requiring individual species identification as products. This code was created to assist small processors with small shipments. However, NMFS discovered that the code causes confusion for shipments of species in any quantities from both small and large processors, because shipment weights of individual species are unknown and these species and weights are not deducted from the logbooks.

The forage fish codes and descriptions would be removed from § 679.2 (Definitions) and added to Table 2 as FMP species codes.

The following non-FMP codes would be removed because they are too general in description and not useful for management: 190* Greenling, general; 510 Smelt, general; 880* Oysters; and 896* Sea urchin.

Code 951 would be changed from ''multispine'' to read ''multispina.''

The following non-FMP species codes would be indicated by ''*'' and would be added to Table 2: 215* Prowfish; 216* Lumpsucker; 515* Smelt, surf; 625* Jellyfish; 680* Sturgeon, general; 714* Ratfish; 715* Skilfish; 720* Albacore; 890* Snails; 892* Sea urchin, red; 893* Sea urchin, green; 951* Multispina crab; and 953* Crab, Verrilli.

Table 3—Product Recovery Rates. A footnote would be added to instruct readers how to obtain round weight of groundfish from product weight, IFQ net weight of Pacific halibut from product weight of halibut, and round weight of Pacific halibut from net weight. Code 86 would be added to the column for values for whole fish product codes. Code 96 would be removed and codes 88 and 89 would be added as a column for values of Infested or Decomposed Fish. The PRR for gutted octopus of § 0.69'' would be revised to read § 0.81'' based on new research from ADF&G.

Effective January 1, 2002, Table 3 would be revised by removing the IFQ ice-and-slime codes (see Table 1) and corresponding values in conjunction with changes in the IFQ landing reporting requirements. The row entry for ''IFQ sablefish'' would be removed causing the PRR values to be the same as ''sablefish'' once the ice-and-slime codes are removed.

Various types of pollock kirimi products have been developed over the years. No PRR has been assigned for these products as a group although industry reports indicate a range of yields from about 18 percent to about 42 percent depending on product form, fish size and buyer specifications. An average PRR for these products is estimated at 25 percent. Pollock kirimi is not an approved product for the purpose of roe retention so producers of pollock kirimi during pollock roe season must discard pollock roe. In response to an industry recommendation, the PRR for pollock kirimi would be established at 0.25 in Table 3.

Table 7—Communities Determined to Be Eligible to Apply for Community

Development Quotas. Table 7 would be revised to add seven new communities recognized as Western Alaska Community Development Quota (CDQ) communities based on their location. Add Grayling to the Bering Strait CDQ Group; add Ekwok, Levelock, and Portage Creek and also list Pilot Point and Ugashik as two separate communities in the Bristol Bay CDQ Group; and add Mountain Village, Napuskiuk, Napakiak, and Oscarville to the Southwest Coastal Lowlands CDQ Group.

Table 8—Harvest Zone Codes. Table 8 would be revised by removing code A for ''EEZ off Alaska'' and adding two new harvest zone codes to give better distinction to NMFS' groundfish database: Code A1 for ''BSAI EEZ off Alaska'' and code A2 for ''GOA EEZ off Alaska.'' The requirement to record Harvest zone codes would be removed from the PTR.

Table 9—Required Logbooks, Reports Forms, and Electronic Logbook Reports from Participants in the Federal Groundfish Fisheries. Table 9 would be revised by removing the entry for ''Buying Station Daily Cumulative Logbook (DCL)'' and replacing it with ''Buying Station Report (BSR)''. The table also would be revised by removing the requirement for a buying station check-in and check-out report.

Table 10—Gulf of Alaska Retainable Percentages. Table 10 would be revised by adding species codes next to the species name in the basis species column. Footnote numbers (1) would be added next to grouped species name in the basis species column so that the terms can be looked up in the GOA specifications in the **Federal Register** or on the Alaska Region Home Page at (http://www.fakr.noaa.gov/sustainablefisheries/2000harvestspecs.htm). The abbreviation SEEO would be corrected to SEO; the meaning of SEO is Southeast Outside District.

Table 11—Bering Sea and Aleutian Islands Management Area Retainable Percentages. Table 11 would be revised by adding a footnote to explain that certain fixed gear restrictions affect the use of the product recovery rate (PRR) values in Table 11. Table 11 is for people using any of the authorized gear types to calculate incidental catch based on a target species. However, if a person is aboard a vessel using fixed gear, retention of sablefish is different from what the table indicates in the following ways: (1) If you have IFQ quota, you must keep all sablefish that are caught (§ 679.7(f)(11)); and (2) if you do not have IFQ quota, you must not retain any sablefish that are caught (§ 679.7(f)(3)(ii)). The footnote would alert the participants to use the table for incidental catch calculations, except when IFQ sablefish and fixed gear are involved. In addition, Table 11 would be revised by adding species codes next to the species name in the basis species column. Footnote numbers (1) would be added next to the grouped species name in the basis species column so that the terms can be identified in the BSAI specifications in the **Federal Register** or on the Alaska Region Home Page at (http://www.fakr.noaa.gov/sustainablefisheries).

Table 19—Seabird Avoidance Gear Codes. Table 19 would be added to present seabird avoidance gear codes for use with logbooks of vessels using longline or pot gear.

Groundfish Logbooks and Forms

The term ''discard/donation'' would be replaced by ''discard/disposition'' to better describe products that are utilized but not necessarily landed. An additional sheet would be added to each logbook, a goldenrod logsheet, for use by the observer. The distribution list on each logsheet would be corrected on all logsheets to represent the correct distribution sequence. ''Jig/troll'' would be separated into two separate gear types: ''jig'' and ''troll.'' The field entitled ''target species'' would be replaced by ''target species code''. The date on the logsheets would be changed from ''2000'' to read ''2001''.

The ''Management Program'' block would replace the ''CDQ'' block, and would be added to the catcher vessel longline and pot gear daily fishing logbook (DFL). The management block lists separate programs under which fish accounting is required (i.e., CDQ, IFQ, Research Program, and Exempted Fishery Program). An operator or manager may use any number of these programs, and if so, must enter the identifying number for the program. A new logsheet must be maintained for each program. A new logsheet must be maintained if more than one identifying number is used within each program.

Removed Definition

''CDQ delivery number'' would be removed; the program computer will create an identifying code based on the date fishing started.

Added Definitions

''Agent'' would be added to identify a person who may act on behalf of the owner, operator, or manager of a catcher vessel, catcher/processor, mothership, shoreside processor, stationary floating processor, buying station or IFQ Registered Buyer to apply for permits or benefits on behalf of applicants.

''Associated processor'' would be added to identify the legal connection between a buying station and a federally permitted mothership, shoreside processor, or stationary floating processor.

''Endorsement'' would be added to present cross references to ''area endorsement'' for the groundfish LLP permits; ''area/species endorsement'' for the crab LLP permits; and ''area endorsements'' for the scallop LLP permit.

''Experimental fishery'' would be added as a cross reference to § 679.6 and to comply with a national change in use from ''experimental fishery'' to ''exempted fishery.''

''Gear'' would be added to create a cross reference to the definition of ''authorized fishing gear.''

''Harvest zone codes'' would be added as a cross reference to Table 8 to this part.

''Incidental catch or incidental species'' would be added to mean fish caught while targeting on some other species, but does not include discard of fish that were released or returned to the sea, whether or not such fish are brought fully on board a fishing vessel. An incidental catch is any species or species group for which a maximum retainable amount is calculated and is expressed as a percentage of the weight of the total fish on board (see Tables 10 and 11 to this part).''

''Product transfer report (PTR)'' would be added as a cross reference to § 679.5(g).

''Representative'' would be added as a cross reference to § 679.5(b).

''Seabird avoidance gear'' would be added to read ''(see § 679.24(e), § 679.42(b)(2), and Table 19 to this part).''

''Shoreside processor electronic logbook report (SPELR)'' would be added as a cross reference to § 679.5(d).

''Tagged halibut or sablefish'' would be added as a cross reference to § 679.40(g).

''Weekly production report (WPR)'' would be added as a cross reference to § 679.5(i).

Revised Definitions

''Active/inactive periods'' would be revised to become a cross reference to § 679.5(a)(7)(i).

''Ancillary product'' would be revised to become a cross reference to Table 1 to this part, and the definition text would be added to Table 1.

''Bycatch species'' would be revised to read ''bycatch or bycatch species'' to mean fish caught and released while

targeting another species or caught and released while targeting the same species.

Paragraph (1)(v) of ''fishing trip'' would be revised to exclude catcher vessels which do not operate on a weekly reporting period.

''Forage fish'' would be revised to become a cross reference to Table 2 to this part.

''Gear deployment'' would be revised to read ''gear deployment (or to set gear)'' and to describe both position and time.

Paragraph (1) *Position of gear deployment* (lat. and long. to the nearest minute). ''Trawl gear'' is unchanged. ''Longline gear'' would be changed to read ''hook-and-line gear'' and would be changed from ''where the gear enters the water'' to read ''the beginning position of a set of hook-and-line gear.'' ''Jig or troll gear'' would be added to mean ''the position where the jig or troll gear enters the water.'' ''Pot gear'' would be revised from ''where the first pot enters the water'' to read ''the position of the first pot in a string of pots.''

Under paragraph (2) ''*Time of gear deployment* (A.l.t.),'' ''trawl gear'' would be added to read ''the time when the trawl gear reaches the fishing level and begins to fish.'' ''Hook-and-line gear'' would be added to read ''the time when the first hook-and-line gear of a set is deployed. ''Jig or troll gear'' would be added to read ''the time when jig or troll gear enters the water.'' ''Pot gear'' would be added to read ''the time when the first pot in a string of pots is deployed.''

''Gear retrieval'' would be revised to read ''gear retrieval (or to haul gear)'' and to create two elements within gear retrieval: position and time where previously ''gear retrieval'' was defined only in terms of position. Also, the requirement to record time would be revised from ''Alaska local time (A.l.t.), to the nearest hour'' to read ''Alaska local time'' without specifying to the nearest hour. Many fishermen have commented that sometimes only minutes separate activities and to round to the nearest hour results in confusing entries.

Paragraph (1) *Position of gear retrieval* (lat. and long. to the nearest minute). ''Trawl gear'' is unchanged. ''Hook-and-line or longline pot gear'' would be split into ''hook-and-line'' and ''pot gear.'' ''Hook-and-line gear'' would be added to mean ''the position where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.'' ''Pot gear'' would be added to mean ''the position where the last pot of a set is retrieved, regardless of where the majority of the set took place.'' ''Jig or troll gear'' remains unchanged.

Paragraph (2), *Time of gear retrieval* (A.l.t.) would be added. ''Trawl gear'' would be added to mean ''the time when retrieval of trawl gear cable commences.'' ''Hook-and-line gear'' would be added to mean ''the time when the last hook-and-line gear of a set leaves the water.'' ''Jig or troll gear'' would be added to mean ''the time when the jig or troll gear leaves the water.'' ''Pot gear'' would be added to mean ''the time when the last pot of a set is retrieved.''

''Groundfish'' would be revised by adding cross references to the definitions for license limitation program groundfish, CDQ species, and IR/IU species; and as a cross reference to § 679.20 and to FMP species presented in Table 2 to this part.

''Logbook'' would be revised by removing the buying station daily cumulative logbook.

''Person'' would be revised to include non-citizens. The term ''person'' is intended to apply to any person—U.S. citizen and non-U.S. citizen alike (e.g., the prohibitions section).

''Primary product'' would be revised to create a cross reference to Table 1, and the definition text added to Table 1.

''Prohibited species'' would be added, unchanged from § 679.21(b)(1) to make it easier to find.

''Reprocessed or rehandled product'' would be revised to create a cross reference to Table 1 to this part, and the definition text added to Table 1.

''Sablefish (black cod)'' would be revised by adding cross references to IFQ sablefish; fixed gear sablefish at § 679.31(b); and sablefish as a prohibited species at § 679.24(c)(2)(ii).''

''Set'' would be revised to improve consistency of recording and reporting of pot gear information and to more precisely define gear deployment and retrieval when the fishermen are using pot gear.

Section 679.4 Permits

General Permit Information

Paragraph (a) would be added to summarize who is qualified for and who must obtain a permit. Paragraph (a)(1) would be added as a table presentation showing program/permit types available, effective dates, and other information. Paragraph (a)(2) would be added as a table presentation showing permit and logbook requirements by type of participant and fishery. Former paragraphs (a)(1) through (6) would be redesignated as paragraphs (a)(3) through (a)(8) respectively. The heading of paragraph (a)(3) would be revised to a Question and Answer (Q&A) format. Newly redesignated paragraph (a)(3)(iii) would be revised to remove the words ''buying station'', because only vessel buying stations are required to obtain a permit and vessels are already mentioned in the paragraph. Paragraph (a)(3)(v) would be added to state that permits are issued free-of-charge; this statement originally was found at paragraphs (b)(1) and (f)(1), but all permits are issued free-of-charge.

Federal Fisheries Permit

Section 679.4(b)(3)(ii) would be divided into paragraphs (b)(3)(ii) and (iii) to present equally these two requirements. Paragraph (b)(3)(iv) would be added; this information was formerly found only on the permit application and needs to be included in the regulations.

The heading for paragraph (b)(5) would be revised to the Q&A format. Paragraph (b)(5) would be reorganized. Paragraph (b)(5)(iii) would be revised to ask whether the vessel is used as a stationary floating processor. A stationary floating processor, even if it is a vessel, would take on the identity of a shore facility and would be issued a Federal processor permit.

IFQ Permits

The heading for paragraph (d) would be revised to include the word ''permits.'' Paragraph (d)(2) would be revised to list all of the persons who NMFS requires to have a Registered Buyer permit listed in one place. The heading for paragraph (d)(3) would be revised to a Q&A format and paragraph (d)(3)(i)(A) would be revised to include all persons who may need renewal of IFQ permits and cards.

Federal Processor Permits

The heading for paragraph (f)(2) would be revised to the Q&A format. Paragraph (f)(2) would be reorganized. Paragraph (f)(2)(iii) would be added to incorporate the stationary floating processor. A stationary floating processor, even if it is a vessel, would take on the identity of a shore facility and would be issued a Federal processor permit. Questions would be added to paragraph (f)(2)(iv) as to whether the shoreside processor is replacing a previous processor at this facility; if yes, name of previous processor; and whether there are multiple processors at this facility.

Section 679.5 Recordkeeping and Reporting

General Requirements

Section 679.5 would be reorganized by removing duplication within sections, shortening descriptions of mundane tasks, and presenting options in tabular form so that specific requirements may be quickly located. The logbooks with similar time limits would be listed in one reference table in paragraph (a). Requirements for the mothership daily cumulative production logbook (DCPLo) (formerly § 679.5(e)) and the shoreside processor DCPL (formerly § 679.5(f)) would be integrated into general sections at § 679.5(a). In several instances, headings in the Q&A format would replace existing headings. In-text tables would be used to display complex relationships to sort out multiple options, steps, conditions, and choices.

The heading for paragraph (a)(1) would be revised to the Q&A format. Paragraph (a)(1)(i) would be revised to add that the owner, operator, or manager of the listed participants is responsible for compliance with R&R. Paragraph (a)(1)(i)(D) would be added; this paragraph was moved from former paragraph(a)(2) and adds that the shoreside processor and stationary floating processor also are participants. Paragraph (a)(1)(i)(E) would be added to explain the meaning of operator and manager. The headings for paragraphs (a)(1)(ii) and (iii) would be revised to the Q&A format. Paragraph (a)(1)(iii) would be redesignated as paragraph (a)(1)(iii)(A). The heading for paragraph (a)(1)(iv) would be removed and paragraph (a)(1)(iv) would be redesignated as paragraph (a)(1)(iii)(B). Paragraphs (a)(1)(iv)(A) through (C) would be redesignated and revised as paragraphs (a)(1)(iii)(B)(*1*) and (*2*), respectively. Paragraphs (a)(1)(iv)(A)(*1*) and (*2*) would be redesignated as paragraphs (a)(1)(iii)(B)(*1*)(*i*) and (*ii*), respectively. Paragraph (a)(1)(v) would be redesignated as paragraph (a)(1)(iv). Paragraph (a)(1)(v) introductory paragraph would be redesignated as paragraph (a)(1)(v)(A) and would be revised to clarify that catcher vessels over 60 ft (18.3 m) LOA must meet this requirement. Paragraph (a)(1)(v)(B) would be added to explain that participants using longline or pot gear who are not involved with the CDQ or IFQ fisheries need also to use this logbook. Paragraph (a)(3) would be redesignated as paragraph (a)(2). Paragraphs (a)(3)(i) and (ii) would be combined into paragraph (a)(2)(i). Paragraph (a)(3)(iii) would be redesignated as paragraph (a)(2)(ii). Paragraph (a)(2)(iv) would be added to explain that a buying station owner, operator or manager must be associated with a processor prior to receiving groundfish. Paragraph (a)(4) would be redesignated as paragraph (a)(3). Paragraph (a)(4)(iii) would be removed because the buying station logbook has been removed as a requirement.

Paragraph (a)(3)(iv) would be redesignated as paragraph (a)(4) and would be revised by: Removing the expiration date from the heading; adding the words ''or receiving pollock harvested in a directed pollock fishery'' that are newly required under the AFA; changing references from paragraph (f)(3) to paragraph (d) and from paragraph (f)(4) to paragraph (e); and removing the last sentence because it duplicates newly redesignated paragraph (a)(2)(i).

Section 679.5(a) would be revised to present common descriptions in one section, to eliminate duplication, and to ensure uniformity in R&R requirements. Paragraph (a)(5)(i) would be revised to include the name and signature of the operator or manager. Paragraph (a)(5)(ii) would be revised to present catcher vessel identification; name of catcher vessel was formerly at paragraph (a)(5)(i). Paragraph (a)(5)(iii) would be revised to present shoreside processor or stationary floating processor identification; name of shoreside processor was formerly at paragraph (a)(5)(i). In addition, the geographic location of plant would be requested, because some processors have more than one plant. Paragraph (a)(5)(vi) would be redesignated as paragraph (a)(5)(iv) to present mothership or catcher/processor identification; name of mothership or catcher/processor was formerly at paragraph (a)(5)(i). Paragraph (a)(5)(iv) would be redesignated as paragraph (a)(5)(v) and would be revised to present buying station identification; name of buying station was formerly at paragraph (a)(5)(i) and the remainder of the information was at paragraph (a)(5)(iv). In addition, the vehicle registration number of the buying station would be requested, in the event that the buying station is a truck. Paragraph (a)(5)(v) would be removed and incorporated into § 679.5(b); this would be done to keep all of the representative information together. Paragraph (a)(5)(vi) would be removed because the signature information would be included at paragraph (a)(5)(i).

Paragraph (a)(6) would be revised by adding introductory text. Paragraph (a)(6)(i) would be revised to account for removal of the introductory text. Paragraph (a)(6)(ii) would be revised to incorporate use of the ''inactive'' boxes on the logbook from paragraph (a)(7)(i). Paragraph (a)(6)(ii)(C) would be added to instruct user on completion of inactive box due to surrendered permit. Paragraph (a)(6)(iii)(B) would be redesignated as paragraphs (a)(6)(iii)(A), and a table would be added presenting description of dates to be recorded in the logbook and buying station report (BSR) by participant. Paragraphs (a)(6)(iii)(B)(*1*) through (*3*) would be removed because the logbook formats have changed. A new paragraph (a)(6)(iii)(B) would be added to describe week-ending date. Paragraph (a)(6)(iii)(C) would be unchanged. Former paragraph (a)(6)(iii)(A) would be redesignated as paragraph (a)(6)(iii)(D) and the heading revised. A new paragraph (a)(6)(iii)(E) introductory text would be added to describe logbook numbering. Paragraph (a)(6)(iii)(E)(*1*) would describe numbering of logbooks of the same gear type. Paragraph (a)(6)(iii)(E)(*2*) would describe numbering of logbooks of different gear types. Paragraph (c)(1) would be redesignated as paragraph (a)(6)(iii)(E)(*3*) and revised to instruct about separate DFLs for each vessel, paginated separately. Paragraph (a)(6)(iii)(E) would be redesignated as paragraph (a)(6)(iii)(F) and revised to remove mention of the buying station daily cumulative logbook (DCL) and to simplify the text.

Paragraph (a)(6)(iii)(F) would be removed. This paragraph described product codes, whole fish codes, discard product codes, and product designations. All of the information contained formerly in this section would be added to Table 1 to this part. Paragraph (a)(6)(iii)(G) would be removed. This paragraph described species codes. All of the information contained formerly in this section would be added to Table 2 to this part.

The heading for paragraph (a)(7) would be revised. Paragraph (a)(7)(i) would be added to paragraph (a)(6)(ii). A new paragraph (a)(7)(i) would be added to describe fishing activity, active period and inactive period by participant formerly found in paragraphs (a)(7)(ii), (iii) and (iv). A new paragraph (a)(7)(ii) would be added to describe recording of non-activity formerly found in paragraphs (a)(7)(ii), (iii) and (iv), (a)(8), (a)(9), and (a)(10). A new paragraph (a)(7)(iii) would be added to describe recording of fishing activity formerly found in paragraphs (a)(7)(ii), (iii) and (iv). A new paragraph (a)(7)(iii)(E) would be added to describe recording of participant information when not active.

A new paragraph (a)(7)(iv) would be added to describe weight, formerly found in paragraphs (a)(8), (a)(9), and (a)(10). A new paragraph (a)(7)(v) in tabular format would be added to describe recording of weight, formerly found in paragraphs (a)(8), (a)(9), and (a)(10). Three new paragraphs (a)(7)(vi), (vii), and (viii) would be added as cross references to Tables 1 and 2.

Paragraph (a)(7)(v)(A) would be redesignated as paragraph (a)(7)(ix) and revised. New paragraph (a)(7)(x) would be added to present all of the occasions that would trigger a separate logsheet, WPR, or check-in/check-out report. Paragraph (a)(7)(v)(B) would be redesignated as paragraph (a)(7)(xi) and revised. New paragraph (a)(7)(xii) would be added to present areas with a reporting area that need to be reported if harvest was with trawl gear, formerly found in paragraphs (a)(8), (a)(9), and (a)(10). Paragraph (a)(7)(v)(C) would be redesignated as paragraph (a)(7)(xiii) and revised. A new requirement for shoreside processor or stationary floating processor would be added to record the dates each observer was present.

Paragraph (a)(7)(v)(D) would be redesignated as paragraph (a)(7)(xiv) to describe crew size and would be revised. Former paragraph (a)(7)(v)(E) would be redesignated as paragraph (a)(7)(xv) and revised. This revision in tabular form adds other special programs to record, similar to the CDQ program and instructs how to record them.

Paragraph (a)(8) and paragraph (a)(8)(i) would be revised. A new requirement would be added as paragraph (a)(8)(ii) to describe how to record landings as product under certain conditions. Paragraph (a)(9), the heading for paragraph (a)(9)(i) and the text of paragraph (a)(9)(i) would be revised. Former paragraph (a)(11) would be redesignated as paragraph (a)(9)(ii) and revised because this paragraph refers to production. Paragraph (a)(10) would be revised. This paragraph would present requirements by participant type. Paragraph (a)(10)(vii) would be added to present time limit requirements for all participants in tabular form for recording discards and disposition.

A new paragraph (a)(11) would be added to present delivery information, formerly found at paragraphs (a)(15) and (a)(16), by participant type.

Paragraph (a)(13)(ii)(A) would be revised to describe what ''on-site'' means. Paragraph (a)(13)(ii)(B) would be revised to remove mention of the buying station. Paragraphs (a)(13)(ii)(C) through (F) would be removed because some of the instructions are duplicative of regulations found at other locations. Also the buying station logbook would be removed; therefore, the detailed instructions on handling the DCL would not be necessary.

Paragraph (a)(14) introductory text would be removed as duplicative text. Paragraph (a)(14)(i) would be revised. Paragraphs (a)(14)(ii) and (iii) would be revised to remove the buying station DCL and to add the goldenrod logsheet to all logbooks. Former paragraphs (a)(15) and (a)(16) would be removed and incorporated into new paragraph (a)(11).

New paragraph (a)(11) would add a comparison of different transfer forms in the regulations (VAR, PTR, IFQ shipment report, IFQ transshipment authorization, IFQ vessel clearance, IFQ departure report, and IFQ dockside sale receipt).

Representative

Section 679.5(b) would be revised to incorporate former paragraph (a)(5)(v), representative's identification. This revision would bring all of the requirements for the representative to one location.

Catcher Vessel DFLs and Catcher/Processor DCPLs

Section 679.5(a)(7)(xiv) and (c)(1) would be removed and incorporated into paragraph (a)(6)(iii)(E)(*3*). Paragraph (c)(2) would be removed and incorporated into paragraph (a)(11)(iv). Paragraph (c)(3) would be incorporated into earlier sections for those items that have common description and all duplicative text would be removed.

Paragraph (c)(1) would add a new requirement in the longline and pot gear DFL and DCPL to record bird avoidance gear code when using longline gear. A check-box would be added to allow the operator, after completing all information regarding gear on one logsheet, to check the box on each subsequent logsheet if all gear information remains the same instead of re-entering that information on subsequent logsheets. The column entitled ''All other species'' would be changed from ''pounds'' to read ''(lb or mt).'' The column entitled ''Landing date'' in the DFL delivery block would be replaced with ''Date.'' The title of the delivery block in the DCPL would be changed from ''IFQ landings'' to ''Delivery,'' because this logsheet is used by both IFQ and non-IFQ participants. The term ''haul'' would be removed from the DFL and DCPL in order to establish a standard method for recording pot gear information. Records would be defined in terms of ''set'' and the option to record ''haul'' would be removed. ''Haul or set No.'' would be removed and replaced with ''set No.'' ''Begin position of haul or set'' would be removed and replaced with ''begin position of set.'' ''End position of haul or set'' would be removed and replaced with ''end position of set.''

In the trawl gear DFL and DCPL, the requirement to record ''haul or set number'' would be revised to ''haul number.''

Buying Station Report (BSR)

Section 679.5(d) describing the buying station daily cumulative logbook (DCL) would be removed and in its place a new requirement, the BSR, would be added. The information required by the BSR would be the same as required by the multi-copy DCL. The BSR would allow the public a more flexible method of recording catcher vessel deliveries, by using an 8½ × 11 inch (0.21 × 0.27 m) sheet that can be easily photocopied. In addition, if a catcher vessel operator by prior arrangement with a processor will ship his groundfish catch directly to that processor that is not located where the catcher vessel is offloaded, the catcher vessel operator would complete a BSR to describe the catch and send the completed BSR with the shipment via truck or airline. When the shipment arrives at the processor, the information from the BSR would be incorporated into the DCPL.

Mothership DCPL

Paragraph (e), mothership DCPL requirements, would be removed because the text incorporated into general requirements at paragraph (a) for those items that have common description and all duplicative text would be removed. In the mothership DCPL, the field requesting information on crew size would be changed from: ''number of processing crew, number of other crew, and total number of crew'' to read ''crew size.'' This change would make the mothership DCPL consistent with the other processor logbooks.

Shoreside Processor DCPL

Section 679.5(f), shoreside processor DCPL requirements, would be removed because the text would be incorporated into general requirements at paragraph (a) for those items that have common description and all duplicative text would be removed.

In the shoreside processor DCPL, the field ''date'' would be replaced by ''week-ending date'', because each page may be used for 1 week.

Shoreside Processor Electronic Logbook Report (SPELR)

Paragraph (f)(3) would be removed and redesignated as paragraph (e) and the heading for paragraph (e) would be revised. A new requirement at paragraph (e)(1)(i)(B) would extend the required use of the SPELR to shoreside processors or stationary floating processors that receive pollock harvested in a directed pollock fishery. All SPELR records must be available for inspection and must be retained for 3 years after the end of the fishing year.

SPELR Printed Reports

Requirements for the SPELR printed reports (formerly § 679.4(f)(4)) would be added at new paragraph (f), and the expiration date for the paragraph on SPELR printed reports would be removed. All SPELR printed reports must be available for inspection and must be retained for 3 years after the end of the fishing year. The owner or manager would be required to sign and enter date of signature onto each SPELR printed report.

Groundfish Product Transfer Report (PTR)

Section 679.5(g) would be revised by consolidating the two existing PTR formats (one for processor vessels, one for shoreside processors) into one, and the text that describes the information required would be clarified and simplified. A box to identify type of processor, a box to identify whether sender is the shipper or receiver, and a column entitled ''species weight'' to accommodate information on mixed species transfers would all be added. This column would be used to enter information for specific species products that are packaged together in one box and shipped to one destination. The weight of each product by species and product code would be recorded in addition to number of units, unit weight, and total weight.

The U.S. Coast Guard (USCG) document number of vessel processors, the page number along with the requirement to maintain a continuous numbering of the PTRs, the use of the term ''offload,'' and use of the harvest zones and the requirement to record them would be removed. The use of product code 888 of the PTR would be prohibited.

The current requirement for a PTR is to obtain the total fish product weight for each species/product transferred, which includes recording the number of production units and average fish product weight of one production unit. Because all shoreside processors and many catcher/processors and motherships now have at-sea scales on board, an option would be added to allow actual scale weights for the total fish product weight and for each species/product. The intention of these revisions would be to allow a standard, straightforward form with options under a variety of conditions.

Submittal requirements would be changed to include electronic submittal as well as FAX submittal of the PTRs to NMFS.

Check-in/Check-Out Reports

Section 679.5(h) would be reorganized and revised for clarity. Submittal requirements would be changed to include electronic submittal as well as FAX submittal of the reports to NMFS.

In the mothership and catcher/processor check-in and check-out report, replace the existing management block and add ''species'' after ''target'' in the fields requesting target species codes.

In the shoreside processor check-in and check-out report, replace the existing management block and add ''or process'' after the words ''ceased to receive''.

Weekly Production Report (WPR)

Section 679.5(i) would be reorganized and revised for clarity. Submittal requirements would be changed to include electronic submittal as well as FAX submittal of the reports to NMFS.

In the mothership and catcher/processor WPR and shoreside processor WPR, the existing management block would be replaced with the new version. The gear type ''jig/troll'' would be separated into ''jig'' and ''troll''. The word ''code'' would be added after ''target species.''

Daily Production Report (DPR)

In the DPR, the existing management block would be replaced with the new version. The gear type ''jig/troll'' would be separated into ''jig'' and ''troll.'' The word ''code'' would be added after ''target species.''

U.S. Vessel Activity Report (VAR)

Section 679.5(k) would be reorganized and revised for clarity. A new question would be added to ask the type of vessel (catcher vessel, catcher/processor or mothership). Two new harvest zone codes would be added to describe the EEZ of the BSAI and the GOA. Submittal requirements would be changed to include electronic submittal as well as FAX submittal of the reports to NMFS.

IFQ Recordkeeping and Reporting Requirements

The manner in which Registered Buyers indicate the presence of ice and slime in reported weights of IFQ fish products in IFQ landing reports would be changed. In the current system, Registered Buyers indicate the presence of ice and slime by selecting a product code in the ''50'' number series, all of which indicate that the reported weight includes ice and slime and for which the stored system product recovery rate (PRR) or conversion factor (CF) includes a correction to account for the non-flesh weight. The proposal would eliminate the ''50'' series product codes, and their PRRs and CFs.

The current PRRs and CFs result in too small an IFQ equivalent weight deduction, and a *de facto* deduction for ice and slime that actually exceeds the intended 2 percent. In addition, the current reporting system is not synchronized with the code system of the Alaska Department of Fish and Game (ADF&G) (in which the ''50'' series has not been adopted), and additionally has proven to be inflexible when an inseason need arises to authorize reporting of additional product forms that include ice and slime. To address this, the reporting system would be modified by: (1) eliminating the ''50'' series special codes; and instead (2) asking a specific question about whether the reported weight includes ice and slime (in addition to flesh weight). The database would use both the reported product code and the ice/slime question answer to determine how to convert the reported weight to the ''IFQ equivalent weight'' to be deducted from the appropriate account. To accomplish this, the IFQ database structure would be modified by making extensive changes to the programming code (i.e., the code that calculates, stores, and accomplishes editing of previously entered landings data).

For example, if eastern cut sablefish (product 08) is reported with ice and slime, the system would multiply the reported weight by 0.98 and multiply the resulting flesh weight by $1 \div 0.63$ to derive the IFQ equivalent weight for which the account is debited. If reported as being without ice and slime, the flesh weight would be converted by simply multiplying the reported product weight by $1 \div 0.63$.

The following tables illustrate IFQ equivalent weight differences between the current calculation method (using the ''50'' series product codes and their PRRs and CFs) and the proposed method (which would deduct the 2

percent ice and slime weight then convert the remaining flesh using ''standard'' PRRs and CFs). Sample data are shown for 100 and 100,000 pounds of halibut or sablefish weight reported for selected products.

HALIBUT SAMPLE CONVERSION DATA

Reported weight (lb)	Product description	Current system			Proposed system		
		Halibut product	Conversion factor	Current IFQ equivalent weight (lb)	Halibut product	Conversion factor	Proposed IFQ equivalent weight (lb)
100	Gutted	04	0.9	90 lb	04	0.9	90
100	Gutted w/IS[1]	54	0.88	88 (−0.2 lb → 2.2% IS allowance)	04	0.9	88.2
100,000	Gutted w/IS	54	0.88	88,000 (−200 lb; → 2.2% IS allowance).	04	0.9	88,200
100	H&G	05	1.0	100	05	1.0	100
100	H&G w/IS	55	0.98	98	05	1.0	98
100,000	H&G w/IS	55	0.98	98,000	05	1.0	98,000

[1] Means Ice and Slime.

SABLEFISH SAMPLE CONVERSION DATA

Reported weight (lb)	Product description	Current system			Proposed system		
		Halibut product	Conversion factor	Current IFQ equivalent weight (lb)	Halibut product	Conversion factor	Proposed IFQ equivalent weight (lb)
100	Whole	01	1.0	100	01	1.0	100
100	Whole w/IS[1]	51	1.02	98.04	01	1.0	98
100	Gutted, head on	04	0.89	112.36	04	0.89	112.36
100	Gutted, head on w/IS.	54	0.91	109.89 (−0.22 lb; → 2.2% IS allowance).	04	0.89	110.11
100,000	Gutted, head on w/IS.	54	0.91	109,890 (−222 lb; → 2.2% IS allowance).	04	0.89	110,112
100	Eastern cut	08	0.63	158.73	08	0.63	158.73
100	Eastern cut w/IS	58	0.65	153.85 (−1.71 lb; → 3.1% IS allowance).	08	0.63	155.56
100,000	Eastern cut w/IS	58	0.65	153,846 (−1,710 lb; → 3.1% IS allowance).	08	0.63	155,556

[1] IS means Ice and Slime.

Section 679.5(l) would be reorganized and revised for clarity.

Prior Notice of Landing. The prior notice of IFQ landing (§ 679.5(l)(1) would be revised by adding a requirement to record the IFQ regulatory area in which the IFQ halibut or IFQ sablefish were harvested and by adding a clarification of exemption for submittal of the prior notice of landing.

Landing Report. The landing report (§ 679.5(l)(2)) would be revised by adding requirements to debit all IFQ catch aboard a vessel and to record gear type reported by cardholder, whether ice and slime is included in the weight of fish (effective January 1, 2002), and whether halibut is incidental catch concurrent with legal landing of salmon or a legal landing of lingcod harvested with dinglebar gear. In addition, if the vessel operator is the Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.

Shipment Report. The shipment report (§ 679.5(l)(3)) would be revised by adding a requirement to describe short-distance movement of IFQ fish when a Registered Buyer's facility is a short distance from where the fish were landed.

Transshipment Authorization. Section 679.5(l)(4) would be revised by adding the list of required information to obtain a transshipment authorization).

Vessel Clearance and Departure Report. Section 679.5(l)(5) would be revised by reorganizing and revising the text to show that a departure report (a document) is a type of vessel clearance and is issued only under specific conditions. A vessel clearance occurs when a vessel physically goes into a port to obtain prelanding written clearance of the vessel by a NOAA Office for Enforcement (NOFE) representative. A departure report clearance occurs when a vessel operator informs NOFE by telephone of intentions to obtain a prelanding written clearance for the vessel at a port in a state other than Alaska.

IFQ Cost Recovery Program

Paragraph 679.5(l)(7) would be changed to allow electronic submittal of the annual register buyer/shoreside processor IFQ Buyer Report and of the IFQ Permit Holder Fee Submission Form and fees from permit holders.

Consolidated Weekly ADF&G Fish Tickets From Motherships

Section 679.5(m) would be revised to clarify the Federal requirement for motherships to complete ADF&G fish tickets, detailing information requirements for each delivering catcher vessel as well as for the mothership. The deadline for operators of motherships to submit completed fish tickets to ADF&G would be revised from 30 days to 45 days.

Groundfish CDQ Fisheries

Section 679.5(n)(1)(i) would be revised to add a heading in the Q&A format, insert ''stationary floating processor'' and to add a sentence indicating that if using the SPELR to report to NMFS, a CDQ delivery report is not required. Section 679.5(n)(1)(ii)

would be revised to remove the term, ''operator'' because that term refers to personnel aboard a vessel. Section 679.5(n)(1)(iii) would be revised to conform to the format and content of the revised CDQ delivery report.

Section 679.5(n)(2)(i) would be revised to add a heading in the Q&A format and to insert ''stationary floating processor''.

Section 679.5(n)(2)(ii) would be revised to reformat the text for clarity. Section 679.5(n)(2)(iii), (iv), and (v) would be revised to conform to the format and content of the revised CDQ catch report.

Catcher Vessel Cooperative Pollock Catch Report

The heading for § 679.5(o) would be revised to remove the expiration date.

Section 679.7 Prohibitions

Section 679.7(a)(10) would be amended to add prohibitions against mutilation of permits and cards, inaccurate information, and false information. Paragraph (a)(11)(i) would be added to prohibit the use of a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish harvested or processed by that vessel. Paragraph (a)(11)(ii) would be amended to add a prohibition against operating a vessel or land-based buying station without an associated processor.

Section 679.21 Prohibited Species Bycatch Management

In § 679.21(b)(1), the definition for ''prohibited species'' would be removed and placed in the definitions section (§ 679.2) in alphabetical order.

Section 679.22 Closures

Section 679.22(a)(11)(iv)(B) would be revised to add a cross reference to Figure 20-Steller Sea Lion Conservation Area. Paragraph (b)(3)(iii)(B) would be revised to add a cross reference to Figure 19-Shelikof Conservation Area.

Section 679.24 Gear Limitations

Section 679.24(a)(1) currently refers to marking of longline marker buoys. This section would be revised to extend the requirement to include hook-and-line, longline pot, and pot-and-line gear. In paragraph (a)(1)(iii), ''vessel's registration'' number' would be replaced with ''vessel's ADF&G registration number''.

Section 679.24(b)(2) refers to net-sounder devices on pelagic trawl gear. This requirement is obsolete and would be removed. Modern net-sounders do not print recordings but rather provide real-time video images of much improved quality.

Section 679.24(e)(1) would be amended to add a requirement that the operator record the appropriate bird avoidance gear code (see Table 19 to this part) in the catcher vessel longline and pot DFL or catcher/processor longline and pot DCPL.

Section 679.31 CDQ Reserves

In § 679.31, paragraph (d)(2) would be removed (the paragraph expired on December 31, 1999). Paragraph (d)(1) would be added to paragraph (d).

Section 679.32 Groundfish and Halibut CDQ Catch Monitoring

Section 679.32(a)(2) would be removed due to an expired date. Paragraph (a)(1) would be redesignated as paragraph (a).

Section 679.40 Sablefish and Halibut QS

New paragraphs (a)(2)(i)(C) and (D) would be added to the definition of ''Qualified person'' to mean a citizen of the United States at the time of application for QS and a corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

Section 679.41 Transfer of Quota Shares and IFQ

Section 679.41(i)(2), which deals with IFQ category redesignation for IFQ transfer, would be removed because the date of effectiveness expired February 24, 1997. Paragraph (i)(3) would be redesignated as paragraph (i)(2).

Section 679.42 Limitations on Use of QS and IFQ

In § 679.42, paragraph (c)(2) would be revised. Paragraphs (c)(2)(i) and (c)(2)(ii) would be added to include halibut or sablefish landings offshore and made into product prior to offload. Paragraph (c)(3) would be added to require that all IFQ catch onboard a vessel be debited from the IFQ permit holder's account under which the catch was harvested.

Classification

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

The following requirements and estimated response times have been approved by OMB and are organized by their OMB control number:

0648–0206: 5 hours for an exempted fishery progress report; 5 hours for an exempted fishery permit application; and 30 minutes for a High Seas Power Troller Salmon Permit.

0648–0213: 35 minutes for Weekly Cumulative Mothership ADF&G Fish Tickets; 14 minutes for U.S. Vessel Activity Report.

0648–0269: 1 hour for CDQ Delivery Report; and 15 minutes for CDQ catch report.

0648–0316: 40 hours for an application; 40 hours for documentation by a distributor; 6 minutes for labeling and product tracking of a shipment by a vessel or processor; and 15 minutes to provide documentation on a vessel or processor).

0648–0401: 30 minutes for daily completion of the SPELR and the estimated time to electronically submit the SPELR (30 min./day); and 5 minutes for estimated time to print the SPELR reports.

0648–0428: 8 hours to complete and submit the COAR.

The following requirements are new or revised and have been submitted to OMB for approval:

0648–0206: 20 minutes for the Federal Fisheries Permit/Federal Processor Permit Application.

0648–0213: 17 minutes for Catcher Vessel trawl gear DFL; 28 minutes for Catcher Vessel longline and pot gear DFL; 31 minutes for Catcher/processor trawl gear DCPL; 41 minutes for Catcher/processor longline and pot gear DCPL; 31 minutes for Shoreside processor DCPL; 31 minutes for Mothership DCPL; 8 minutes for Shoreside Processor Check-in/Check-out Report; 7 minutes for Mothership or Catcher/processor Check-in/Check-out Report; 11 minutes for Product transfer report; 17 minutes for Weekly Production Report; 11 minutes for Daily Production Report; estimated time to electronically submit the weekly production report (5 min./report); 5 minutes to electronically submit the check-in/check-out report; 23 minutes for buying station report.

0648–0272: 12 minutes for IFQ Prior notice of landing; 12 minutes for IFQ Landing report; 18 minutes for IFQ Shipment report; 12 minutes for IFQ Transshipment authorization; 12 minutes for IFQ Vessel clearance; 6 minutes for IFQ Departure report; 6 minutes for IFQ Dockside sale; 6 minutes for Administrative waiver.

0648–0353: 15 minutes to paint each buoy with the vessel name and Federal

permit number, or ADF&G registration number.

The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

The NMFS Alaska Region prepared an Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. The number of small entities to which the proposed rule will apply are identified as: 1,254 catcher vessels; 47 catcher processors; 32 onshore processors, 6 CDQ groups; 268 buying stations; 1,613 halibut fishing operations; and 92 Registered Buyers.

This RIR/IRFA analyzes proposed amendments to regulations at 50 CFR part 679 that would revise R&R regulations for the Alaska groundfish fisheries and for the IFQ halibut and sablefish fisheries off of Alaska. The objectives of the proposed actions are: to clarify and simplify the regulations pertaining to the management of the groundfish fisheries and the IFQ halibut and sablefish fisheries in the waters of the BSAI and the GOA; to ease certain regulatory burdens to reduce the cost of operation for fishermen and increase compliance with regulations; to reduce the costs of enforcing fisheries regulations; to enhance the value of the pollock fisheries managed under the AFA; to reduce the costs of compliance with pollock reasonable and prudent alternatives (RPAs) for Steller sea lion protection; and to reduce the costs and increase the effectiveness of regulations protecting migratory birds identified as endangered or threatened under the Endangered Species Act (ESA). It provides the analyses required under Executive Order 12866 and the RFA.

Eight groups of regulatory changes are identified in the analysis, each being independent of the other. Any one of them may be adopted in combination with any possible grouping of the others. Because of this, the RIR and the accompanying IRFA evaluate each of the eight proposals independently. Each of the proposals is evaluated against a ''no action'' alternative and the costs and benefits relative to the ''no action'' alternative are identified.

1. *Regulatory Housekeeping.* Remove obsolete text, clarify and simplify existing text, and reorganize text to remove duplication. Add, revise, and remove definitions. Because the changes do not impose new responsibilities on small entities, there are no added costs.

2. *Buying Station Daily Cumulative Logbook (DCL).* Remove the requirement to obtain, complete, and submit the DCL. Add a requirement to complete, maintain, and distribute a Buying Station Report (BSR). As with the DCL, the processors who receive fish from buying stations must compile data from the BSRs; unlike the DCL, processors will not be required to file quarterly reports with NMFS. NMFS estimates that the annual costs for this activity for at-sea tenders would be about $312 per buying station per processor. The cost for 268 at-sea tenders would be about $83,616. This estimate assumes all tender permits are active and all at-sea tenders are in complete compliance. Costs for on-shore buying stations cannot be determined since the number of on-shore buying stations cannot be estimated with current data. NMFS estimates that its costs would be about $670 per year for preparation and delivery of the BSR.

Substitution of the BSR for the DCL should benefit operators of buying stations by reducing their paperwork costs. It will benefit processors to the extent that the buying stations are their subsidiaries and they share in the reduced paperwork costs. NMFS estimates a reduction in public and private costs (a benefit) of about $8,700 per year. This estimate assumes all tender permits are active and in complete compliance with the program and does not take in to account the unknown number of land-based buying stations. There are no apparent costs to implement this proposal.

3. *Shoreside Processor Electronic Logbook Report (SPELR).* Extend the requirement to use the SPELR for processors buying from AFA catcher vessels past January 16, 2001, and require shoreside processors or stationary floating processors that receive pollock harvested in a directed pollock fishery to use the SPELR. Regulations at § 679.5(f)(3) currently require managers of shoreside processors or stationary floating processors, who receive groundfish deliveries from AFA catcher vessels, to record and submit a SPELR for each catcher vessel delivery and to retain printed reports for the duration of the fishing year. Currently, 19 firms use the SPELR system under the Federal AFA regulations. Two firms that are not currently using the SPELR are making progress in bringing the SPELR system on line. NMFS estimates that adoption of the SPELR requires the use of a personal computer with a value of about $1,000 and 1–2 weeks of staff time. The upper limit of this cost is estimated to be about $4,000 per firm.

The SPELR brings three classes of benefits: (a) Reduced annual R&R costs for NMFS and for firms adopting the SPELR, (b) enhanced value from the AFA statute, and (c) reduced costs of compliance with pollock RPAs for Steller sea lion protection. The annual R&R costs for firms and NMFS can be estimated. Each firm that adopts the SPELR will have annual SPELR expenses, but will no longer have to file or maintain the WPR or DCPL. The SPELR is expected to cost $941 per year while the savings on the WPR and DCPL is expected to be $2,508. NMFS will incur an additional $133 to receive SPELR reports from a new firm, but will save $627 per year on WPR and DCPL paperwork. The net overall paperwork savings should be about $2,194 per year for each firm that adopts the SPELR. Since two firms are expected to adopt, the total cost is $4,388 per year.

The cost of adopting the SPELR system is the cost to each firm of acquiring a computer and converting to the data processing system and software used by the SPELR. These costs are estimated to be $4,000 per firm. Four firms not using the SPELR would have to begin using it under this regulation, and three of these firms are known to have already made significant progress toward adopting the SPELR. As noted, 19 firms are currently required to use the SPELR because they buy groundfish from AFA catcher vessels. Another two firms would be required to begin using the SPELR under the provisions of the proposed rule requiring that firms accepting deliveries of pollock from fisheries targeting pollock use the SPELR. On the basis of anecdotal information, 13 of these firms are believed to be large firms, employing or affiliated with firms that employ more than 500 persons. The sizes of another eight of these firms are not known. For the purpose of this analysis, these have been treated as small firms, although this may overestimate the numbers of small firms. Six CDQ groups will also be impacted. CDQ groups are considered to be small non-profit entities.

4. *IFQ Program.* Eight changes are proposed for the regulations for the IFQ halibut and sablefish programs.

Weight prior to offload. Some of the vessels landing IFQ halibut and IFQ sablefish are catcher/processors that freeze and package IFQ halibut and sablefish on board before delivery. In many cases, the vessel operator acts as an IFQ Registered Buyer taking possession of the IFQ fish and making the landing report. These operations often calculate the weight of product that they produce at the time of production. However, current regulations at § 679.5(l)(2)(vi) require that Registered Buyers, taking possession of IFQ fish at landing, record the product code and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained. Frozen product requires a second weighing of the fish. This regulatory change would redesignate § 679.5(1)(2)(vi)(J) as § 679.5(1)(2)(vi)(J)(*1*) and add a new paragraph (l)(2)(vi)(J)(*2*) to allow a vessel operator, if he or she is a Registered Buyer reporting the IFQ landing, to substitute the ''accurate weight of IFQ sablefish *processed* product obtained before the offload'' for the ''initial accurate weight at time of offload.'' NOFE would still be able to monitor the offload and weigh the product if necessary for the purpose of auditing under other regulations.

Debit all catch to IFQ account; Vessel operator responsible for landing. Regulatory changes would make it clear that fishermen who set aside part of their IFQ catch for home consumption would be required to debit that harvest against their IFQ account; a vessel operator has an obligation to offload all IFQ fish to a Registered Buyer. A new § 679.5(l)(2)(i)(C) would be added to clarify that the weight of any halibut or sablefish offshore landings made by a catcher/processor into product (frozen) prior to offload at the landing site must be properly debited from the IFQ permit holder's account under which the catch was harvested. These regulatory changes would not add new requirements to the IFQ halibut and IFQ sablefish program but would only clarify existing regulations. If this clarification reduced efforts to by-pass the reporting requirements, or made it easier to prosecute those requirements, it would reduce program costs. Because the requirement does not impose new responsibilities on fishermen, it does not add to their costs.

Regulatory area on prior notice of IFQ landing report. This change would amend § 679.5(l)(1)(iii) to add a question to the Prior Notice of IFQ Landing Report; fishermen would be required to report on the IFQ regulatory area within which IFQ halibut or IFQ sablefish were harvested. The benefit of the regulation would be the improved compliance with IFQ regulations. The cost would be the burden of answering the additional question when the prior notice of landing was made. This cost would be very small since the information is already known when the Prior Notice of IFQ Landing is made. In 2000, 10,279 prior notices of landing were submitted. If the answer to the question added 30 seconds to each notice, the total additional time would have been 86 hours. At $20 per hour (the pay for a Federal GS–7 in Alaska, including COLA), the total cost would have valued at about $1,700.

IFQ landing report. Additional information would be collected in the landings reports filled out by Registered Buyers that would reduce the costs of monitoring landings made under the exemption. This information would include the gear type used to harvest the fish and regardless of whether the IFQ fish were landed concurrently with salmon or dinglebar lingcod.

The benefits from these proposed changes would be increased flexibility and consequent reduced operating costs for dinglebar lingcod fishermen who hold halibut QS, and in addition, an improved ability by NMFS to target its enforcement assets. The cost to registered buyers of collecting and reporting the additional information would be small.

Registered buyers complete landings reports using automated terminals. These terminals lead the buyers through a series of question prompts. The change would require the addition to prompts for the gear type used in the landing and for information on whether or not salmon or lingcod taken with dinglebar gear was landed concurrently with the IFQ fish. This information should be known to or readily available to the registered buyer. In 2000, about 10,057 landings reports were submitted. At 1 minute for the two additional questions, the total additional time required would have been about 168 hours. At $20 per hour (the pay for a Federal GS–7 in Alaska, including COLA), the total cost would have valued at about $3,400.

IFQ shipment report. Regulations at § 679.5(l)(3) would be amended to add a requirement to the IFQ Shipment Report to allow short-distance movement of IFQ fish accompanied by an ATM landing receipt by a Registered Buyer to his or her processing plant. Currently Registered Buyers are required to complete and file an IFQ shipment report before they move fish away from the place where they are landed. Many firms, whose plants are located away from landing places, are inconvenienced by the need to complete the form before moving the fish from the place where they were landed to the place where they will be processed. This regulatory change would reduce the costs for this class of Registered Buyer. NOFE would still receive a landing report from the landing place; the IFQ shipment report would still be required from the Registered Buyer before the buyer disposed of the fish to other parties. The most important use for Shipment Reports is to provide the ability to audit Registered Buyers' landings by monitoring movements of fish being moved in the chain of possession from the Registered Buyer. There are no costs associated with this regulatory change and there will be cost savings to Registered Buyers whose plants are located at a distance from landings places.

IFQ transshipment authorization. Regulations at § 679.5(l)(4) would be amended to revise the regulatory text describing the IFQ Transshipment Authorization by adding a list of required information to obtain a transshipment authorization. Vessel operators transshipping (from one vessel to another) IFQ halibut and IFQ sablefish are required to obtain a Transshipment Authorization at least 24 hours before the transshipment. This gives NOFE time to decide whether or not to monitor the transshipments, plan resources, and arrange the logistics for monitoring the transshipment. This change is principally needed to monitor the offloading of freezer longliners to tramp freighters. NOFE routinely collects certain information from persons requesting the authorization to find out when and where the transshipment will occur and how long it might take. This change will provide a basis in regulation for the specific information collected when an authorization is requested. This should not increase the costs for fishing operations or for the operations taking possession of the fish at sea since it would not affect the requirement for authorizations. It may reduce enforcement costs by clarifying the types of information that are required when an authorization is requested.

IFQ vessel clearance report and the IFQ departure report. This proposed change will make the vessel clearance and departure report regulations clearer and may reduce the amount of time it takes to find, read and interpret them. The substantive part of the change involves the revision of the departure

report requirement to prevent IFQ fishing after the report is filed. This change clarifies the intent of the regulation that departure reports be filed after IFQ fishing has finished. While almost all departure reports are believed to have been filed after fishing has been concluded, at least one in the last 2 years was not. The intent is to close this loophole. The benefit will be an enhanced ability to enforce the IFQ program. There is no cost to fishermen from this change because a departure report can be filed as easily after fishing is concluded as before it is concluded.

5. *Product Transfer Report (PTR).* Regulations at § 679.5(g) currently require the operators of motherships, catcher/processors, or managers of shoreside processors or stationary floating processors to record each transfer of groundfish product (including unprocessed fish) or donated prohibited species, on a PTR. An important enforcement document, the PTR provides the principal information for the movement of volumes of groundfish into and out of the facilities of a processor and provides a check on buyer purchase reports. Because of its importance, the PTR is used with audits and by physical inspection of product.

This change would provide processors more flexibility in adapting their responses to their working procedures and may result in some private sector time savings. If the regulation change reduces the time taken to fill out the PTRs by 10 percent, it would produce a private sector cost savings of about $1,568 per year. There are no implementation or other costs.

NMFS estimates that 171 processors (110 catcher/processors, 3 motherships, and 58 shoreside processors or stationary floating processors) must currently file a PTR for each transfer of product an average of 25 times a year generating 4,275 PTRs per year. The estimated time requirement for a PTR is 11 minutes. Total time devoted to PTRs is estimated to be 784 hours a year. NMFS estimates that the total cost of PTR preparation is $15,675 (this does not include costs of submittal to NMFS by FAX).

Forty-seven catcher/processors and 32 shoreside processors are assumed to be small entities. The remaining operations are assumed to be large entities. Six CDQ groups would also be impacted. CDQ groups are considered to be small non-profit entities. The new PTR format would reduce the costs to NOAA and USCG enforcement efforts and would allow for more effective enforcement of product transfer rules.

6. *Marking of Gear.* The proposed rule would increase the financial costs to a few small entities by extending requirements to mark identification information on marker buoys that currently apply only to longline gear to include also hook-and-line, longline pot, and pot-and-line gear. Most fishermen have their marker buoys properly identified and would not be adversely affected by this regulation. Fishermen affected by this regulation would incur the costs of marking their own marker buoys and legally would not be able to use another fisherman's marker buoys. State regulations (5 AAC 28.050) currently require crab and groundfish pots to carry the ADF&G registration number of the vessel operating the gear. Since many Pacific cod fishermen already participate in State groundfish and crab fisheries, they would already be subject to this requirement. The regulation extends the marker buoy requirement to vessels using pot gear to fish for groundfish. In 1999, 254 catcher-vessels caught groundfish with pot gear off of Alaska; 13 catcher-processors also used pot gear. In 1999, no pot vessels had Alaska groundfish landings with ex-vessel or product value over $3,000,000. Six CDQ groups will also be impacted. CDQ groups are considered to be small non-profit entities. Marking of marker buoys reduces the costs to NOAA and USCG enforcement efforts and allows for more effective enforcement of gear rules.

7. *Seabird Avoidance Gear.* The proposed rule would add a requirement for operators of catcher vessels over 60 ft (18.3 m) LOA and catcher/processors using hook-and-line gear to record in the logbook the type of bird avoidance gear used on the vessel. A regulation currently exists at § 679.24(e) that requires bird avoidance gear be used. This proposed regulation merely makes it a requirement to record the code in the logbook that describes the type of gear used. NMFS estimates that it would take approximately 1 minute per haul for a vessel operator to collect information on what type of avoidance gear is being used and to enter the information into the log. Based on 19,245 hauls, the cost in time to the entire hook-and-line fleet would be approximately 321 hours per year. Evaluating this time at a cost of $20/hour (the average wages and benefits for a Federal GS–7 employee in Alaska, including COLA), the cost imposed would be $6,415 per year.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 20, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2 the definitions for ''Bycatch species,'' ''CDQ delivery number,'' ''Gear deployment,'' ''Gear retrieval,'' and ''Sablefish'' are removed; the definitions for ''Active/inactive periods,'' ''Ancillary product,'' the introductory text of ''Area/species endorsement,'' ''paragraph (1)(v) of Fishing trip,'' ''Forage fish,'' ''Groundfish,'' ''Logbook,'' ''Person,'' ''Primary product,'' ''Reprocessed or rehandled product,'' and ''Set,'' are revised; the definitions for ''Agent,'' ''Associated processor,'' ''Bycatch or bycatch species,'' ''Endorsement,'' ''Experimental fishery,'' ''Gear,'' ''Gear deployment (or to set gear),'' ''Gear retrieval (or to haul gear),'' ''Harvest zone codes,'' ''Incidental catch or incidental species,'' ''Product transfer report (PTR),'' ''Prohibited species,'' ''Representative,'' ''Sablefish (black cod),'' ''Seabird avoidance gear,'' ''Shoreside processor electronic logbook report (SPELR),'' ''Tagged halibut or sablefish,'' and ''Weekly production report (WPR)'' are added to read as follows:

§ 679.2 Definitions.

* * * * *

Active/inactive periods. (see § 679.5(a)(7)(i)).

* * * * *

Agent. (1) *For purposes of permits issued under § 679.4,* means a person appointed and maintained within the United States who may apply for permits and may otherwise act on behalf of the owner, operator, and manager of a catcher vessel, catcher/processor, mothership, shoreside processor, stationary floating processor, buying station, or on behalf of the IFQ registered buyer.

(2) *For purposes of groundfish product distribution under § 679.5(g),* means a buyer, distributor, or shipper but not a buying station, who may

receive and distribute groundfish on behalf of the owner, operator, and manager of a catcher/processor, mothership, shoreside processor, or stationary floating processor.

(3) *For purposes of IFQ recordkeeping and reporting under § 679.5(l),* means a person who on behalf of the Registered Buyer may submit IFQ reports.

* * * * *

Ancillary product (see Table 1 to this part).

* * * * *

Area/species endorsement means (for purposes of LLP) a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for the designated crab species in Federal waters in the designated area (see Figures 16 and 17 to this part). Area/species endorsements for crab species licenses are as follows:

* * * * *

Associated processor means, a federally permitted mothership, shoreside processor, or stationary floating processor that has a contract or agreement with a buying station to conduct groundfish buying station activities for that processor.

* * * * *

Bycatch or bycatch species means fish caught and released while targeting the same species.

* * * * *

Endorsement. (1) (See *area endorsement* for purposes of the groundfish LLP permits);

(2) (See *area/species endorsement* for purposes of the crab LLP permits); and

(3) (See § 679.4(g)(3)(ii) *area endorsements* for purposes of the scallop permit).

Experimental fishery (see *Exempted fishery,* § 679.6).

* * * * *

Fishing trip means:

(1) * * *

(v) The end of a weekly reporting period (except a catcher vessel), whichever comes first.

* * * * *

Forage fish (see Table 2 to this part).

* * * * *

Gear (see the definition for *Authorized fishing gear* of this section).

Gear deployment (or to set gear) means:

(1) *Position of gear deployment* (lat. and long.):

(i) *For trawl gear.* The position where the trawl gear reaches the fishing level and begins to fish.

(ii) *For hook-and-line gear.* The beginning position of a set of hook-and-line gear.

(iii) *For jig or troll gear.* The position where the jig or troll gear enters the water.

(iv) *For pot gear.* The position of the first pot in a string of pots.

(2) *Time of gear deployment* (A.l.t.):

(i) *For trawl gear.* The time when the trawl gear reaches the fishing level and begins to fish.

(ii) *For hook-and-line gear.* The time when the first hook-and-line gear of a set is deployed.

(iii) *For jig or troll gear.* The time when jig or troll gear enters the water.

(iv) *For pot gear.* The time when the first pot in a string of pots is deployed.

Gear retrieval (or to haul gear) means:

(1) *Position of gear retrieval* (lat. and long.):

(i) *For trawl gear.* The position where retrieval of trawl gear cable commences.

(ii) *For hook-and-line gear.* The position where the last hook-and-line gear of a set leaves the water, regardless of where the majority of the set took place.

(iii) *For jig or troll gear.* The position where the jig or troll gear leaves the water.

(iv) *For pot gear.* The position where the last pot of a set is retrieved, regardless of where the majority of the set took place.

(2) *Time of gear retrieval* (A.l.t.):

(i) *For trawl gear.* The time when retrieval of trawl gear cable commences.

(ii) *For hook-and-line gear.* The time when the last hook-and-line gear of a set leaves the water.

(iii) *For jig or troll gear.* The time when the jig or troll gear leaves the water.

(iv) *For pot gear.* The time when the last pot of a set is retrieved.

Groundfish means (1) FMP species as listed in Table 2 to this part.

(2) Target species and the ''other species'' category, specified annually pursuant to § 679.20(a)(2) (See also the definitions for: *License limitation groundfish; CDQ species;* and *IR/IU species* of this section).

* * * * *

Harvest zone codes (see Table 8 to this part).

* * * * *

Incidental catch or incidental species means fish caught while targeting on some other species, but does not include discard of fish that were released or returned to the sea, whether or not such fish are brought fully on board a fishing vessel. An incidental catch is any species or species group for which a maximum retainable amount is calculated and is expressed as a percentage of the weight of the total fish on board (see Tables 10 and 11 to this part).

* * * * *

Logbook means Daily Cumulative Production Logbook (DCPL) or Daily Fishing Logbook (DFL) required by § 679.5.

* * * * *

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

* * * * *

Primary product (see Table 1 to this part).

* * * * *

Product transfer report (PTR) (see § 679.5(g)).

Prohibited species means any of the species of Pacific salmon (*Oncorhynchus spp.*), steelhead trout (*Oncorhynchus mykiss*), Pacific halibut (*Hippoglossus stenolepis*), Pacific herring (*Clupea harengus pallasi*), king crab, and Tanner crab, caught by a vessel regulated under this part while fishing for groundfish in the BSAI or GOA, unless retention is authorized by other applicable laws, including the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

* * * * *

Representative (see § 679.5(b)).

Reprocessed or rehandled product (see Table 1 to this part).

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Sablefish (black cod) means *Anoplopoma fimbria.* (See also *IFQ sablefish; fixed gear sablefish* at § 679.31(b); and *sablefish as a prohibited species* at § 679.24(c)(2)(ii)).

* * * * *

Seabird avoidance gear (see § 679.24(e), § 679.42(b)(2), and Table 19 to this part).

Set means a string of longline gear, a string of pots, or a group of pots with individual pots deployed and retrieved in the water in a similar location with similar soak time. In the case of pot gear, when the pots in a string are hauled more than once in the same position, a new set is created each time the string is retrieved and re-deployed. A set includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested.

* * * * *

Shoreside processor electronic logbook report (SPELR) (see § 679.5(d)).

* * * * *

Tagged halibut or sablefish (see § 679.40(g)).

* * * * *

Weekly production report (WPR) (see § 679.5(i)).

* * * * *

3. In § 679.4 paragraphs (a)(1) through (a)(6) are redesignated as paragraphs (a)(3) through (a)(8) respectively; paragraph (a) introductory text, paragraphs (a)(1), (a)(2), (a)(3)(v), (b)(3)(iii), and (b)(3)(iv) are added; and paragraph (a) heading, newly redesignated (a)(3) heading, newly redesignated paragraph (a)(3)(iii), paragraphs (b)(3)(ii), (b)(4)(ii), (b)(5), (d) heading, (d)(2), the heading of paragraph (d)(3), and paragraphs (d)(3)(i)(A), (f)(2), and (f)(4)(ii) are revised to read as follows:

§ 679.4 Permits.

(a) *Requirements.* Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ card issued to an individual person designated by a QS or IFQ permit holder as a master employed to fish his/her IFQ need not be held by a U.S. citizen.

(1) *What permits are available?* Various types of permits are issued for programs codified at 50 CFR part 679. These permits are listed in the following table. The date of effectiveness for each permit is given along with certain reference paragraphs for further information.

If program permit type is:	Permit is in effect from issue date through the end of:	See paragraphs for more information:
(i) IFQ:		
(A) Registered Buyer permit	Specified fishing year	§ 679.4(d)(2)
(B) Halibut & sablefish permits	Specified fishing year	§ 679.4(d)(3)(i)(B)
(C) Halibut & sablefish cards	Specified fishing year	§ 679.4(d)(3)(i)(C)
(ii) CDQ Halibut:		
Halibut permit and Halibut card	Specified fishing year	§ 679.32(f)
(iii) AFA:		
(A) Catcher/processor permit	12/31/04	§ 679.4(f)
(B) Catcher vessel permit	12/31/04	§ 679.4(f)
(C) Mothership permit	12/31/04	§ 679.4(f)
(D) Inshore processor permit	12/31/04	§ 679.4(f)
(E) Inshore cooperative permit	Calendar year	§ 679.4(f)
(F) Replacement vessel permit	Takes dates of replaced vessel's permit.	§ 679.4(f)
(iv) Groundfish:		
(A) Federal fisheries permit	3 years	§ 679.4(b)
(B) Federal processor permit	3 years	§ 679.4(f)
(v) High seas salmon permit	Indefinite	§ 679.4(h)
(vi) High Seas Fishing Compliance Act (HSFCA) permit	5 years	§ 300.10 of this title
(vii) License Limitation Program (LLP); Groundfish license and Crab license.	Specified fishing year or interim (active until further notice).	§ 679.4(k)
(viii) Exempted fisheries permits	1 year or less	§ 679.6
(ix) Research permits	1 year or less	§ 600.745(a) of this chapter
(x) Prohibited species donation program permits	Salmon: 3 years halibut: through 12/31/00.	§ 679.26

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, different record-keeping and reporting requirements are shown in the following table, based on type of participant and fishery in which one participates.

Type of participant	Fishery	Applicable logbook type	Federal permits required
(i) Catcher Vessels greater than 60 ft LOA using longline or pot gear.	Groundfish and/or IFQ or CDQ Pacific halibut.	CV longline and pot DFL.	Federal fisheries permit, groundfish LLP permit, if IFQ fishing: (A) IFQ permit & card. (B) IFQ Registered Buyer permit (if applicable). (C) If CDQ halibut fishing: CDQ halibut permit & card.
(ii) Catcher Vessels greater than 60 ft LOA using trawl gear.	Groundfish	CV trawl DFL	Federal Fisheries Permit Groundfish LLP Permit AFA permit.
(iii) Catcher/processor using longline or pot gear.	Groundfish and/or IFQ or CDQ Pacific halibut.	C/P longline and pot DCPL.	Federal fisheries permit groundfish LLP permit if IFQ fishing: (A) IFQ permit & card. (B) IFQ Registered Buyer permit (if applicable). (C) If CDQ halibut fishing: CDQ halibut permit & card.
(iv) Catcher/processor using trawl gear.	Groundfish	C/P trawl DCPL	Federal Fisheries Permit Groundfish LLP Permit AFA permit.
(v) Catcher vessel or catcher/processor.	Scallops	N/A	Scallop LLP permit Federal Fisheries Permit (if retain any groundfish).
(vi) Catcher vessel or catcher/processor.	Crab	N/A	Crab LLP permit Federal Fisheries Permit (if retain any groundfish, including bait).
(vii) Mothership	Groundfish	MS DCPL	Federal Fisheries Permit AFA permit.

Type of participant	Fishery	Applicable logbook type	Federal permits required
(viii) Shoreside processor or stationary floating processor.	Groundfish	SS DCPL or SPELR	Federal Processor Permit AFA permit IFQ Registered Buyer permit (if receive IFQ or CDQ halibut).
(ix) Tender vessel or land-based buying station.	Groundfish	N/A	Federal fisheries permit (if tender vessel).

(3) *How do you obtain a permit?*
* * *

(iii) Complete a separate application for each vessel or processor, and retain a copy of each completed application.
* * * * *

(v) All permits are issued free of charge.
* * * * *

(b) * * *

(3) * * *

(ii) A Federal fisheries permit is issued to a vessel to function as a support vessel or as any combination of the other four categories (catcher vessel, catcher/processor, mothership, tender vessel).

(iii) A vessel permitted as a catcher/processor, catcher vessel, mothership, or tender vessel also may conduct all operations authorized for a support vessel.

(iv) A vessel permitted as a support vessel may not conduct activities as a catcher vessel, catcher/processor, mothership, and/or tender vessel.

(4) * * *

(ii) A Federal fisheries permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Program, Juneau, AK.
* * * * *

(5) *How do I obtain a Federal fisheries permit?* To obtain a Federal fisheries permit, the owner must complete a Federal fisheries permit application and provide the following information for each vessel to be permitted:

(i) *Permit application information.* Indicate whether application is for a new or amended Federal fisheries permit and if revision, enter the current Federal fisheries permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business FAX number, and business e-mail address of the owner; and the name of any person or company (other than the owner) that manages the operations of the vessel.

(iii) *Vessel information.* Indicate the vessel name and homeport (city and state); U.S. Coast Guard (USCG) documentation number; the ADF&G vessel registration number; ADF&G processor code; vessel's LOA (ft), registered length (ft), gross tonnage, net tonnage, and shaft horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.

(iv) *Federal fisheries permit information.* Indicate area of operation you request; if a catcher/processor or a catcher vessel, the gear types used for groundfish fishing; if a mothership or catcher/processor operating in the GOA, choose inshore or offshore component.
* * * * *

(d) *IFQ permits.** * *

(2) *Registered buyer permit.* A Registered buyer permit is required of:

(i) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(ii) Any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

(A) In a dockside sale;

(B) Outside of an IFQ regulatory area; or

(C) Outside the State of Alaska.

(iii) A vessel operator who obtains a vessel clearance (see § 679.5(l)(5)(iv)).

(3) *How do I obtain an IFQ permit, IFQ card, or Registered Buyer Permit?* (i) *IFQ permits and cards*—(A) *Issuance.* The Regional Administrator will renew IFQ permits and cards annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.
* * * * *

(f) * * *

(2) *How do I obtain a Federal processor permit?* To obtain a Federal processor permit, the owner must complete a Federal processor permit application and provide the following information for each shoreside processor and stationary floating processor to be permitted:

(i) *Permit application information.* Indicate whether application is for a new or amended Federal processor permit and if a revision, the current Federal processor permit number.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business FAX number, and business e-mail address of the owner; and the name of any person or company (other than the owner) who manages the operations of the shoreside processor or stationary floating processor.

(iii) *Stationary floating processor information.* Indicate the vessel name and homeport (city and state); USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft) and registered length (ft), gross tonnage, net tonnage and shaft horsepower; whether this is a vessel of the United States; and whether this vessel will be used as a stationary floating processor.

(iv) *Shoreside processor information.* Indicate the shoreside processor's name; name and physical location of facility or plant at which the shoreside processor is operating (street, city, state, zip code); whether the shoreside processor is replacing a previous processor at this facility; and if yes, name of previous processor; whether there are multiple processors at this facility; whether the owner named in paragraph (f)(2)(ii) of this section owns this facility; shoreside processor ADF&G Processor Code, business telephone number, FAX number, and e-mail address.

(v) *Signature.* The owner or agent of the owner of the shoreside processor or stationary floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.
* * * * *

(4) * * *

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Program, Juneau, AK.
* * * * *

4. Section 679.5 is amended by revising paragraph (a) through (k), (l)(1) through (6), (l)(7)(i)(D) introductory text, (m) through (o), and adding paragraph (p) to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) *General requirements*—(1) *Applicability*—(i) *Who must comply with recordkeeping and reporting requirements?* Except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the owner, operator, or manager of the following participants must

comply with the recordkeeping and reporting requirements of this section:

(A) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(B) Any shoreside processor, stationary floating processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(C) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or stationary floating processor issued a Federal processor permit under § 679.4(f).

(D) Any shoreside processor or stationary floating processor that is required to have a Federal processor permit under § 679.4.

(E) For purposes of this section, ''operator or manager'' means ''the operator of a catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station.''

(ii) *What fish need to be recorded and reported?* A shoreside processor, stationary floating processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a federal fisheries permit.

(B) Fish received under contract for handling or processing for another processor.

(iii) *Who is exempt from recordkeeping and reporting requirements?* (A) *Catcher vessels less than 60 ft (18.3 m) LOA.* A catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with recordkeeping and reporting requirements contained in paragraphs (a) through (k) of this section.

(B) *Catcher vessels that take groundfish in crab pot gear for use as crab bait on that vessel.* (*1*) Owners or operators of catcher vessels who, during open crab season, take groundfish in crab pot gear for use as crab bait on board their vessels, and the bait is neither transferred nor sold, are exempt from Federal recordkeeping and reporting requirements contained in paragraphs (a) through (j) of this section. This exemption does not apply to fishermen who:

(*i*) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(*ii*) Participate in a directed fishery for groundfish using any gear type during periods that are outside an open crab season for use as crab bait on board their vessel.

(*2*) No groundfish species listed by NMFS as ''prohibited'' in a management or regulatory area may be taken in that area for use as bait.

(iv) *Who needs to use the combined groundfish/IFQ logbook?*

(A) Any catcher vessel 60 ft (18.3 m) or greater LOA or catcher/processor, that participates in an IFQ sablefish fishery, IFQ halibut fishery, or CDQ halibut fishery and that retains any groundfish from the GOA or BSAI, must use a combined groundfish/IFQ logbook (catcher vessel or catcher/processor longline and pot gear logbook) to record all IFQ, CDQ halibut and groundfish.

(B) Any catcher vessel 60 ft (18.3 m) or greater LOA or catcher/processor that is using longline or pot gear in the groundfish fisheries of the GOA or BSAI must use a combined groundfish/IFQ logbook (catcher vessel or catcher/processor longline and pot gear logbook) to record all IFQ, CDQ halibut and groundfish.

(2) *Responsibility.* (i) The owner of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership, a shoreside processor, a stationary floating processor, or buying station receiving from a catcher vessel and delivering to a shoreside processor or stationary floating processor:

(A) Is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(B) Must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with the applicable recordkeeping and reporting requirements of this section.

(ii) The signature of the owner, operator, or manager on the DFL or DCPL is verification of acceptance of the responsibility required in paragraph (a)(2)(i) of this section.

(iii) The operator or manager of a buying station must operate with an associated mothership, shoreside processor, or stationary floating processor before receiving groundfish.

(3) *Groundfish logbooks and forms.* (i) The Regional Administrator will prescribe and provide groundfish logbooks and forms required under this section for a catcher vessel 60 ft (18.3 m) or greater LOA, a catcher/processor, a mothership, a shoreside processor, a stationary floating processor, and a buying station (see Table 9 to this part).

(ii) The operator or manager must use the current edition of the logbooks and forms or obtain approval from the Regional Administrator to use current electronic versions of the logbooks and forms.

(4) *Shoreside processor electronic logbook report (SPELR).* The manager of a shoreside processor or stationary floating processor receiving groundfish from AFA catcher vessels or receiving pollock harvested in a directed pollock fishery is required to use SPELR or NMFS-approved software described at paragraph (e) of this section to report every delivery from all catcher vessels and is required to maintain the SPELR and printed reports as described at paragraph (f) of this section. The owner or manager of a shoreside processor or stationary floating processor that is not required to use SPELR under paragraph (e) of this section may use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR.

(5) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks, as appropriate:

(i) *Name and signature.* Name and signature of operator or manager.

(ii) *Catcher vessel.* If a catcher vessel, the name as displayed in official documentation, Federal fisheries permit number and ADF&G vessel registration number.

(iii) *Shoreside processor or stationary floating processor.* If a shoreside processor or stationary floating processor, the processor name as displayed in official documentation, ADF&G processor code, and Federal processor permit number. If a shoreside processor, the geographic location of plant.

(iv) *Mothership or catcher/processor.* If a mothership or catcher/processor, the name as displayed in official documentation, ADF&G processor code and Federal fisheries permit number.

(v) *Buying station.* If a buying station, the name as displayed in official documentation; ADF&G vessel registration number (if a vessel) or vehicle registration number (if a vehicle); name, ADF&G processor code, and Federal fisheries permit number of the associated mothership, or name, geographic location of plant, ADF&G processor code, and Federal processor permit number of the associated shoreside processor or stationary floating processor to which groundfish deliveries were made.

(6) *Maintenance of records.* The operator or manager must:

(i) Maintain in English all records, reports, and logbooks in a legible, timely, and accurate manner; if handwritten, in indelible ink; if computer-generated, in a printed paper copy; and based on A.l.t.

(ii) Account for each day of the fishing year, January 1 through December 31, in the DFL or DCPL. Unless the appropriate box is checked to indicate an active period-no fishing or inactive period, records are assumed to be for an active period. Record the first day of the fishing year, January 1, on the first page of the DFL or DCPL. Record time periods consecutively in the logbook.

(A) If a vessel owner or operator is granted reinstatement of a Federal fisheries permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(B) If a shoreside processor owner or manager is granted reinstatement of a Federal processor permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(C) If inactive due to surrender of a Federal fisheries or processor permit, the operator or manager must mark the inactive box, write ''surrender of permit,'' and follow complete instructions for recording an inactive period.

(iii) Record in the appropriate report, form, and logbook, when applicable, the date of activity and type of participant as presented in the following table:

(A) *Date of activity,* as month-day-year.

Date of	If a[1]	Means the date when	In the
(*1*) Delivery	(*i*) CV	Delivery of harvest was completed	DFL
	(*ii*) SS, SFP, MS	Delivery of harvest was completed	DCPL
	(*iii*) BS	Delivery of harvest was completed	BSR
(*2*) Landing	SS, SFP	Sorting and weighing of a delivery by species was completed	DCPL
(*3*) Production	SS, SFP	Production was completed.	
(*4*) Discard or disposition.	(*i*) CV using longline or pot gear.	Discard or disposition occurred	DFL
	(*ii*) SS, SFP, MS	Discard or disposition occurred at the facility; or Received blue discard logsheet from a catcher vessel, not the actual date of discard or disposition indicated on the blue discard logsheet; or Received BSR from a buying station, not the actual date of discard or disposition indicated on the BSR.	DCPL

[1] CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(B) *Week-ending date.* The last day of the weekly reporting period: 2400 hours, A.l.t., Saturday night (except during the last week of each year, when it ends on December 31).

(C) *Time,* in military format, A.l.t.

(D) *Page numbering.* (1) Number the pages in each logbook and BSR consecutively, beginning with page 1 and continuing for the remainder of the fishing year.

(*2*) If a shoreside processor or stationary floating processor, number the DCPL pages within Part I and Part II separately, beginning with page 1. If in an inactive period, the manager needs only to record in Part I.

(E) *Logbook numbering*—(*1*) *Two logbooks of same gear type.* If more than one logbook of the same gear type is used in a fishing year, the page numbers must follow the consecutive order of the previous logbook.

(*2*) *Two logbooks of different gear types.* If two logbooks of different gear types are used in a fishing year, the page numbers in each logbook must start with page 1.

(*3*) *Two logbooks for pair trawl.* If two catcher vessels are dragging a trawl between them (pair trawl), two logbooks must be maintained, a separate DFL by each vessel to record the amount of the catch retained and fish discarded by that vessel, each separately paginated.

(F) *Original/revised report.* Except for a DFL or DCPL, if a report is the first one submitted to the Regional Administrator for a given date, gear type, and reporting area, indicate ORIGINAL REPORT. If a report is a correction to a previously submitted report for a given date, gear type, and reporting area, indicate REVISED REPORT.

(G) *Position coordinates,* position in lat. and long.

(7) *What is an active status?* (i) *Fishing activity, active periods, and inactive periods.* The operator or manager daily must record in the appropriate logbook the status of fishing activity as active or inactive according to the following table:

If participant is a . . .	Fishing activity is . . .	An active period is . . .	An inactive period is . . .
(A) CV[1]	Harvest or discard of groundfish	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location.	When no gear remains on the grounds in a reporting area.
(B) SS, SFP, MS	Receipt, discard, or processing of groundfish.	When checked in or processing	When not checked in or not processing.
(C) C/P	Harvest, discard, or processing of groundfish.	When checked in or processing	When not checked in or not processing.

If participant is a . . .	Fishing activity is . . .	An active period is . . .	An inactive period is . . .
(D) BS	Receipt, discard, or delivery of groundfish.	When conducting fishing activity for an associated processor.	When not conducting fishing activity for an associated processor.

[1] CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = C/P; BS = Buying station

(ii) *What do I record if I'm not active?* If not active, the operator or manager must record in the appropriate logbook or form a brief explanation according to the following table:

The operator or manager must enter:	In the ...	If ...
(A) No receipt	(*1*) DCPL	No deliveries received for a day.
	(*2*) DCPL, WPR	No deliveries received during a weekly reporting period.
(B) No landings	(*1*) DCPL, DPR	No landings occurred for a day.
	(*2*) DCPL, WPR	No landings occurred during a weekly reporting period.
(C) No production	(*1*) DCPL, DPR	No production occurred for a day.
	(*2*) DCPL, WPR	No production occurred for a weekly reporting period.
(D) No discard or Disposition.	(*1*) DCPL, DFL, BSR or DPR.	No discards or dispositions occurred for a day.
	(*2*) DCPL, WPR	No discards or dispositions occurred for a weekly reporting period.

(iii) *Recording activity on logsheets.* When recording fishing activity in an appropriate logbook, the operator or manager must:

(A) *Active.* If active, complete a separate logsheet for each day (except a shoreside processor or stationary floating processor).

(B) *Active but not fishing.* If active but not fishing, complete on one logsheet:

(*1*) Check ''active but not fishing.''

(*2*) Record the date of the first day when active but not fishing under ''Start date.''

(*3*) Indicate brief explanation that you are active but not fishing.

(*4*) Record the date of the last day when active but not fishing.

(C) *Inactive.* If inactive, complete on one logsheet:

(*1*) Check ''inactive.''

(*2*) Record the date of the first day when inactive under ''Start date.''

(*3*) Indicate brief explanation that you are inactive.

(*4*) Record the date of the last day when inactive.

(D) *Two or more quarters.* If the ''inactive'' time period or ''active but not fishing'' time period extends across two or more successive quarters, the operator or manager must complete two logsheets: the first to indicate the last day of the first ''inactive'' or ''active but not fishing'' quarter and the next page to indicate the first day of the second ''inactive'' or ''active but not fishing'' quarter.

(E) *Participant information if not active.* If using one logsheet to record a period when inactive or active-not-fishing, record the participant information as described at paragraph (a)(8) of this section.

(iv) *Weight of fish.* When recording weight in a logbook or form, the operator or manager must follow the guidelines in the tables in paragraphs (a)(7)(iv)(C) and (D) and (a)(7)(iv)(F) through (I) of this section and must:

(A) Indicate whether records of weight are in pounds or metric tons.

(*1*) If a DFL, DCPL, BSR, and shoreside processor check-in report or check-out report, record weight in pounds or in metric tons to the nearest 0.001 mt, but be consistent throughout the year.

(*2*) If a WPR or DPR, record weight in metric tons to the nearest 0.001.

(B) Record the weight of groundfish landings, groundfish product, and groundfish or prohibited species Pacific herring discard or disposition weight by species codes as defined in Table 2 to this part and product codes and product designations as defined in Table 1 to this part. Except for product information provided by shoreside processors or stationary floating processors [which is the sum of product weight separately by BSAI or GOA management area], the operator or manager must summarize groundfish weights separately by reporting area, management program information, gear type, and if trawl gear used, whether harvest was caught in the CVOA or the COBLZ.

(C) Daily catch weight. The operator or manager must enter daily catch weight per the following table:

Enter . . .	In a . . .	If a . . .
(*1*) Estimated total round catch weight of groundfish, listed by CV or BS	DCPL	SS, SFP
(*2*) Estimated total round catch weight of groundfish by haul	Trawl DFL	CV
(*3*) Estimated total round catch weight of groundfish by haul, excluding pollock and Pacific cod	Trawl DCPL	C/P
(*4*) Estimated total round catch weight of groundfish listed by CV or BS, excluding pollock and Pacific cod.	DCPL	MS
(*5*) Estimated total round catch weight of groundfish by set, excluding CDQ/IFQ Pacific halibut and IFQ sablefish.	Longline or pot DFL	CV
(*6*) Estimated total round catch weight of groundfish by set, excluding CDQ/IFQ Pacific halibut, IFQ sablefish, pollock and Pacific cod.	Longline or pot DCPL	C/P
(*7*) If a CV reported discards on a blue discard logsheet but did not deliver groundfish, enter ''0'' in this column.	(*i*)DCPL	MS, SS, SFP
	(*ii*)BSR	BS

(D) Daily landings weight. The operator or manager must enter daily landings weight per the following table:

Enter . . .	In a . . .	If a . . .
(*1*) Obtain actual weights for each groundfish species received and retained by: Sorting according to species codes and direct weighing of that species, or weighing the entire delivery and then sorting and weighing some or all of the groundfish species individually to determine their weight..	DCPL, DPR	SS, SFP
(*2*) Record daily combined scale weights of landings by species and product codes	DCPL, DPR	SS, SFP

(E) *Daily product weight.* The operator or manager of a SS, SFP, MS, or C/P must enter total daily fish product weight or actual scale weight of fish product by species and product codes in the DCPL and DPR.

(F) *Daily discard or disposition weight and number.* The operator or manager must enter daily discard or disposition weight and number per the following table:

Enter . . .	In a . . .	If a . . .
(*1*) The daily estimated total weight of discards or disposition for Pacific herring and each groundfish species or species group.	DCPL, DFL, BSR, ADF&G fish ticket.	CV, BS, SS, SFP, MS, C/P
(*2*) The daily estimated numbers of whole fish discards or disposition of prohibited species Pacific salmon, steelhead trout, Pacific halibut, king crab, and *C. opilio* or *C. bairdi* Tanner crabs.	DCPL, DFL, BSR, ADF&G fish ticket.	CV, BS, SS, SFP, MS, C/P

(G) *Balance brought forward.* The operator or manager must enter the balance brought forward per the following table:

Enter . . .	In a . . .	If a . . .
(*1*) The total product balance brought forward from the previous day	DCPL	MS, C/P
(*2*) The total estimated discards or disposition balance brought forward from the previous day	DFL, DCPL	CV, MS, C/P

(H) *Zero balance.* The operator or manager must enter zero balance per the following table:

Record weights as zero	In a . . .	If a . . .
(*1*) After the offload or transfer of all fish or fish product onboard and prior to the beginning of each fishing trip.	DFL	CV
(*2*) After the offload or transfer of all fish or fish product onboard, if such offload occurs prior to the end of a weekly reporting period. Nothing shall be carried forward.	DCPL	MS, C/P
(*3*) At the beginning of each weekly reporting period. Nothing shall be carried forward from the previous weekly reporting period.	DCPL	MS, C/P

(I) *Cumulative totals.* The operator or manager must enter cumulative totals per the following table:

Enter . . .	In a . . .	If a . . .
(*1*) Weekly cumulative totals, calculated by adding the daily totals and balance carried forward	DCPL, WPR	MS, C/P
(*2*) Weekly cumulative totals, calculated by adding the daily totals	DCPL, WPR	SS, SFP
(*3*) Cumulative total discards or disposition since last delivery. Enter the cumulative estimated total discards or disposition since last delivery calculated by adding the daily totals and balance carried forward from the day before.	DFL	CV

(v) *Numbers of fish.* The operator or manager must record the estimated numbers of whole fish discards or disposition of prohibited species Pacific salmon, steelhead trout, Pacific halibut, king crab, and *C. opilio* or *C. bairdi Tanner crabs.*

(vi) *Species codes.* To record species information for federally managed groundfish, the operator or manager must use Table 2 to this part to determine species codes.

(vii) *Product codes and product designations.* To record product information for federally managed groundfish, the operator or manager must use Table 1 to this part to determine product codes and product designations.

(viii) *Target codes.* To record target species information for federally managed groundfish, the operator or manager must use Table 2 to this part to determine species codes. Target species may be recorded as primary and secondary.

(ix) *Gear type information*—(A) *Longline or pot gear.* If a catcher vessel or catcher/processor using longline or pot gear, the operator or manager must indicate the gear type used to harvest the fish and appropriate ''gear ID''. If gear information is the same on subsequent pages, check the appropriate box instead of re-entering the information.

(B) If gear type is . . .	Then enter . . .
(*1*) Pot	Number of pots set
(*2*) Hook-and-line	(*i*) Check the appropriate box to indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations). (*ii*) Length of skate to the nearest foot (optional, but may be required by IPHC regulations). (*iii*) Size of hooks, hook spacing in feet, and number of hooks per skate (optional, but may be required by IPHC regulations). (*iv*) Number of skates set (*v*) Number of skates lost (if applicable) (optional, but may be required by IPHC regulations).

(B) If gear type is . . .	Then enter . . .
(*3*) Longline	Bird avoidance gear code (see Table 19 to this part).

(x) *Separate logsheet, WPR, check-in/check-out report.* The operator or manager must use a separate page (logsheet, WPR, check-in/check-out report) according to the table in paragraph (a)(7)(xii) of this section:

(A) For each day of an active period, except shoreside processor or stationary floating processors may use one logsheet for each day of an active period or use one logsheet for up to 7 days.

(B) If harvest from more than one reporting area.

(C) If harvest from COBLZ or RKCSA within a reporting area. Use two separate logsheets, the first to record the information from the reporting area that includes COBLZ or RKCSA, and the second to record the information from the reporting area that does not include COBLZ or RKCSA.

(D) If harvest with more than one gear type.

(E) If harvest under a separate management program. If harvest from more than one program of the same management type, use a separate logsheet for each identifying program number.

(xi) *Reporting area.* The operator or manager must record the reporting area code (see Figures 1 and 3 to this part) where gear retrieval (see § 679.2) was completed, regardless of where the majority of the set took place. Record in the DFL, BSR, DCPL, SPELR, WPR, DPR, and mothership or catcher/processor check-in/check-out report.

(xii) *Areas within a reporting area.* If harvest was caught using trawl gear, the operator or manager must indicate whether fishing occurred in the COBLZ or RKCSA:

	Area	Reference
(A) COBLZ	BSAI *C. opilio* Bairdi Bycatch Limitation Zone	Figure 13 to this part.
(B) RKCSA	Red King Crab Savings Area	Figure 11 to this part.

(xiii) *Observer information.* Record the number of observers aboard or on site, the name of the observer(s), and the observer cruise number(s) in the DFL and DCPL. If a shoreside processor or stationary floating processor, record also the dates present for each observer.

(xiv) *Number of crew or crew size.* Record the number of crew, excluding certified observer(s), on a mothership or catcher/processor WPR and in the BSR; on the last day of the weekly reporting period in a mothership or catcher/processor DCPL; and in the DFL on the last day of a trip for a catcher vessel.

(xv) *Management program.* Indicate whether harvest occurred under one of the listed management programs in a DFL, BSR, DCPL, SPELR, WPR, DPR, or check-in/check-out report. If harvest is not under one of these management programs, leave blank.

If harvest made under . . . . program	Indicate yes and record the	Reference
(A) CDQ	CDQ group number	Subpart C to part 679.
(B) Exempted Fishery.	Exempted fishery permit number	§ 679.26.
(C) Research	Research program permit number	§ 600.745(a) of this chapter.
(D) IFQ	IFQ permit number(s)	Subpart D to part 679.

(8) *Landings information*—(i) *Requirement.* The manager of a shoreside processor or stationary floating processor must record landings information for all retained species from groundfish deliveries.

(A) If recording in DCPL, or DPR, enter date of landing and daily weight and weekly cumulative weight by species code and product code.

(B) If recording in WPR, enter weekly cumulative weight by species code and product code.

(ii) *Landings as product.* If a shoreside processor or stationary floating processor receives groundfish, records them as landings in Part IB of the DCPL, and transfers these fish to another processor without further processing, the manager must also record the species code, product code, and weight of these fish in Part II of the DCPL prior to transfer.

(9) *Product information*—(i) *Requirement.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must record groundfish product information for all retained species from groundfish deliveries.

(A) If recording in DCPL or DPR, enter date of production (shoreside processor or stationary floating processor only); daily weight, balance forward (except shoreside processor or stationary floating processor), and weekly cumulative weight by species code, product code, and product designation.

(B) If recording in WPR, enter weekly cumulative weight by species code, product code, and product designation.

(ii) *Custom processing.* The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must record products that result from custom processing by you for another processor. If you receive unprocessed or processed groundfish to be handled or processed for another processor or business entity, enter these groundfish in a DCPL and a WPR consistently throughout a fishing year using one of the following two methods:

(A) *Combined records.* Record landings (if applicable), discards or dispositions, and products of contract-processed groundfish routinely in the DCPL, SPELR, WPR, and DPR without separate identification; or

(B) *Separate records.* Record landings (if applicable), discards or dispositions, and products of custom-processed groundfish in a separate DCPL, WPR, and DPR identified by the name, Federal processor permit number or Federal fisheries permit number, and ADF&G

processor code of the associated business entity.

(10) *Discard or disposition information*—(i) *Shoreside processor, stationary floating processor, mothership*—(A) *DCPL or DPR.* (*1*) Except as described in paragraph (a)(10)(v) of this section, the manager of a shoreside processor or stationary floating processor, and the operator of a mothership must record in a DCPL and DPR, discard or disposition information that occurred on and was reported by a catcher vessel, that occurred on and was reported by a buying station, and that occurred prior to, during, and after production of groundfish.

(*2*) Discard or disposition information must include: Date of discard or disposition (only shoreside processor or stationary floating processor); daily weight of groundfish; daily weight of Pacific herring PSC; daily number of PSC animals; balance forward (except shoreside processor or stationary floating processor); and weekly cumulative weight of groundfish and herring PSC; weekly cumulative number of PSC animals; species codes and product codes.

(B) *WPR.* The manager of a shoreside processor or stationary floating processor, and the operator of a mothership must record in a WPR, discard or disposition information to include: week-ending date; weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(ii) *Catcher/processor*—(A) *DCPL or DPR.* (*1*) The operator of a catcher/processor must record in a DCPL and DPR, discard or disposition information that occurred prior to, during, and after production of groundfish.

(*2*) Discard or disposition information must include: daily weight of groundfish; daily weight of herring PSC; daily number of PSC animals, balance forward, and weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(B) *WPR.* The operator of a catcher/processor must record in a WPR, discard or disposition information to include: week-ending date; weekly cumulative weight of groundfish and herring PSC; and weekly cumulative number of PSC animals by species code and product code.

(iii) *Buying station.* The operator or manager of a buying station must record in a BSR discard or disposition information that occurred on and was reported by a catcher vessel and that occurred on and prior to delivery to an associated processor. Discard or disposition information must include: daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals by species code and product code.

(iv) *Catcher vessel.* Except as described in paragraph (a)(10)(vi) of this section, the operator of a catcher vessel must record in a DFL discard or disposition information that occurred on and prior to delivery to a buying station, mothership, shoreside processor, or stationary floating processor. Discard or disposition information must include daily weight of groundfish, daily weight of herring PSC, and daily number of PSC animals by species code and product code.

(v) *Exemption: Catcher vessel unsorted codends.* If a catcher vessel is using trawl gear and deliveries to a mothership, shoreside processor, stationary floating processor, or buying station are of unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue discard logsheet for that delivery.

(vi) *Discard quantities over maximum retainable amount.* When fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount for Pacific cod or rockfish as defined in Table 10 or 11 to this part; quantities over this amount must be discarded and recorded as discard in the logbook.

(vii) *Discard or disposition logbook recording time limits.* The operator or manager must record discards and disposition information in the logbook within the time limits given in the following table:

If participant is a[1] . . .	Record information . . .
(A) MS, SS, SFP	By noon each day to record the previous day's discard/disposition that: (*1*) Occurs on site after receipt of groundfish from a CV or BS; (*2*) Occurs during processing of groundfish received from a CV or BS; (*3*) Was reported on a blue DFL received from a CV delivering groundfish; (*4*) Was reported on a BSR received from a BS delivering groundfish, if different from blue DFL.
(B) CV, C/P	By noon each day to record the previous day's discard/disposition.
(C) BS	By noon each day to record the previous day's discard/disposition that: (*1*) Was reported on a blue DFL received from a CV delivering groundfish. (*2*) Occurs on BS after receipt of harvest from a CV. (*3*) Occurs prior to delivery of harvest to a MS, SS, or SFP.

[1] CV=Catcher vessel; SS=Shoreside processor; SFP=stationary floating processor; MS=mothership; Catcher/processor=C/P; BS=Buying station

(11) *Delivery information*—(i) *Mothership, shoreside processor or stationary floating processor.* The operator of a mothership or manager of a shoreside processor or stationary floating processor must record delivery information in a DCPL or SPELR when unprocessed groundfish deliveries are received from a buying station or a catcher vessel. Discards must also be recorded when no groundfish are delivered but the blue discard logsheet containing records of discards is submitted by a catcher vessel (e.g., an IFQ fish delivery with no groundfish incidental catch).

(ii) *Buying station.* (A) The operator or manager of a buying station must record delivery information in a BSR when unprocessed groundfish deliveries are received from a catcher vessel and also when no groundfish are delivered but the blue discard logsheet containing records of discards is submitted by a catcher vessel (e.g., an IFQ fish delivery with no groundfish incidental catch).

(B) In addition, a catcher vessel operator by prior arrangement with a processor may function as a buying station for his own catch by: Shipping his groundfish catch with a copy of the BSR directly to that processor via truck or airline in the event that the processor is not located where the harvest is offloaded; or by driving a truck that contains his catch and a copy of the BSR to the processor. When the shipment arrives at the processor, the information from the BSR would be incorporated by

the manager of the shoreside processor or stationary floating processor into the DCPL.

(iii) *Required delivery information, Mothership, shoreside processor, stationary floating processor, or buying station*—(A) *Date of delivery.* Enter date of delivery.

(B) *CV or BS.* If a mothership, shoreside processor, or stationary floating processor, the manager or operator must:

(*1*) Enter CV or BS to indicate delivery from catcher vessel or buying station, respectively.

(*2*) If delivery is from a buying station, keep the BSR for each delivery on file throughout the fishing year and for 3 years after the end of the fishing year.

(C) *Receive discard report.* Indicate whether the blue discard logsheet was received from the catcher vessel at the time of catch delivery; if delivery from a buying station, leave this column blank; if blue discard logsheet not received from catcher vessel, enter NO and the response code (example: NO–L) to describe the reason for non-submittal as follows:

If blue DFL not submitted by catcher vessel, record number followed by . . .	To indicate the catcher vessel
(*1*) P	Does not have a Federal fisheries permit.
(*2*) P	Is under 60 ft (18.3 m) LOA and does not have a Federal fisheries permit.
(*3*) L	Is under 60 ft (18.3 m) LOA and has a Federal fisheries permit.
(*4*) U	Delivered an unsorted codend.

(D) *Name and ADF&G vessel registration number* (if applicable) of the catcher vessel or buying station delivering the groundfish;

(E) *Time when receipt of groundfish delivery was completed;*

(F) *Mothership begin position.* If a mothership, the mothership's begin position coordinates when receiving the groundfish delivery;

(G) *ADF&G fish ticket numbers.* (*1*) If a mothership, shoreside processor, or stationary floating processor and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the AD&FG fish ticket number issued to each catcher vessel; if receiving unprocessed groundfish from an associated buying station, record in the DCPL and WPR the AD&FG fish ticket numbers issued by the buying station to the catcher vessel.

(*2*) If a buying station and receiving unprocessed groundfish from a catcher vessel, record in the BSR the ADF&G fish tickets numbers issued to each catcher vessel.

(H) *Fish ticket numbers, state other than Alaska.* If a shoreside processor located in a state other than Alaska and receiving unprocessed groundfish from a catcher vessel, record in the DCPL and WPR the fish ticket numbers issued for that non-Alaska state along with the two-character abbreviation for that state.

(I) *Catch receipt numbers, state other than Alaska.* If a shoreside processor located in a state other than Alaska where no fish ticket system is available and receiving unprocessed groundfish from a catcher vessel, record in the DCPL the catch receipt number issued to the catcher vessel.

(iv) *Catcher vessel using trawl gear.* If a catcher vessel using trawl gear, indicate whether sorting of codend onboard or bleeding from a codend occurred prior to delivery to a mothership, shoreside processor, stationary floating processor, or buying station. If delivery is an unsorted codend, see paragraph (a)(10)(vi) of this section. Delivery information required: The delivery date; the ADF&G fish ticket number(s) received for delivery; and recipient's name and ADF&G processor code.

(v) *Catcher vessel using longline or pot gear.* If IFQ delivery, information required: the delivery date; the ADF&G fish ticket number(s) received at delivery; name of IFQ Registered Buyer receiving harvest; name of unloading port (see paragraph (l)(5)(vi) of this section and Table 14 to this part) or landing location. If non-IFQ delivery, information required: the delivery date; the ADF&G fish ticket number(s) received at delivery; name of recipient receiving harvest; name of unloading port (see Table 14 to this part) or landing location.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook, except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection and retention of records*—(i) *Inspection.* The operator of a catcher vessel or catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator of a buying station must make all logbooks, reports, forms, and mothership-issued fish tickets required under this section available for inspection upon the request of an authorized officer for the time periods indicated in paragraph (a)(13)(ii) of this section.

(ii) *Retention of records.* The operator or manager must retain logbooks and forms as follows:

(A) *On site.* On site at the shoreside facility or onboard the vessel until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbooks and forms are retained.

(B) *For 3 years.* Make them available upon request of an authorized officer for 3 years after the end of the fishing year during which the records were made.

(14) *Submittal and distribution of logbooks and forms—(i) Submittal of forms.* The operator or manager must submit to NMFS the check-in report, check-out report, VAR, WPR, DPR, and PTR (see Table 9 to this part), as applicable, by:

(A) Faxing the NMFS printed form to the FAX number on the form; or

(B) Telexing a data file to the telex number on the form.

(C) Transmitting a data file with required information and forms to NMFS by e-mail, modem, or satellite (specifically INMARSAT standards A, B, or C).

(D) With the approval of the Regional Administrator, using the voluntary electronic reporting format for the check-in report, check-out report, WPR, and shoreside processor electronic logbook delivery report.

(ii) *Logbook copy sets.* (A) The copy sets of each logbook are described in the following table:

Type of logbook	Copy sets
(*1*) Catcher vessel longline and pot gear DFL	White, blue, green, yellow, goldenrod.
(*2*) Catcher vessel trawl gear DFL	White, blue, yellow, goldenrod.
(*3*) Catcher/processor longline and pot gear DCPL	White, green, yellow, goldenrod.
(*4*) Catcher/processor trawl gear DCPL	White, yellow, goldenrod.
(*5*) Mothership DCPL	White, yellow, goldenrod.
(*6*) Shoreside processor DCPL	White, yellow, goldenrod.

(B) [Reserved]

(iii) *Logsheet distribution.* The logsheet distribution is described in the following table:

If logsheet is . . .	>Then, the operator or manager must . . .
(A) White	Retain, permanently bound in the logbook.
(B) Yellow	Submit quarterly to: NOAA Office for Enforcement, Alaska Region, Logbook Program, P.O. Box 21767, Juneau, AK 99802–1767 on the following schedule: 1st quarter by May 1 of that fishing year 2nd quarter by August 1 of that fishing year 3rd quarter by November 1 of that fishing year 4th quarter by February 1 of the following fishing year.
(C) Blue	(*1*) *Catcher vessel*. Except when delivering an unsorted codend (see paragraph (a)(10)(vi) of this section), submit to the buying station, mothership, shoreside processor or stationary floating processor that receives the harvest. (*2*) *Buying station*. Submit upon delivery of catch to an associated mothership, shoreside processor, or stationary floating processor any blue discard logsheet received from catcher vessels delivering groundfish to the buying station.
(D) Green	*Longline and pot gear DFL and DCPL*. To support a separate IFQ data collection by the IPHC under the joint NMFS/IPHC logbook program; check with the IPHC for submittal and retention requirements.
(E) Goldenrod	Submit to the observer onboard or onsite after the logsheet is signed by the operator or manager.

(iv) *Logbook time limits.* The following table displays the responsibilities of the operator or manager to submit the identified logsheet within a specified time limit:

If a . . .	The operator or manager must . . .	Time limit
(A) CV	Submit the blue DFL logsheets to the MS, SS, SFP, or BS receiving the catch.	>Within 2 hours after completion of catch delivery.
(B) CV or C/P	(*1*) DFL, DCPL using trawl gear: record time, position, CDQ group number and estimated total groundfish catch weight for each haul or set.	Within 2 hours after completion of gear retrieval.
	(*2*) DFL, DCPL using longline or pot gear: record set number, time and date set, time and date hauled, begin and end position, number of pots set, and estimated total catch weight of groundfish for each set.	Within 2 hours after completion of gear retrieval.
	(*3*) DFL, DCPL: notwithstanding other time limits, record all information required in the DFL or DCPL.	Within 2 hours after the vessel's catch is off-loaded.
(C) CV, C/P, MS, SS or SFP	(*1*) DFL, DCPL: record discard or disposition information	By noon each day to record the previous day's discard/disposition.
	(*2*) DFL, DCPL: sign the completed logsheets	By noon of the day following the week-ending date of the weekly reporting period.
	(*3*) DFL, DCPL: submit the goldenrod logsheet to the observer	After signature of operator or manager.
(D) C/P, MS, SS, or SFP	(*1*) DFL, DCPL: record all other required information	By noon of the day following completion of production.
	(*2*) DFL, DCPL: record product information	By noon each day for the previous day's production.
(E) MS, SS or SFP	(*1*) DFL, DCPL: record delivery information	Within 2 hours after completion of receipt of each groundfish delivery.
	(*2*) DFL, DCPL: record all other information required in the logbook.	By noon of the day following the day the receipt of groundfish was completed.
(F) SS or SFP	DCPL: record landings information	By noon each day to record the previous day's landings.

Note: SS = shoreside processor; SFP = stationary floating processor; C/P = catcher/processor; CV = catcher vessel; MS = mothership; BS = buying station

(15) *Transfer document comparison.* When the operator or manager is participating in both the groundfish fisheries and the IFQ fisheries, certain exceptions to submittal of forms are provided by the following table:

	VAR	PTR	IFQ trans shipment authorization	IFQ vessel clearance	IFQ departure report	IFQ dockside sale receipt	IFQ shipment report
	§ 679.5(k)	§ 679.5(g)	§ 679.5(l)(4)	§ 679.5(l)(5)	§ 679.5(l)(5)	§ 679.5(l)(3)(iv)	§ 679.5(l)(3)
(i) If a catcher vessel leaving Alaska with groundfish but no IFQ product onboard	X						
(ii) If a mothership or catcher/processor leaving Alaska with groundfish but no IFQ product onboard	X	X					
(iii) If a vessel leaving Alaska with IFQ sablefish or halibut but no other groundfish onboard				X	X		
(iv) If a vessel leaving Alaska with IFQ sablefish or halibut and other groundfish onboard	X	X		X	X		
(v) Transfer of groundfish		X					
(vi) Transfer of CDQ sablefish							X
(vii) Transfer of IFQ fish						X	X
(viii) Transfer of IFQ between vessels			X				

(b) *Representative.* (1) The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor or buying station delivering to a shoreside processor or stationary floating processor may identify one contact person to complete the logbook and forms and to respond to inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance under paragraph (a)(2) of this section.

(2) Except for a DFL, BSR, PTR, or DCPL, the operator or manager must provide the following representative identification information: The representative's name; daytime business telephone number (including area code); and FAX or telex number. In addition, if completing a DPR, a VAR, or a mothership or catcher/processor check-in/check-out report, the representative's COMSAT number.

(c) *Catcher vessel DFL and catcher/processor DCPL*—(1) *Longline and pot DFL and DCPL.* In addition to information required at paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor using longline or pot gear to harvest groundfish and the operator of a catcher vessel or a catcher/processor using longline or pot gear to harvest IFQ sablefish or IFQ halibut must record in the DFL or DCPL:

(i) Gear type;

(ii) IFQ permit number of the operator, if any, and of each IFQ holder aboard the vessel;

(iii) Groundfish CDQ group number;

(iv) Halibut CDQ permit number;

(v) The set number, sequentially by year;

(vi) Date, time, and begin position coordinates of gear deployment;

(vii) Begin and end buoy or bag numbers (optional, but may be required by IPHC regulations);

(viii) Date, time, and end position coordinates of gear retrieval;

(ix) Begin and end gear depths, recorded to the nearest fathom (optional, but may be required by IPHC regulations);

(x) Number of skates or pots set;

(xi) Number of skates or pots lost (optional, but may be required by IPHC regulations);

(xii) Target species code;

(xiii) Estimated catch weight of IFQ halibut and CDQ halibut to the nearest pound, indicate ''CDQ'' above the amount of CDQ halibut;

(xiv) Estimated weight of IFQ sablefish to the nearest pound;

(xv) Indicate whether IFQ sablefish product is Western cut, Eastern cut, or round weight;

(xvi) Number of sablefish;

(xvii) The bird avoidance gear code;

(xviii) If a catcher/processor, enter separately the round catch weight of pollock and Pacific cod to the nearest pound or metric ton and the estimated total round catch weight of all retained species combined, except sablefish, halibut, pollock and Pacific cod to at least the nearest 0.001 mt;

(xix) If a catcher vessel, the estimated total round catch weight of all species combined, except sablefish and halibut.

(2) *Trawl gear DFL and DCPL.* In addition to information required at paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor using trawl gear to harvest groundfish must record in the DFL or DCPL:

(i) Whether nonpelagic trawl or pelagic trawl;

(ii) Haul number, sequentially by year;

(iii) Time and begin position coordinates of gear deployment;

(iv) Date, time, and end position coordinates of gear retrieval;

(v) Average sea depth and average gear depth, recorded to the nearest meter or fathom and whether depth recorded in meters or fathoms;

(vi) Target species code;

(vii) If a catcher/processor, enter separately the round catch weight of pollock, Pacific cod, and the estimated total round catch weight of all retained species except Pacific cod and pollock, and indicate whether weight is recorded to the nearest pound or metric ton;

(viii) If a catcher vessel, enter the estimated total round catch weight of all retained species.

(d) *Buying station report (BSR)*—(1) *Requirement.* In addition to information required at paragraphs (a) and (b) of this section, the operator or manager of a buying station must:

(i) Enter on each BSR the name, ADF&G processor code, and Federal fisheries or processor permit number of its associated processor;

(ii) Record each delivery of unprocessed groundfish or donated prohibited species to an associated processor on a separate BSR.

(iii) Ensure that a BSR, along with any blue discard logsheets received from a catcher vessel, accompanies each groundfish delivery from the landing site to the associated processor.

(iv) Retain a copy of each BSR.

(2) *Time limits and submittal.* The operator or manager must record all information required and sign the BSR within 2 hours of completion of delivery from catcher vessel.

(e) *Shoreside processor electronic logbook report (SPELR).*

(1) The owner or manager must use SPELR or NMFS-approved software for the duration of the fishing year to report every delivery from all catcher vessels and maintain the SPELR and printed reports as described at paragraph (f) of this section, if a shoreside processor or stationary floating processor:

(i) Receives groundfish from AFA catcher vessels;

(ii) Receives pollock harvested in a directed pollock fishery.

(2) The owner or manager of a shoreside processor or stationary floating processor that is not required to use SPELR under paragraph (e)(1) of this section may use, upon approval by the Regional Administrator, SPELR or NMFS-approved software in lieu of the shoreside processor DCPL and shoreside processor WPR. Processors using the SPELR must maintain the SPELR and printed reports as described in this paragraph (e) and at paragraph (f) of this section.

(3) *Exemptions.* The owner or manager who uses the SPELR per paragraphs (e)(1) and (2) of this section is exempt from the following requirements:

(i) Maintain shoreside processor DCPL.

(ii) Submit quarterly DCPL logsheets to NOFE, Juneau, as described at paragraph (a)(14)(iii) of this section.

(iii) Maintain and submit WPRs to the Regional Administrator as described at paragraph (i) of this section.

(iv) If receiving deliveries of fish under a CDQ program, submit CDQ delivery reports to the Regional Administrator as described at paragraph (n)(1) of this section.

(4) *Time limit and submittal.* (i) The SPELR must be submitted daily to NMFS as an electronic file. A dated return-receipt will be generated and sent by NMFS to the processor confirming receipt and acceptance of the report. The owner or manager must retain the return receipt as proof of report submittal. If an owner or manager does not receive a return receipt from NMFS, the owner or manager must contact NMFS within 24 hours for further instruction on submittal of SPELRs.

(ii) Daily information described at paragraph (e)(6) of this section must be entered into the SPELR each day on the day they occur.

(iii) Information for each delivery described at paragraph (e)(7) of this section must be submitted to the Regional Administrator by noon of the following day for each delivery of groundfish.

(5) *Information entered once (at software installation) or whenever it changes.* The owner or manager must enter the following information into the SPELR when software is installed or whenever any of the information changes:

(i) Shoreside processor or stationary floating processor name, ADF&G processor code, Federal processor permit number, and processor e-mail address;

(ii) State port code as described in Table 14 to this part;

(iii) Name, telephone and FAX numbers of representative.

(6) *Information entered daily.* The owner or manager must daily enter the following information into the SPELR:

(i) Whether no deliveries or no production;

(ii) Number of observers on site;

(iii) Whether harvested in BSAI or GOA;

(iv) Product by species code, product code, and product designation;

(v) Product weight (in lb or mt).

(7) *Information entered for each delivery.* The owner or manager must enter for each delivery the following information into the SPELR:

(i) Date fishing began; delivery date; vessel name and ADF&G vessel registration number; ADF&G fish ticket number of delivery; management program name and identifying number (if any); gear type of harvester; landed species of each delivery by species code, product code, and weight (in pounds or mt); ADF&G statistical area(s) where fishing occurred and estimated percentage of total delivered weight corresponding to each area; and whether delivery is from a buying station.

(ii) If delivery received from a buying station, indicate name and type of buying station (vessel, vehicle, or other); date harvest received by buying station; if a vessel, ADF&G vessel registration number; if a vehicle, license plate number; if other than a vessel or vehicle, description.

(iii) Whether a blue discard logsheet was received from catcher vessel; if not received, reason given; discard or disposition species; if groundfish or PSC herring, enter species code, product code, and weight (in pounds or mt); if PSC halibut, salmon, or crab, enter species code, product code, and count (in numbers of animals).

(iv) If a CDQ delivery, enter species code, product code, weight (in pounds or mt) and count of PSQ halibut.

(f) *SPELR printed reports*—(1) *Requirement*—(i) *Daily printouts.* The manager daily must print onsite at the shoreside processor or stationary floating processor two reports: a shoreside logbook daily production report and a delivery worksheet using pre-determined formats generated by the SPELR or NMFS-approved software.

(ii) *Signature.* The owner or manager of the shoreside processor or stationary floating processor must sign and enter date of signature onto each SPELR printed report. The signature of the owner or manager on SPELR printed reports is verification of acceptance of the responsibility required in paragraphs (e) and (f) of this section.

(iii) *Delivery worksheet.* The Delivery Worksheet results from a SPELR or NMFS-approved pre-determined format of the data; it summarizes daily landings and discards.

(iv) *Shoreside logbook daily production report.* The Shoreside Logbook Daily Production Report results from a SPELR or NMFS-approved pre-determined format of the data; it summarizes daily production.

(2) *Retention.* The manager must retain the paper copies of the reports described in paragraph (f)(1) of this section as follows:

(i) *Onsite.* Onsite at the shoreside processor or stationary floating processor until the end of the fishing year during which the reports were made and for as long thereafter as fish or fish products recorded in the reports are retained.

(ii) *For 3 years.* For 3 years after the end of the fishing year during which the reports were made.

(3) *Inspection.* The owner or manager must make available the reports described in paragraph (f)(1) of this section upon request of observers, NMFS personnel, and authorized officers.

(g) *Groundfish Product Transfer Report (PTR).* (1) Except as provided in paragraphs (g)(1)(i) through (iv) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record on a separate PTR each transfer of groundfish product (including unprocessed fish) or donated prohibited species.

(i) *Exemption:* Bait sales. The operator or manager may aggregate individual sales or transfers of groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product leaving a facility that day. If transfer is a daily aggregation of bait sales, enter ''BAIT SALES'' in the ''RECEIVER'' box and enter the time of the first sale of the day and the time of the last sale of the day.

(ii) *Exemption: Over-the-counter groundfish sales.* The operator or manager may aggregate individual over-the-counter sales of groundfish for human consumption in quantities less than 10 lb (0.0045 mt) per sale during

a day onto one PTR when recording the amount of such over-the-counter product leaving a facility that day. If transfer is a daily aggregation of over-the-counter product sales, enter ''OVER-THE-COUNTER SALES'' in the ''RECEIVER'' box and enter the time of the first sale of the day and the last sale of the day.

(iii) *Exemption: Wholesale sales.* The operator or manager may aggregate wholesale sales of groundfish by species during a single day onto one PTR when recording the amount of such wholesale product leaving a facility that day, as long as the invoices detailing destinations for all of the product are available for inspection by an authorized officer. If transfer is a daily aggregation of wholesale product sales, enter ''WHOLESALE SALES'' in the ''RECEIVER'' box and enter the time of the first sale of the day and the last sale of the day.

(iv) *Exemption: IFQ Registered Buyer permit and IFQ or CDQ sablefish product.* If the operator or the manager possesses a Registered Buyer permit issued per § 679.4(d)(2), the operator or manager is not required to submit a PTR to document shipment of IFQ or CDQ sablefish product. However, a shipment report as described at paragraph (l)(3) of this section is required for each shipment of IFQ or CDQ sablefish product.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor or manager of a shoreside processor or stationary floating processor must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) Submit by FAX or electronic file a copy of each PTR to NOFE, Juneau, by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) A PTR is not required to accompany a shipment or offload.

(3) *General information.* In addition to requirements described in paragraphs (a) and (b) of this section the operator or manager must record on a PTR:

(i) Whether original or revised PTR;

(ii) Whether receipt or shipment. ''RECEIPT'' if product is received; ''SHIPMENT'' if transferring product off your site or transferring product off your vessel;

(iii) Your processor type;

(iv) Whether you are the shipper or the receiver.

(4) *Transfer Information*—(i) *Shipper.* (A) Enter information about your company: If you are shipping groundfish or groundfish product, enter your company name, address, FAX number, and ADF&G processor code.

(B) Enter information about the other company: If you are receiving groundfish or groundfish product from another company, enter name of the other company and ADF&G processor code (if applicable).

(ii) *Receiver.* (A) Enter information about your company: If you are receiving groundfish or groundfish product, enter your company name and ADF&G processor code.

(B) Enter information about the other company: If you are shipping groundfish or groundfish product to another company on land, enter name of the receiver and ADF&G processor code (if applicable).

(C) If you are the shipper, enter appropriate information about the other company as provided in the following table:

If . . .	You must provide the . . .	Date and time of product transfer	Position of product transfer or port of landing	Mode of transportation & intended route
(*1*) Receiver is on land	Name of the receiver and ADF&G processor code (if applicable).	(*i*) Ground Transportation. If transfer involves one van or truck, the date and time when shipment leaves the plant.	N/A	The name of the shipping company and van or truck arrival location.
		(*ii*) If transfer involves multiple vans or trucks, the date and time when loading of vans or trucks is completed each day.	N/A	The name of the shipping company and van or truck arrival location.
		(*iii*) Airline Transportation. If transfer involves one airline flight, the date and time when shipment leaves the plant.	N/A	The name of the airline and airport arrival location.
		(*iv*) If transfer involves multiple airline flights, record date and time when the last airline flight shipment of the day leaves.	N/A	The name of the airline and airport arrival location.
(*2*) Receiver is a vessel	Name and call sign of the vessel.	Start and finish dates and times of product transfer.	If the product transfer occurs at sea, enter transfer position coordinates in latitude and longitude in degrees and minutes. If a mothership or catcher/processor and the product transfer takes place in port, enter the name of the port and country (if other than USA).	The first destination of the vessel.
(*3*) Receiver is an agent (buyer, distributor, or shipping agent).	Name and location (city, state) of agent.	Start and finish dates and times of product transfer.	N/A	If a containerized van, the name of the vessel transporting the van and arrival port.

If . . .	You must provide the . . .	Date and time of product transfer	Position of product transfer or port of landing	Mode of transportation & intended route
(*4*) If aggregating individual over-the-counter sales of groundfish for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR.	''OVER-THE-COUNTER SALES''.	The time of the first sale of the day and the time of the last sale of the day.	N/A	N/A
(*5*) If aggregating individual bait sales of groundfish during a day onto one PTR.	''BAIT SALES''	N/A	N/A	N/A
(*6*) If aggregating wholesale product sales of groundfish by species during a single day onto one PTR and maintaining for inspection by an authorized officer, invoices detailing destinations for all of the product.	''WHOLESALE SALES''	N/A	N/A	N/A

(5) *Products shipped or received.* Enter information for each transfer:

(i) The species code and product code for each product transferred (Tables 1 and 2 to this part).

(ii) The number of cartons or production units transferred.

(iii) The average weight of one carton or production unit for each species and product code in kilograms or pounds (indicate which).

(iv) The total net weight (to the nearest 0.001 mt) of the products transferred.

(v) In addition to paragraphs (g)(5)(i) through (iv) of this section, if recording two or more species with one or more product types of fish in the same carton, enter the actual scale weight of each product of each species to the nearest 0.001 mt. If not applicable, enter ''n/a'' in the species weight column. If you use more than one line to record species in one carton, use a bracket } to tie the carton information together.

(6) *Total or partial offload.* (i) If a mothership or catcher/processor, indicate whether the transfer is a total or partial offload.

(ii) If a partial offload, for the products remaining on board, enter: species code, product code, and total product weight to the nearest 0.001 mt for each product.

(h) *Check-in/check-out report*—(1) *Requirements.* The operator of a catcher/processor or mothership and the manager of a shoreside processor or stationary floating processor must submit check-in reports during any active period and check-out reports when not active for every check-in report submitted within the given time limits to the Regional Administrator by FAX; Telex; or transmit a data file by e-mail, modem, or satellite (specifically INMARSAT standards A, B, or C); or transmit by voluntary electronic check-in and check-out reports.

(i) *Check-in report (BEGIN message).* Except as indicated in paragraph (h)(1)(iii) to this part, the operator or manager must submit a check-in report according to the following table:

Submit a separate BEGIN message for . . .	If you are a . . .	Within this time limit
(A) Each reporting area of groundfish harvest, except 300, 400, 550, or 690.	(*1*) C/P using trawl gear.	Before gear deployment.
	(*2*) C/P using longline or pot gear.	Before gear deployment. May be checked in to more than one area simultaneously.
	(*3*) MS, SS, SFP	Before receiving groundfish. May be checked in to more than one area simultaneously.
	(*4*) MS	Must check-in to reporting area(s) where groundfish were harvested.
(B) COBLZ or RKCSA	(*1*) C/P using trawl gear.	Prior to fishing. Submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
	(*2*) MS, SS, SFP	Before receiving groundfish harvested with trawl gear, submit one check-in for the COBLZ or RKCSA and another check-in for the area outside the COBLZ or RKCSA.
(C) Gear Type	(*1*) C/P	If in the same reporting area but using more than one gear type, prior to fishing submit a separate check-in for each gear type.
	(*2*) MS, SS, SFP	If harvested in the same reporting area but using more than one gear type, prior to receiving groundfish submit a separate check-in for each gear type.
(D) CDQ	(*1*) C/P	Prior to groundfish CDQ fishing under each CDQ program.
	(*2*) MS, SS, SFP	Prior to receiving groundfish CDQ. If receiving groundfish under more than one CDQ number, use a separate check-in for each number.
(E) Exempted or Research Fishery.	(*1*) C/P	If in an exempted or research fishery, prior to fishing submit a separate check-in for each type.
	(*2*) MS, SS, SFP	If receiving groundfish from an exempted or research fishery, prior to receiving submit a separate check-in for each type.
(F) Processor type	C/P, MS	If a catcher/processor and functioning simultaneously as a mothership in the same reporting area, before functioning as either processor type.

Submit a separate BEGIN message for . . .	If you are a . . .	Within this time limit
(G) Change of fishing year.	C/P, MS, SS, SFP	If continually active through the end of one fishing year and at the beginning of a second fishing year, submit a check-in for each reporting area to start the year on January 1.

(ii) *Check-out report (CEASE message).* Except as indicated in paragraph (h)(1)(iii) to this part, the operator or manager must submit a check-out report according to the following table:

Submit a separate CEASE message for	If you are a	Within this time limit
(A) COBLZ or RKCSA	(*1*) C/P using trawl gear.	Upon completion of gear retrieval for groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
	(*2*) MS, SS, SFP	If receiving groundfish harvested with trawl gear, upon completion of receipt of groundfish, submit a separate check-out for the COBLZ or RKCSA and another check-out for the area outside the COBLZ or RKCSA.
(B) Processor type	C/P, MS	Upon completion of simultaneous activity as both catcher/ processor and mothership, a separate check-out, one for catcher/processor and one for mothership.
(C) Gear Type	(*1*) C/P	Upon completion of gear retrieval for groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
	(*2*) MS, SS, SFP	Upon completion of receipt of groundfish, submit a separate check-out for each gear type for which a check-in was submitted.
(D) CDQ	(*1*) C/P	Within 24 hours after groundfish CDQ fishing for each CDQ group has ceased.
	(*2*) MS, SS, SFP	Within 24 hours after receipt of groundfish CDQ has ceased for each CDQ group.
(E) Exempted or Research Fishery.	(*1*) C/P	If groundfish are caught during an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
	(*2*) MS, SS, SFP	Upon completion of receipt of groundfish under an exempted or research fishery, submit a separate check-out for each type for which a check-in was submitted.
(F) Reporting Area	(*1*) C/P using longline or pot gear.	Upon completion of gear retrieval and within 24 hours after departing each reporting area.
	(*2*) C/P using trawl gear.	Within 24 hours after departing a reporting area but prior to checking-in another reporting area.
	(*3*) SS, SFP	Within 48 hours after the end of the applicable weekly reporting period that a shoreside processor or stationary floating processor ceases to receive or process groundfish from that reporting area for the fishing year.
	(*4*) MS, SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, may submit a check-out report for that reporting area.
	(*5*) MS	Within 24 hours after receipt of fish is complete from that reporting area.
(G) Change of fishing year.	C/P, MS, SS, SFP	If a check-out report was not previously submitted during a fishing year for a reporting area, submit on December 31, a check-out report for each reporting area.
(H) Interruption of production.	SS, SFP	If receipt of groundfish from a reporting area is expected to stop for a period of time (month(s)) during the fishing year and then start up again, the manager may choose to submit a check-out report for that reporting area.

(iii) *Exception, two adjacent reporting areas.* If on the same day a catcher/processor intends to fish in two adjacent reporting areas (an action which would require submittal of check-out reports and check-in reports multiple times a day when crossing back and forth across a reporting area boundary), and the two reporting areas have on that day and time an identical fishing status for every species, the operator must submit to NMFS:

(A) A check-in report to the first area prior to entering the first reporting area, and

(B) A check-in report to the second area prior to entering the second reporting area.

(C) If the catcher/processor remains within 10 nautical miles (18.5 km) of the boundary between the two areas and crosses back and forth between the first and second reporting areas one or more times, a check-out report from either reporting area is not required.

(D) If the catcher/processor proceeds in the second reporting area beyond 10 nautical miles (18.5 km) of the boundary between the two areas, the operator must submit a check-out report from the first reporting area.

(2) *Transit through reporting areas.* The operator of a catcher/processor or mothership is not required to submit a check-in or check-out report if the vessel is transiting through a reporting area and is not fishing or receiving fish.

(3) *Required information.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record the following information.

(i) *For each check-in and check-out report.* (A) Whether an original or revised report;

(B) Participant identification information (see paragraph (a)(5) of this section);

(C) Representative information (see paragraph (b)(2) of this section);

(D) Management program name and identifying number (if any);

(E) If a mothership or catcher/processor, processor type and gear type.

(ii) *For each check-in report, mothership.* (A) Date and time when receipt of groundfish will begin;

(B) Position coordinates where groundfish receipt begins;

(C) Reporting area code where gear deployment begins;

(D) Primary and secondary target species expected to be received the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iii) *For each check-in report, catcher/processor.* (A) Date and time when gear deployment will begin;

(B) Position coordinates where gear is deployed;

(C) Reporting area code of groundfish harvest;

(D) Primary and secondary target species expected to be harvested the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(iv) *For each check-in report, shoreside processor or stationary floating processor:* (A) Indicate check-in report;

(B) Date facility will begin to receive groundfish;

(C) Whether checking in for the first time this fishing year or checking in to restart receipt and processing of groundfish after filing a check-out report;

(D) The product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code;

(E) Whether pounds or 0.001 mt.

(v) *For each check-out report, mothership:* Date, time, reporting area code, and position coordinates where the last receipt of groundfish was completed.

(vi) *For each check-out report, catcher/processor:* date, time, reporting area code, and position coordinates where the vessel departed the reporting area.

(vii) *For each check-out report, shoreside processor or stationary floating processor:* (A) Indicate check-out report;

(B) Date facility ceased to receive or process groundfish;

(C) The product weight of all fish or fish products (including non-groundfish) remaining at the facility (other than public cold storage) by species code and product code;

(D) Whether pounds or 0.001 mt.

(i) *Weekly Production Report (WPR)*—(1) *Who needs to submit a weekly production report?* (i) Except as indicated in paragraph (i)(1)(iii) of this section, the operator or manager must submit a WPR for any week the mothership, catcher/processor, shoreside processor, or stationary floating processor is checked-in pursuant to paragraph (h)(2) of this section.

(ii) If a vessel is operating simultaneously during a weekly reporting period as both a catcher/processor and a mothership, the operator must submit two separate WPRs for that week, one for catcher/processor fishing activity and one for mothership fishing activity.

(iii) *Exemption.* If using SPELR or software approved by the Regional Administrator as described in § 679.5(d), a shoreside processor or stationary floating processor is exempt from the requirements to submit a WPR.

(2) *Time limit and submittal.* The operator or manager must submit a separate WPR by FAX or electronic file to the Regional Administrator by 1200 hours, A.1.t. on Tuesday following the end of the applicable weekly reporting period.

(3) *Submit separate WPR.* The operator or manager must submit a separate WPR if:

(i) *Processor type.* For each processor type if a catcher/processor is functioning simultaneously as a Mothership in the same reporting area.

(ii) *Gear type.* For each gear type of harvester if groundfish are caught in the same reporting area using more than one gear type.

(iii) *COBLZ or RKCSA.* If groundfish are caught with trawl gear, submit one report for fish harvested in the COBLZ or RKCSA and another report for fish harvested outside the COBLZ or RKCSA.

(iv) *Management Program.* If groundfish are caught under a specific management program, submit a separate report for each program.

(v) *Reporting area.* For each reporting area, except 300, 400, 550, or 690.

(vi) *Change of fishing year.* If continually active through the end of one fishing year and at the beginning of a second fishing year, the operator or manager must submit a WPR for each reporting area:

(A) To complete the year at midnight, December 31, if still conducting fishing activity regardless of where this date falls within the weekly reporting period.

(B) To start the year on January 1, if still conducting fishing activity regardless of where this date falls within the weekly reporting period.

(4) *Required information.* The operator or manager must record:

(i) Whether original or revised WPR;

(ii) Week-ending date;

(iii) Participant identification information (see paragraph (a)(5) of this section);

(iv) Representative information (see paragraph (b)(2) of this section);

(v) Date (month-day-year) WPR completed;

(vi) Management program name and identifying number (if any);

(vii) Gear type of harvester;

(viii) If a mothership or catcher/processor, processor type and crew size;

(ix) Reporting area of harvest;

(x) If a shoreside processor or stationary floating processor, landings scale weights of groundfish by species and product codes and product designations; scale weights or fish product weights of groundfish by species and product codes and product designations;

(xi) Discard or disposition weights or numbers by species and product codes;

(xii) ADF&G fish ticket numbers issued to catcher vessels at delivery (except catcher/processors).

(j) *Daily Production Report (DPR)*—(1) *Notification.* If the Regional Administrator determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submittal of DPRs from motherships, catcher/processors, shoreside processors and stationary floating processors for reporting one or more specified species, in addition to a WPR. NMFS will publish notification in the **Federal Register** specifying the fisheries that require DPRs and the dates that submittal of DPRs are required.

(2) *Applicability.* (i) If a catcher/processor or mothership is checked in to the specified reporting area and is harvesting, receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the operator must submit a DPR.

(ii) If a shoreside processor or stationary floating processor is receiving, processing, or discarding the specified species or is receiving reports from a catcher vessel of discard at sea of the specified species, the manager must submit a DPR.

(iii) The operator of a catcher/processor or mothership or the manager of a shoreside processor or stationary floating processor must use a separate DPR for each gear type, processor type, and CDQ number.

(3) *Time limit and submittal.* The operator or manager must submit a DPR by FAX to the Regional Administrator by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or the manager of a shoreside processor or stationary floating processor must record the processor type.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Who needs to submit a VAR?* Except as noted in paragraphs (k)(1)(iii) and (iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/ processor, or a mothership holding a Federal fisheries

permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to NOFE, Juneau, AK, before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(i) *Both groundfish and IFQ fish.* If a vessel is carrying both groundfish and IFQ halibut or IFQ sablefish, the operator must submit a VAR in addition to a Vessel Departure Report (VDR) or a Vessel Clearance (VC).

(ii) *Revised VAR.* If groundfish are landed at a port other than the one specified, submit a revised VAR showing the actual port of landing.

(iii) *Exemption: Vessel clearance.* If a vessel is carrying only IFQ halibut or IFQ sablefish onboard and the operator has received a Vessel Clearance per paragraph (l)(5)(iii) of this section, a VAR is not required.

(iv) *Exemption:* If a vessel is carrying only IFQ halibut or IFQ sablefish onboard and the operator has submitted a Departure Report per paragraph (l)(5)(iii)(B) of this section, a VAR is not required.

(2) *Information required.* Whether original or revised VAR; name and Federal fisheries permit number of vessel; type of vessel (whether catcher vessel, catcher/processor, or mothership); and representative information (see paragraph (b)(2) of this section).

(i) *Return report.* ''Return,'' for purposes of this paragraph, means coming back to Alaska. If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a ''return'' report and enter:

(A) Intended Alaska port of landing (see Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates the vessel will cross.

(ii) *Depart report.* ''Depart'' means leaving Alaska. If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, indicate a ''depart'' report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates in latitude and longitude the vessel will cross.

(iii) *The Russian Zone.* Indicate whether your vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(iv) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter: Harvest zone code; species codes; product codes; and total fish product weight in lbs or to the nearest 0.001 mt.

(l) *IFQ Recordkeeping and reporting.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following IFQ reports are required, when applicable: prior notices of landing, landing report, shipment report, transshipment authorization, vessel clearance, and IFQ departure report.

(1) *Prior notice of IFQ landing*—(i) *Applicability.* Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify NOFE, Juneau, no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

(ii) *Time limits.* A prior notice of landing must be made to the toll-free telephone number specified on the IFQ permit between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(iii) *Information required.* A prior notice of landing must include the following:

(A) Vessel name and ADF&G vessel registration number;

(B) Name and permit number of the Registered Buyer who will be responsible for completion and submittal of the IFQ Landing Report(s);

(C) The location of the landing (port name or code);

(D) The date and time (A.l.t.) that the landing will take place;

(E) Landing directions;

(F) Species and estimated weight (in pounds) of the IFQ halibut or IFQ sablefish that will be landed;

(G) IFQ regulatory area(s) in which the IFQ halibut or IFQ sablefish were harvested;

(H) IFQ permit number(s) that will be used to land the IFQ halibut or IFQ sablefish.

(iv) *Exemption.* An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the prior notice of landing required by this section.

(v) *Revision to prior notice of landing.* The operator of any vessel wishing to land IFQ halibut or IFQ sablefish before the date and time (A.l.t.) reported in the prior notice of landing or later than 2 hours after the date and time (A.l.t.) reported in the prior notice of landing must submit a new prior notice of IFQ landing as described in paragraphs (l)(1)(i) through (iii) of this section.

(2) *Landing report*—(i) *Applicability.* (A) A Registered Buyer must report an IFQ landing within 6 hours after all such fish are landed and prior to shipment of said fish or departure of the delivery vessel from the landing site.

(B) All IFQ catch retained onboard a vessel must be debited from the IFQ permit holder's account under which the catch was harvested.

(C) The weight of any halibut or sablefish offshore landings made by a catcher/processor into product (frozen) prior to offload at the landing site must be properly debited from the IFQ permit holder's account under which the catch was harvested.

(ii) *Electronic landing report.* (A) Electronic landing reports must be submitted to NOFE, Juneau, using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software, as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the Registered Buyer to locate or procure a transaction terminal and report as required. Waivers from the electronic reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer.

(B) The IFQ cardholder must initiate a landing report by using his or her own magnetic card and personal identification number (PIN).

(C) Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited. The offloaded IFQ species may not be moved from the landing site until the IFQ landing report is received by NOFE, Juneau, and the IFQ cardholder's account is properly debited. A properly concluded transaction terminal receipt or manual landing report receipt received by FAX from NOFE, Juneau, constitutes confirmation that NOFE received the landing report and that the cardholder's account was properly debited. After the Registered Buyer enters the landing data in the transaction terminal and a receipt is printed, the IFQ cardholder must sign the receipt. Legible copies of the receipt must be retained by both the Registered

Buyer and the IFQ cardholder pursuant to paragraph (l)(7) of this section.

(iii) *Manual landing report.* (A) If a waiver has been granted pursuant to paragraph (l)(2)(ii) of this section, manual landing instructions must be obtained from NOFE, Juneau, at (800)304–4846 or (907)586–7163. Completed manual landing reports must be submitted by FAX to NOFE, Juneau, at (907)586–7313.

(B) The manual landing report must be signed by the Registered Buyer or his/her representative, the IFQ cardholder, and the NOFE representative to show that the IFQ cardholder's account was properly debited.

(iv) *Time limits and submittals.* (A) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless:

(*1*) Permission to land at a different time is granted in advance by a clearing officer; or

(*2*) An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear.

(B) An IFQ landing report must be completed and the IFQ account(s) properly debited, as defined in paragraph (l)(2)(ii)(C) of this section, within 6 hours after the completion of the IFQ landing.

(v) *Landing verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized officers, clearing officers, or observers. Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

(vi) *Information required.* The Registered Buyer must enter accurate information contained in a complete IFQ landing report as follows:

(A) Date and time (A.l.t.) of the IFQ landing;

(B) Location of the IFQ landing (port code or if at sea, lat. and long.);

(C) Name and permit number of the IFQ card holder;

(D) Name and permit number of Registered Buyer receiving the IFQ species;

(E) The harvesting vessel's name and ADF&G vessel registration number;

(F) Gear type used to harvest IFQ species;

(G) Alaska State fish ticket number(s) for the landing;

(H) ADF&G statistical area of harvest reported by the IFQ cardholder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder;

(J)(*1*) Except as indicated in paragraph (l)(2)(vi)(J)(*2*) of this section, for each ADF&G statistical area of harvest, the species codes, product codes, and initial accurate scale weight (in pounds) made at the time offloading commences for IFQ species sold and retained;

(*2*) If the vessel operator is a Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.

(K) (Effective January 1, 2002) Whether ice and slime is present on the fish as offloaded from the vessel (YES or NO). Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2 percent deduction for ice and slime and must indicate NO SLIME & ICE.

(L) If IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear;

(M) Signature of Registered Buyer representative;

(N) Signature of IFQ/CDQ card holder.

(vii) *Manual landing report.* When a waiver is issued pursuant to paragraph (l)(2)(ii)(A) of this section, additional information is required. In addition to the information required in paragraph (l)(2)(vi) of this section, the following information is required to complete a landing report using a manual landing report:

(A) Whether the manual landing report is an original or revised;

(B) Name, telephone number, and FAX number of individual submitting the manual landing report.

(3) *Shipment report*—(i) *Requirement.* Each Registered Buyer, other than those conducting dockside sales must:

(A) Except as provided in paragraph (l)(3)(i)(D) of this section, complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from that Registered Buyer before the fish leave the landing site.

(B) Assure that a shipment report is submitted to, and received by, NOFE, Juneau, by FAX to (907) 586–7313 or mail to P.O. Box 21767, Juneau, AK 99802–1767, within 7 days of the date shipment commenced.

(C) Ensure that a copy of the shipment report or a bill of lading containing the same information accompanies the shipment of IFQ species from the landing site to the first destination beyond the location of the IFQ landing.

(D) A shipment report is not required for transportation of IFQ species directly from the landing site to a processing facility owned by the Registered Buyer submitting the IFQ landing report. When transporting the fish in this manner, the landing report receipt from the IFQ terminal documenting the IFQ landing must accompany the offloaded IFQ species. For IFQ species transported in this manner, the Registered Buyer must complete a shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from the Registered Buyer's processing facility.

(ii) *Information required.* A shipment report must specify the following:

(A) Whether revised or original report;

(B) Shipment date;

(C) Registered Buyer name, address, FAX number, and permit number;

(D) Signature of Registered Buyer or Registered Buyer's representative;

(E) Receiver name (this is the first receiver; the purchaser, wholesaler, or retailer who will receive the shipment from the Registered Buyer) and address;

(F) Mode of transportation and intended route;

(G) Name of the shipping company or entity that is transporting the shipment.

(*1*) If by air, enter the name of the airline, flight number, departure and arrival airport locations.

(*2*) If by containerized van, enter the name of the shipping company, vessel transporting the van, and departure and arrival ports.

(*3*) If by vessel, enter the name of the shipping company if applicable, name of the vessel transporting, and the departure and arrival ports.

(*4*) If by ground transportation, enter the name of the shipping or trucking company, and departure and arrival locations.

(H) Species codes and product codes of IFQ species;

(I) Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers);

(J) Unit weight (weight of single production unit as listed in ''No. of Units''); indicate whether metric tons or pounds;

(K) Total fish product weight of shipment less packing materials; indicate whether metric tons or pounds.

(iii) *Revision to shipment report.* Each Registered Buyer must ensure that, if any information on the original Shipment Report changes prior to the first destination of the shipment, a revised shipment report is submitted to NOFE, Juneau, clearly labeled ''Revised Report'' and that the revised shipment report be received by NOFE, Juneau, within 7 days of the change.

(iv) *Dockside sale or outside landing.* A Registered Buyer conducting dockside

sales must issue a receipt in lieu of a shipment report, that includes the date of sale or transfer, the Registered Buyer permit number, and the fish product weight of the IFQ sablefish or halibut transferred to each individual receiving IFQ halibut or IFQ sablefish.

(4) *Transshipment authorization.* (i) No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(ii) *Information required.* To obtain a transshipment authorization, the vessel operator must provide the following information to the clearing officer:

(A) Date and time (A.l.t.) of transshipment;

(B) Location of transshipment;

(C) Name and ADF&G vessel registration number of vessel offloading transshipment;

(D) Name of vessel receiving the transshipment;

(E) Product destination;

(F) Species and product type codes;

(G) Total product weight;

(H) Time (A.l.t.) and date of the request;

(I) Name, telephone number, FAX number (if any) for the person making the request.

(5) *Vessel clearance.* (i) A vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must first obtain a prelanding written vessel clearance from a clearing officer.

(ii) *Canadian ports.* A vessel operator who lands IFQ species in Canada must first obtain a vessel clearance from a clearing officer and must make an IFQ landing in Canada only at the ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia.

(iii) *Foreign port other than Canada.* A vessel operator who lands IFQ species in a foreign port must first obtain a vessel clearance from a clearing officer located at a primary port in the State of Alaska (see Table 14 to this part).

(iv) *Registered Buyer permit.* A vessel operator obtaining an IFQ vessel clearance must have a Registered Buyer permit.

(v) *IFQ permits on board.* A vessel operator obtaining an IFQ vessel clearance must ensure that one or more IFQ cardholders is on board with enough remaining IFQ balance to harvest amounts of IFQ fish equal to or greater than all IFQ halibut and IFQ sablefish on board.

(vi) *Inspection.* A vessel for which a vessel operator is seeking an IFQ vessel clearance is subject to inspection of all fish, logbooks, permits, and other documents on board the vessel at the discretion of the clearing officer.

(vii) *Primary ports.* Unless specifically authorized on a case-by-case basis, IFQ vessel clearances will be issued only by clearing officers at the primary ports listed in Table 14 to this part.

(viii) *Completion of fishing.* An IFQ vessel operator who obtains an IFQ vessel clearance may only obtain that IFQ vessel clearance after completion of all fishing. If any fishing takes place after issuance of an IFQ vessel clearance, the vessel operator must obtain a new IFQ vessel clearance.

(ix) *Required information.* To obtain an IFQ vessel clearance, the vessel operator must provide the following information to the clearing officer:

(A) Date, time (A.l.t.), and location of requested IFQ vessel clearance;

(B) Vessel name and ADF&G vessel registration number;

(C) Name and permit numbers of IFQ permits used to harvest IFQ species on board;

(D) Vessel operator's IFQ Registered Buyer permit number;

(E) Estimated total weight of IFQ halibut on board (lb/kg/mt);

(F) Estimated total weight of IFQ sablefish on board;

(G) IFQ areas of harvest;

(H) Intended date, time (A.l.t.) and location of landing;

(I) Signature of vessel operator.

(x) *First landing of any species.* A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during an IFQ fishing trip.

(xi) *IFQ landing after vessel clearance.* A vessel operator having been granted an IFQ vessel clearance must be the Registered Buyer responsible for the IFQ landing and must submit the IFQ landing report, required under this section, for all IFQ halibut, IFQ sablefish and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(xii) *IFQ departure report.* (A) A vessel operator intending to obtain an IFQ vessel clearance for the vessel at a port in a state other than Alaska must first provide an IFQ departure report, by telephone, to NOFE, Juneau, at 907–586–7225 or 800–304–4846. The IFQ departure report may only be submitted after completion of all IFQ fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. The vessel operator must provide the following information:

(B) Vessel name and ADF&G registration number;

(C) Name of vessel operator submitting the IFQ departure report;

(D) Total weight on board of IFQ halibut and total weight of IFQ sablefish;

(E) Intended date, time (A.l.t.), and location for obtaining an IFQ vessel clearance.

(6) *Record retention.* A copy of all reports and receipts required by this section must be retained by Registered Buyers and be made available for inspection by an authorized officer or a clearing officer for a period of 3 years.

(7) * * *

(i) * * *

(D) The registered buyer must complete an IFQ buyer report and submit it by mail, fax, or electronic submittal to the following address: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, FAX: (907) 586–7354.

* * * * *

(m) *Consolidated weekly ADF&G fish tickets from motherships*—(1) *Requirement.* (i) The operator of a mothership must ensure that any groundfish catch received by a mothership from a catcher vessel that is issued a Federal fisheries permit under § 679.4 is recorded for each weekly reporting period on a minimum of one ADF&G groundfish fish ticket. The operator of a mothership may create a fish ticket for each delivery of catch. (An ADF&G fish ticket is further described at Alaska Administrative Code, 5 AAC Chapter 39.130.) A copy of the Alaska Administrative Code can be obtained from the Alaska Regional Office, see § 600.502 of this chapter, Table 1.

(ii) The operator of a mothership must ensure that the information listed in paragraph (m)(2)(iii) of this section is written legibly or imprinted from the catcher vessel operator's State of Alaska, Commercial Fisheries Entry Commission (CFEC) permit card on the consolidated weekly ADF&G fish ticket.

(2) *Information required from the catcher vessel.* (i) The operator of a catcher vessel delivering groundfish to a mothership must complete the parts of the fish ticket listed in paragraph (m)(2)(iii) of this section, sign the fish ticket, and provide it to the operator of the mothership receiving groundfish harvest for submittal to ADF&G.

(ii) If there is a change in the operator of the same catcher vessel during the same weekly reporting period, complete a fish ticket for each operator.

(iii) *Information required:* (A) Name and ADF&G vessel registration number of the catcher vessel;

(B) Name, signature and CFEC permit number of CFEC permit holder aboard the catcher vessel;

(C) The six-digit ADF&G groundfish statistical area denoting the actual area of catch;

(D) Write in gear type used by the catcher vessel, whether hook and line, pot, nonpelagic trawl, pelagic trawl, jig, troll, or other.

(3) *Information required from the mothership.* The operator of a mothership must ensure that the following information is written legibly or imprinted from the mothership's CFEC processor plate card on the consolidated weekly ADF&G fish ticket:

(i) Mothership name and ADF&G processor code;

(ii) Enter ''FLD'' for port of landing or vessel transshipped to;

(iii) Signature of the mothership operator;

(iv) The week-ending date of the weekly reporting period during which the mothership received the groundfish from the catcher vessel;

(v) Species code for each species from Table 2 to this part, except species codes 120, 144, 168, 169, or 171;

(vi) The product code from Table 1 to this part (in most cases, this will be product code 01, whole fish);

(vii) ADF&G 6-digit statistical area in which groundfish were harvested. If there are more than eight statistical areas for a fish ticket in a weekly reporting period, complete a second fish ticket. These statistical areas are defined in a set of charts obtained at no charge from Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, AK, 99615–6399;

(viii) The landed weight of each species to the nearest pound. If working in metric tons, convert to pounds using 2204.6 lb = 1 mt before recording on fish ticket.

(4) *Time limit and submittal.* (i) The operator of a mothership must complete a minimum of one ADF&G groundfish fish ticket for each catcher vessel by 1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.

(ii) The operator of a mothership must ensure copy distribution within the indicated time limit or retention of the multiple copies of each consolidated weekly ADF&G groundfish fish ticket (G series) as follows:

If fish ticket color is . . .	Distribute to . . .	Time limit
(A) White	Retained by Mothership, see paragraph (a)(13)(ii)(D)(*6*)	N/A
(B) Yellow	Alaska Commercial Fisheries Management & Development Division, Department of Fish & Game, 211 Mission Road, Kodiak, AK, 99615–6399.	Within 45 days after landings are received.
(C) Pink	Catcher vessel delivering groundfish to the mothership	1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.
(D) Golden rod	Extra copy	N/A

(n) *Groundfish CDQ fisheries*—(1) *CDQ delivery report*—(i) *Who must submit a CDQ delivery report?* The manager of each shoreside processor and stationary floating processor taking deliveries of groundfish CDQ or PSQ species from catcher vessels must submit for each delivery a CDQ delivery report, unless using the SPELR described at paragraph (e) of this section to submit the required CDQ information.

(ii) *Time limit and submittal.* The manager as defined at paragraph (n)(1)(i) of this section must submit to the Regional Administrator a CDQ delivery report within 24 hours of completion of each delivery of groundfish CDQ or PSQ species to the processor.

(iii) *Information required.* The manager as defined at paragraph (n)(1)(i) of this section must record whether the report is original or a revision and the following information on each CDQ delivery report:

(A) *CDQ group information.* CDQ group number as defined at § 679.2 and CDQ group name or acronym.

(B) *Processor information.* (*1*) Name and federal processor permit number of the processor as defined at paragraph (n)(1)(i) of this section taking delivery of the CDQ catch.

(*2*) Date delivery report submitted.

(C) *Vessel and catch information.* (*1*) Enter the name, Federal Fisheries Permit number if applicable, and ADF&G vessel registration number of the vessel delivering CDQ catch. Write ''unnamed'' if the vessel has no name;

(*2*) Enter the delivery date, date fishing began, harvest gear type, and Federal reporting area of CDQ harvest. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(D) *Groundfish CDQ Species in this delivery.* Enter weight by species codes and product codes as defined in Tables 1 and 2 to this part, respectively, of groundfish CDQ species that were delivered. Report the weight of each CDQ species in metric tons to at least the nearest 0.001 mt.

(E) *Halibut CDQ, halibut IFQ and sablefish IFQ in this delivery.* For nontrawl vessels only, enter the product code and product weight for any halibut CDQ, halibut IFQ, and sablefish IFQ in this catch. Submit this same information to the Regional Administrator on an IFQ landing report (see paragraph (l)(2) of this section).

(F) *PSQ information.* For halibut, enter the species code and the weight to the nearest 0.001 mt. For salmon or crab, enter the species code and the number of animals.

(*1*) Enter PSQ species delivered and discarded from processor by species code and weight or numbers.

(*2*) Enter at-sea discards of PSQ for vessels without observers by species code and weight or numbers.

(2) *CDQ catch report*—(i) *Who must submit a CDQ catch report?* The CDQ representative must submit a CDQ catch report for all groundfish catch made by vessels groundfish CDQ fishing as defined at § 679.2 or for any groundfish harvested by vessels greater than or equal to 60 ft (18.3 m) LOA while halibut CDQ fishing and delivered to a shoreside processor, to a stationary floating processor, or to a mothership.

(ii) *Time limit and submittal.* Submit to the Regional Administrator a CDQ catch report:

(A) Within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor, stationary floating processor, or mothership.

(B) Within 7 days of the date gear used to catch CDQ was retrieved by a catcher/processor.

(iii) *Information required, all CDQ catch reports.* Record whether an original or revised report and the following information on each CDQ catch report:

(A) *Vessel type.* Indicate one appropriate vessel/gear/delivery type.

(B) *Vessel catch information.* (*1*) Enter the name, Federal fisheries permit number if applicable, and ADF&G vessel registration number of the vessel

delivering CDQ catch. Write ''unnamed'' if the vessel has no name.

(*2*) *Reporting area.* Enter reporting area in which CDQ catch occurred. If a set occurs in more than one area, record the area code where gear retrieval was completed.

(*3*) *Gear type.* Circle gear type used to harvest CDQ catch. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(C) *CDQ group information.* Enter CDQ number as defined at § 679.2, CDQ group name or acronym, and date report submitted to NMFS.

(iv) *Catch and delivery Information: catcher vessels retaining all groundfish CDQ and delivering to shoreside processors or stationary floating processors (Option 1 in the CDP).* Record the following information on each applicable CDQ catch report:

(A) *Delivery information.* Name and Federal processor permit number of the shoreside processor or the stationary floating processor taking delivery of the CDQ catch; date catch delivered to processor; and date fishing began on this trip.

(B) *Catch information, groundfish CDQ species.* Report the weight in metric tons to at least the nearest 0.001 mt for each groundfish CDQ species retrieved by a catcher/processor or delivered to a processor as defined in paragraph (n)(1)(i) of this section by product code and species code as defined in Tables 1 and 2 to this part, respectively.

(C) *Catch information, halibut CDQ, halibut IFQ and sablefish IFQ.* For non-trawl vessels only, enter the product code as defined in Table 1 to this part and product weight in metric tons to at least the nearest 0.001 mt for any halibut CDQ, halibut IFQ, and sablefish IFQ in the CDQ delivery. Submit this same information to the Regional Administrator on an IFQ landing report (see § 679.5(l)(2)).

(D) *Mortality information, salmon and crab PSQ.* For salmon or crab, enter the species code, as defined in Table 2 to this part, and the number of animals.

(E) *Mortality information, halibut PSQ.* For halibut PSQ catch, enter the round weight to the nearest 0.001 mt, mortality rate, and overall halibut mortality in metric tons to the nearest 0.001 mt. Use the target fishery designations and halibut bycatch mortality rates in the annual final specifications published in the **Federal Register** under § 679.20(c).

(v) *Catch and delivery information: catcher/processors, catcher vessels delivering unsorted codends to motherships, or catcher vessels (with observers) using nontrawl gear and discarding groundfish CDQ at sea (Option 2 in the CDP).* Record the following information on each applicable CDQ catch report.

(A) *Delivery information.* (*1*) If a catcher vessel (with observers) using nontrawl gear, discarding groundfish CDQ at sea, and delivering to a shoreside processor or stationary floating processor, enter name and Federal processor permit number of the shoreside processor or the stationary floating processor, date catch delivered, and date fishing began on this trip.

(*2*) If a catcher vessel delivering unsorted codends to a mothership, enter the mothership name and Federal fisheries permit number, observer's haul number for this catch, and date codend is completely onboard the mothership as determined by the Level 2 observer.

(*3*) If a catcher/processor, the observer's haul number for this catch, and the date on which the gear was retrieved as determined by the Level 2 observer.

(B) *Catch information, groundfish CDQ species.* (See paragraph (n)(2)(iv)(B) of this section).

(C) *Catch information, halibut IFQ/CDQ and sablefish IFQ* (See paragraph (n)(2)(iv)(C) of this section).

(D) *Mortality information, salmon and crab prohibited species.* (See paragraph (n)(2)(iv)(D) of this section).

(E) *Mortality information, halibut PSQ.* (See paragraph (n)(2)(iv)(E) of this section).

(o) *Catcher vessel cooperative pollock catch report*—(1) *Applicability.* The designated representative of each AFA inshore processor catcher vessel cooperative must submit to the Regional Administrator a catcher vessel cooperative pollock catch report detailing each delivery of pollock harvested under the allocation made to that cooperative. The owners of the member catcher vessels in the cooperative are jointly responsible for compliance and must ensure that the designated representative complies with the applicable recordkeeping and reporting requirements of this section.

(2) *Time limits and submittal.* (i) The cooperative pollock catch report must be submitted by one of the following methods:

(A) An electronic data file in a format approved by NMFS; or

(B) By FAX.

(ii) The cooperative pollock catch report must be received by the Regional Administrator by 1200 hours, A.l.t. 1 week after the date of completion of delivery.

(3) *Information required.* The cooperative pollock catch report must contain the following information:

(i) Cooperative account number;

(ii) Catcher vessel ADF&G number;

(iii) Inshore processor Federal processor permit number;

(iv) Delivery date;

(v) Amount of pollock (in lb) delivered plus weight of at-sea pollock discards;

(vi) ADF&G fish ticket number.

(p) *Commercial Operator's Annual Report (COAR)*—(1) *Requirement.* The owner of a mothership or catcher/processor must annually complete and submit to ADF&G the appropriate Forms A through M and COAR certification page for each year in which the mothership or catcher/processor was issued a Federal Fisheries permit. The owner of a mothership must include all fish received and processed during the year, including fish received from an associated buying station. The ADF&G COAR is further described under Alaska Administrative Code (5 AAC 39.130) (see § 679.3(b)(2)).

(2) *Time limit and submittal of COAR.* The owner of a mothership or catcher/processor must submit to ADF&G the appropriate Forms A through M and COAR certification page by April 1 of the year following the year of issuance of a Federal Fisheries permit to the following address: Alaska Department of Fish & Game, Division of Commercial Fisheries, Attn: COAR, P.O. Box 25526, Juneau, Alaska 99802–5526.

(3) *Information required, certification page.* The owner of a mothership or catcher/processor must:

(i) Enter the company name and address, including street, city, state, and zip code; also seasonal mailing address, if applicable.

(ii) Enter the vessel name and ADF&G processor code.

(iii) Check YES or NO to indicate whether fishing activity occurred conducted during the appropriate year.

(iv) If response to paragraph (p)(3)(iii) of this section is YES, complete the applicable forms of the COAR (see table 18 to this part) and complete and sign the certification page.

(v) If response to paragraph (p)(3)(iii) of this section is NO, complete and sign only the certification page.

(vi) Sign and enter printed or typed name, e-mail address, title, telephone number, and FAX number of owner.

(vii) Enter printed or typed name, e-mail address, and telephone number of alternate contact.

(4) *Buying information (exvessel), Forms A(1–3), C(1–2), E, G, I(1–2), and K*—(i) *Requirement.* The owner of a mothership (if the first purchaser of raw

fish) must complete and submit the appropriate COAR buying forms (A(1–3), C(1–2), E, G, I(1–2), and K) for all information for each species purchased from fishermen during the applicable year.

(ii) *Buying information required.* The owner of the mothership must record the following information on the appropriate COAR buying forms:

(A) Species name and code (see table 2 to this part).

(B) Area purchased (see table 16 to this part).

(C) Gear code (see table 15 to this part).

(D) Delivery code (form G only) (see table 1 to this part).

(E) Total weight (to the nearest lb) purchased from fishermen.

(F) Total amount paid to fishermen, including all post-season adjustments and/or bonuses and any credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(G) Price per pound. If additional adjustments are made after this report has been filed, the owner must check the ''$ not final'' box, and submit Form M when these adjustments are paid. Do not include fish purchased from another processor.

(5) *Production forms, Forms B(1–6), D, F, H, J(1–2), and K).* For purposes of this paragraph, the total wholesale value is the amount that the processor receives for the finished product (free on board pricing mothership or catcher/processor). For products finished but not yet sold (still held in inventory), calculate the estimated value using the average price received to date for that product.

(i) *Requirement*—(A) *Mothership.* The owner of a mothership must record and submit the appropriate COAR production forms (B(1–6), D, F, H, J(1–2), and K) for all production that occurred for each species during the applicable year:

(*1*) That were purchased from fishermen on the grounds and/or dockside, including both processed and unprocessed seafood.

(*2*) That were then either processed on the mothership or exported out of the State of Alaska.

(B) *Catcher/processor.* The owner of a catcher/processor must record and submit the appropriate COAR production forms (B(1–6), D, F, H, J(1–2), and K) for each species harvested during the applicable year that were then either processed on the vessel or exported out of the State of Alaska.

(ii) *Information required, non-canned production.*

(A) Enter area of processing (see table 16 to this part). List production of Canadian-harvested fish separately.

(B) Processed product. Processed product must be described by entering three codes:

(*1*) Process prefix code (see table 17 to this part).

(*2*) Process suffix code (see table 17 to this part).

(*3*) Product code (see table 1 to this part).

(C) Total net weight. Enter total weight in pounds of the finished product.

(D) Total value($). Enter the total wholesale value of the finished product.

(E) Enter price per pound of the finished product.

(iii) *Information required, canned production.* Complete an entry for each can size produced:

(A) Enter area of processing (see table 16 to this part).

(B) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(C) Total value($). Enter the total wholesale value of the finished product.

(D) Enter can size in ounces, to the hundredth of an ounce.

(E) Enter number of cans per case.

(F) Enter number of cases.

(6) *Custom production forms, Form L(1–2)*—(i) *Requirement.* The owner of a mothership or catcher/processor must record and submit COAR production form L(1–2) for each species in which custom production was done by the mothership or catcher/processor for another processor and for each species in which custom production was done for the mothership or catcher/processor by another processor.

(ii) *Custom-production by mothership or catcher/processor for another processor.* If the mothership or catcher/processor custom-processed fish or shellfish for another processor during the applicable year, the owner of the mothership or catcher/processor must list the processor name and ADF&G processor code (if known) to describe that processor, but must not include any of that production in production form L(1–2).

(iii) *Custom-production by another processor for mothership or catcher/processor.* If a processor custom-processed fish or shellfish for the mothership or catcher/processor during the applicable year, the owner of the mothership or catcher/processor must use a separate page to list each processor and must include the following information.

(A) *Custom fresh/frozen miscellaneous production.* The owner of a mothership or catcher/processor must list the following information to describe production intended for wholesale/retail market and that are not frozen for canning later:

(*1*) Species name and code (see Table 2 to this part).

(*2*) Area of processing (see Table 16 to this part).

(*3*) Processed product. Processed product must be entered using three codes:

(*i*) Process prefix code (see Table 17 to this part).

(*ii*) Process suffix code (see Table 17 to this part).

(*iii*) Product code (see Table 1 to this part).

(*4*) Total net weight. Enter total weight in pounds of the finished product.

(*5*) Total wholesale value($). Enter the total wholesale value of the finished product.

(B) *Custom canned production.* The owner of a mothership or catcher/processor must list the following information to describe each can size produced in custom canned production:

(*1*) Species name and code (see Table 2 to this part).

(*2*) Area of processing (see Table 16 to this part).

(*3*) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(*4*) Total wholesale value($). Enter the total wholesale value of the finished product.

(*5*) Can size in ounces, to the hundredth of an ounce.

(*6*) Number of cans per case.

(*7*) Number of cases.

(7) *Fish buying retro payments/post-season adjustments, Form M*—(i) *Requirement.* The owner of a mothership must record and submit COAR production Form M to describe additional adjustments and/or bonuses awarded to a fisherman, including credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(ii) *Information required.* (A) Enter species name and code (see Table 2 to this part).

(B) Enter area purchased (see Table 16 to this part).

(C) Enter gear code (see Table 16 to this part).

(D) Enter total pounds purchased from fisherman.

(E) Enter total amount paid to fishermen (base + adjustment).

5. In § 679.7, paragraphs (a)(10) and (a)(11) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(10) *Recordkeeping and reporting.* (i) Fail to comply with or fail to ensure compliance with requirements in § 679.4 or § 679.5.

(ii) Alter, erase, or mutilate any permit, card or document issued under § 679.4 or § 679.5.

(iii) Fail to submit or submit inaccurate information on, any report, application, or statement required under this part.

(iv) Intentionally submit false information on any report, application, or statement required under this part.

(11) *Buying station*—(i) *Tender vessel.* Use a catcher vessel or catcher/processor as a tender vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) *Associated processor.* Function as a vessel or land-based buying station without an associated processor.

* * * * *

6. In § 679.21, paragraphs (b)(1), (e)(1)(ii), and (e)(1)(iii) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) *General.* (1) See § 679.2 for definition of prohibited species.

* * * * *

(e) . . .

(1) . . .

(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

When the number of mature female red king crab . . .	The zone 1 PSC limit will be . . .
(A) Is at or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt).	32,000 red king crab.
(B) Is above the threshold of 8.4 million mature crab and the effective spawning biomass is greater than 14.5 but less than 55 million lb (24,948 mt).	97,000 red king crab.
(C) Is above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb.	197,000 red king crab.

(iii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified annually by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii)(A) and (B) of this section.

(A) The following table refers to the PSC limits for *C. bairdi* that you must follow in Zone 1:

When the total abundance of *C. bairdi* crabs is . . .	The PSC limit will be . . .
(*1*) 150 million animals or less	0.5 percent of the total abundance minus 20,000 animals.
(*2*) Over 150 million to 270 million animals	730,000 animals.
(*3*) Over 270 million to 400 million animals	830,000 animals.
(*4*) Over 400 million animals	980,000 animals.

(B) This table refers to the PSC limits for *C. bairdi* that you must follow in Zone 2.

When the total abundance of *C. bairdi* crabs is . . .	The PSC limit will be . . .
(*1*) 175 million animals or less	1.2 percent of the total abundance, minus 30,000 animals.
(*2*) Over 175 million to 290 million animals	2,070,000 animals.
(*3*) Over 290 million to 400 million animals	2,520,000 animals.
(*4*) Over 400 million animals	2,970,000 animals.

* * * * *

7. In § 679.22, paragraph (a)(11)(iv)(A) is added and reserved, and paragraph (a)(11)(iv)(B) is added; and paragraph (b)(3)(iii)(A) is added and reserved, and paragraph (b)(3)(iii)(B) is added to read as follows:

§ 679.22 Closures.

(a) . . .

(11) . . .

(iv) . . .

(A) [Reserved]

(B) The SCA is described in Figure 20 to this part.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) [Reserved]

(B) The SSCA is described in Figure 19 to this part.

* * * * *

8. In § 679.24, paragraph (b)(2) is removed and reserved; paragraph (a) heading and paragraphs (a)(1) and (e)(1) are revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) *Marking of hook-and-line, longline pot, and pot-and-line gear.* (1) All hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under this part shall be marked with the following:

(i) The vessel's name; and

(ii) The vessel's Federal fisheries permit number; or

(iii) The vessel's ADF&G vessel registration number

* * * * *

(e) * * *

(1) *Applicability.* The operator of a vessel who is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraphs (e)(2) and (e)(3) of this section while fishing with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

* * * * *

9. In § 679.31, paragraph (d) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* King and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska that is available for commercial harvest are apportioned to a crab CDQ reserve of 7.5 percent.

* * * * *

§ 679.32 [Amended]

10. In § 679.32, paragraph (a)(2) is removed and the designation for paragraph (a)(1) is removed.

11. In § 679.40, paragraphs (a)(2)(i)(C) and (D) are added to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(C) Who is a citizen of the United States at the time of application for QS.

(D) Who is a corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

* * * * *

§ 679.41 [Amended]

12. In § 679.41, paragraph (i)(2) is removed; and paragraph (i)(3) is redesignated as paragraph (i)(2).

13. In § 679.42, paragraph (c)(2) is revised and paragraph (c)(3) is added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(c) *Requirements and deductions.*

* * *

(2) NMFS shall use the following sources of information to debit a CDQ or IFQ account. A CDQ or IFQ account will be debited as indicated in Table 3 to this part.

(i) Except as provided in § 679.5(l)(2)(vi)(J)(*2*), if offload of unprocessed CDQ or IFQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(vi) to be included in the IFQ/CDQ landing report.

(ii) If offload of processed IFQ & CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish processed product actually measured at or before the time of offload. If the product scale weights are taken before the time of offload, then the species and actual product weight of each box or container must be visibly marked on the outside of each container to facilitate enforcement inspection.

(3) All IFQ catch onboard a vessel must be debited from the IFQ permit holder's account under which the catch was harvested.

* * * * *

14. In part 679, Figure 3b, ''Coordinates,'' is revised, and Figures 19 and 20 are added to read as follows:

FIGURE 3 TO PART 679.—GULF OF ALASKA STATISTICAL AND REPORTING AREAS

Code	b. Coordinates Description
610	*Western GOA Regulatory Area, Shumagin District.* Along the south side of the Aleutian Islands, including those waters south of Nichols Point (54°51′30″ N lat) near False Pass, and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.18′ N, 169°40.47′ W; 52°49.24′ N, 169°07.10′ W; 53°23.13′ N, 167°50.50′ W; 53°18.95′ N, 167°51.06′ W; 53°58.97′ N, 166°16.50′ W; 54°02.69′ N, 166°02.93′ W; 54°07.69′ N, 165°39.74′ W; 54°08.40′ N, 165°38.29′ W; 54°11.71′ N, 165°23.09′ W; 54°23.74′' N, 164°44.73′ W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass), between 170°00′ W long and 159°00' W long.
620	*Central GOA Regulatory Area, Chirikof District.* Along the south side of the Alaska Peninsula, between 159°00′ W long and 154°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
630	*Central GOA Regulatory Area, Kodiak District.* Along the south side of continental Alaska, between 154°00′ W long and 147°00′ W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	*Eastern GOA Regulatory Area, West Yakutat District.* Along the south side of continental Alaska, between 147°00′ W long and 140°00′ W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	*Prince William Sound.* Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	*Eastern GOA Regulatory Area, Southeast Outside District.* East of 140°00′ W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	*Eastern GOA Regulatory Area, Southeast Inside District.* As specified in Alaska State regulations at 5 AAC 28.105(a) (1) and (2).
690	*GOA outside the U.S. EEZ* as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

Note: A statistical area is the part of a reporting area contained in the EEZ.

BILLING CODE 3510–22–J

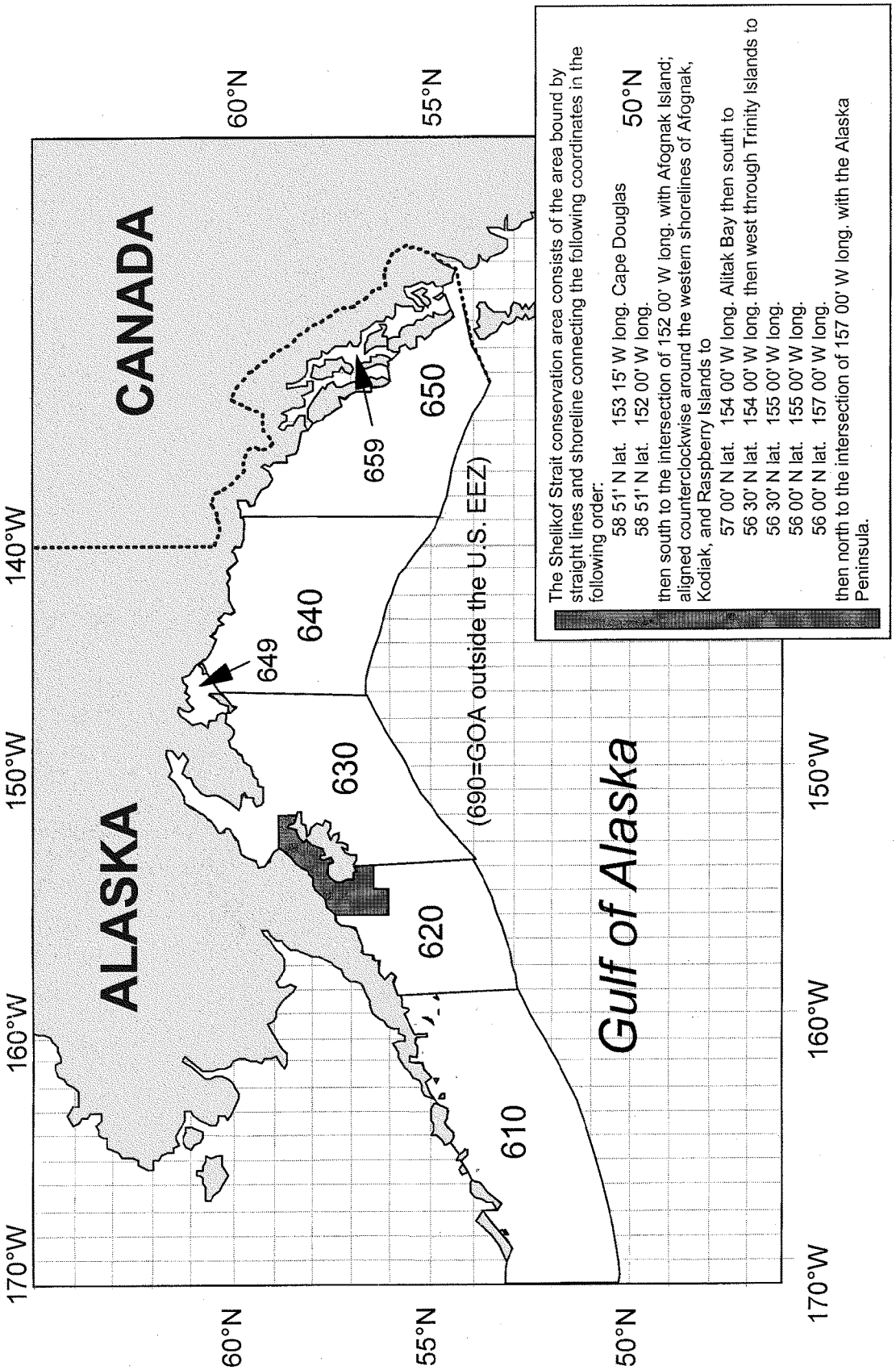

Figure 19 to Part 679. Shelikof Strait Conservation Area

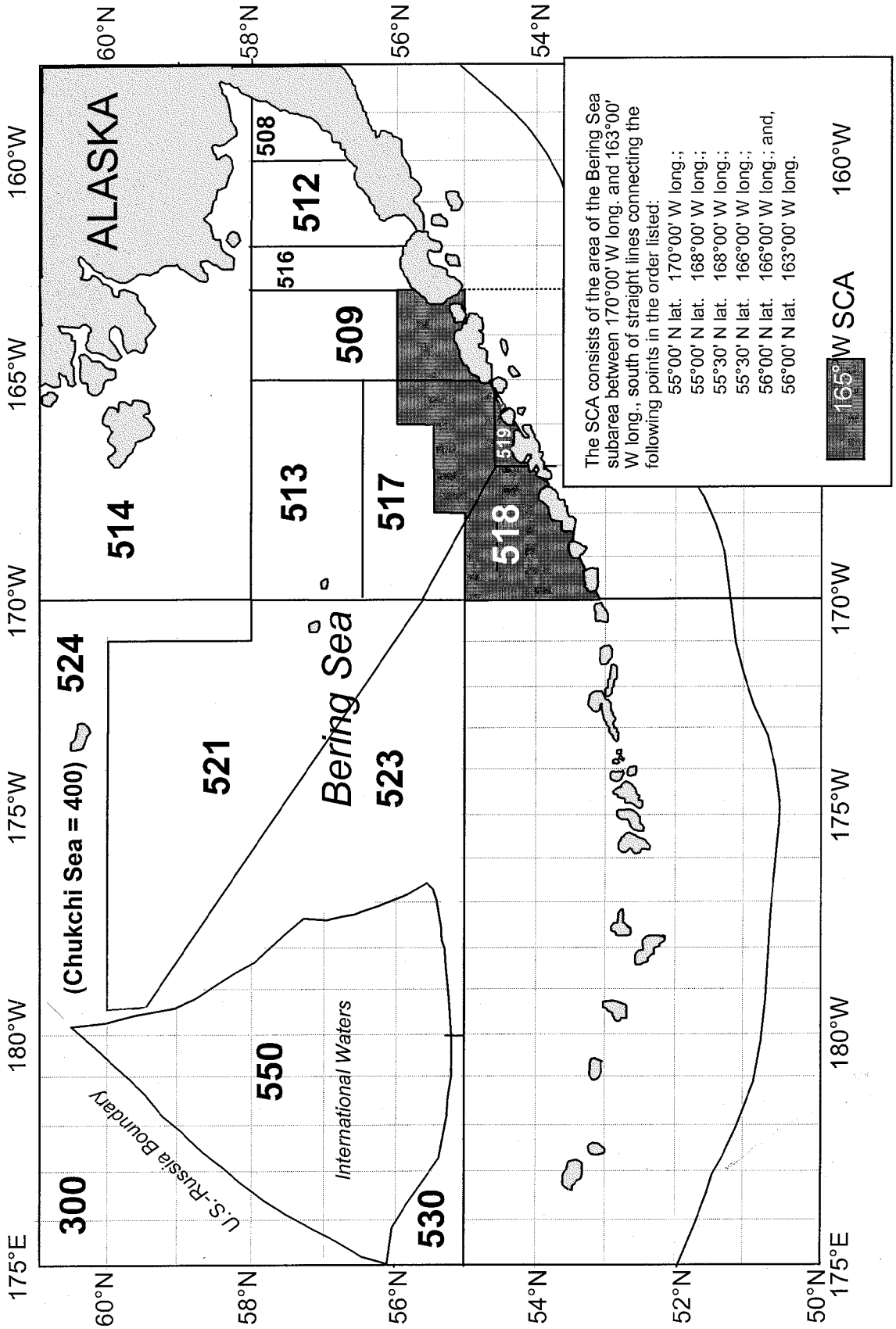

Figure 20 to Part 679. Steller sea lion conservation area (SCA) of the Bering Sea

BILLING CODE 3510–22–C

15. In part 679, Tables 1, 2, 3, 7, 8, 9, 10, and 11 are revised, Tables 16 through 18 are added and reserved, and Table 19 is added to read as follows:

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES

[These codes describe the condition of the fish at the point it is weighed and recorded]

Product description	Code
General Use Codes	
Belly flaps. Flesh in region of pelvic and pectoral fins and behind head (ancillary only)	19
Bled only. Throat, or isthmus, slit to allow blood to drain	03
Bled fish destined for fish meal (includes offsite production). Do Not Record on PTR	42
Bones (if meal, report as 32) (ancillary only)	39
Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached	37
Cheeks. Muscles on sides of head (ancillary only)	17
Chins. Lower jaw (mandible), muscles, and flesh (ancillary only)	18
Fillets, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets	24
Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail	23
Fillets with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail	22
Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail	20
Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail	21
Fish meal. Meal from whole fish or fish parts; includes bone meal	32
Fish oil. Rendered oil from whole fish or fish parts Record only oil destined for sale and not oil stored or burned for fuel onboard	33
Gutted, head on. Belly slit and viscera removed	04
Headed and gutted, with roe	06
Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed	07
Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed	08
Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed	10
Heads. Heads only, regardless where severed from body (ancillary only)	16
Kirimi (Steak) Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak	11
Mantles, octopus or squid. Flesh after removal of viscera and arms	36
Milt. (in sacs, or testes) (ancillary only)	34
Minced. Ground flesh	31
Other retained product. If product is not listed on this table, enter code 97 and write a description with product recovery rate next to it in parentheses	97
Pectoral girdle. Collar bone and associated bones, cartilage and flesh	15
Roe. Eggs, either loose or in sacs, or skeins (ancillary only)	14
Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail Product salted	12
Stomachs. Includes all internal organs (ancillary only)	35
Surimi. Paste from fish flesh and additives	30
Whole fish/meal. Whole fish destined for meal (includes offsite production). Do Not Record on PTR	[1] 41
Whole fish/food fish	[1] 01
Whole fish/bait. Bait. Sold	02
Wings. On skates, side fins are cut off next to body	13
Discard/Disposition Codes	
Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program	86
Whole fish/onboard bait. Whole fish used as bait on board vessel Not sold	[1] 92
Whole fish/damaged. Whole fish damaged by observer's sampling procedures	[1] 93
Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait	[1] 95
Whole fish, discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, catcher/processors, motherships, or vessel buying stations. Do Not Record on PTR	98
Whole fish, discard, infested. Flea-infested fish, parasite-infested fish	88
Whole fish, discard, decomposed. Decomposed or previously discarded fish	89
Whole fish, discard, onshore. Discard after delivery and before processing by shoreside processors, stationary floating processors and buying stations and in-plant discard of whole groundfish and prohibited species during processing. Do not record on PTR	99
Product Designation Codes	
Ancillary product. A product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product	A
Primary product. A product, such as fillets, made from each fish, with the highest recovery rate	P
Reprocessed or rehandled product. A product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product	R
Pacific Halibut IFQ & CDQ Codes The following codes are authorized for IFQ and CDQ reporting of Pacific halibut	
Gutted, head off. Belly slit and viscera removed Pacific halibut only	05

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES—Continued

[These codes describe the condition of the fish at the point it is weighed and recorded]

Product description	Code
Gutted, head on. Belly slit and viscera removed Pacific halibut	04
The following codes are effective through December 31, 2001	
Whole fish/food fish with ice & slime. Sablefish only	51
Gutted, head on, with ice & slime. Belly slit and viscera removed Pacific halibut and sablefish	54
Gutted, head off, with ice & slime. Belly slit and viscera removed Pacific halibut only	55
Headed and gutted, Western cut, with ice & slime. Sablefish only	57
Headed and gutted, Eastern cut, with ice & slime. Sablefish only	58

[1] When using whole fish codes, record round weights not product weights, even if the whole fish is not used.

TABLE 2 TO PART 679.—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES

[Codes without asterisks are FMP species—Federal groundfish or prohibited species in groundfish fisheries—that must be recorded in R&R systems]

Species description	Code
Atka mackerel (greenling)	193
Flounder:	
Arrowtooth and/or Kamchatka	121
Starry	129
Alaska Plaice	133
Octopus	870
Pacific Cod	110
Pollock	270
Rockfish:	
Aurora	185
Black (BSAI)	142
Blackgill	177
Blue (BSAI)	167
Bocaccio	137
Canary	146
Chilipepper	178
China	149
Copper	138
Darkblotched	159
Dusky	154
Greenstriped	135
Harlequin	176
Northern	136
Pacific Ocean Perch	
(*S. alutus* only)	141
Pygmy	179
Quillback	147
Redbanded	153
Redstripe	158
Rosethorn	150
Rougheye	151
Sharpchin	166
Shortbelly	181
Shortraker	152
Silvergray	157
Splitnose	182
Stripetail	183
Thornyhead (all *Sebastolobus* species)	143
Tiger	148
Vermillion	184
Widow	156
Yelloweye	145
Yellowmouth	175
Yellowtail	155
Sablefish (blackcod)	710
Sculpins	160
Sharks:	
General	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
Skate, longnose	701
Skates, general	700

TABLE 2 TO PART 679.—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

[Codes without asterisks are FMP species—Federal groundfish or prohibited species in groundfish fisheries—that must be recorded in R&R systems]

Species description	Code
Sole:	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid	875
Turbot, Greenland	134
Forage Fish (all species of the following families):	
Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
Capelin smelt (family *Osmeridae*)	516
Deep-sea smelts (family *Bathylagidae*)	773
Eulachon smelt (family *Osmeridae*)	511
Gunnels (family *Pholidae*)	207
Krill (order *Euphausiacea*)	800
Laternfishes (family *Myctophidae*)	772
Pacific herring (family *Clupeidae*)	235
Pacific Sand fish (family *Trichodontidae*)	206
Pacific Sand lance (family *Ammodytidae*)	774
Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*)	208
Surf smelt (family *Osmeridae*)	515
Group Codes (DO NOT USE FOR SORTING SPECIES. Do not record on ADF&G fish tickets)	
Demersal shelf rockfish (china, copper, quillback, rosethorn, tiger, yellow-eye, canary)	168
Miscellaneous flatfish (all flatfish without separate codes)	120
Pelagic shelf rockfish (dusky, yellowtail, widow)	169
Shortraker/rougheye rockfish	171
Slope rockfish (aurora, blackgill, Bocaccio, redstripe, silvergray, chili-pepper, dark-blotched, green-striped, harlequin, pygmy, redbanded, shortbelly, split-nose, stripetail, vermillion, yellowmouth, sharpchin).	144
Prohibited Species Codes	
Crab:	
Red king	921
Blue king	922
Gold/brown king	923
Scarlet king	924
Bairdi Tanner	931
Opilio Tanner	932
Tanner, grooved	933
Tanner, triangle	934
Pacific halibut	200
Pacific herring (family *Clupeidae*)	235
Salmon:	
Chinook	410
Sockeye	420
Coho	430
Pink	440
Chum	450
Steelhead trout	540
Additional *non-FMP Codes (*These species codes may be recorded in NMFS logbooks and reports but are not required by regulations at 50 CFR part 679.)	
Abalone	*860
Albacore	*720
Arctic char, anadromous	*521
Clams:	
Butter	*810
Cockle	*820
Eastern softshell	*842
Geoduck	*815
Little-neck	*840
Razor	*830

TABLE 2 TO PART 679.—SPECIES CODES FOR FMP SPECIES AND NON-FMP SPECIES—Continued

[Codes without asterisks are FMP species—Federal groundfish or prohibited species in groundfish fisheries—that must be recorded in R&R systems]

Species description	Code
Surf	*812
Coral	*899
Crab:	
Box	*900
Dungeness	*910
Korean horsehair	*940
Multispina	*951
Verrilli	*953
Dolly varden, anadromous	*531
Eels or eel-like fish	*210
Giant grenadier	*214
Greenling, kelp	*194
Greenling, rock	*191
Greenling, whitespot	*192
Grenadier (rattail)	*213
Jellyfish	*625
Lamprey, pacific	*600
Lingcod	*130
Lumpsucker	*216
Mussel, blue	*855
Pacific flatnose	*260
Pacific hagfish	*212
Pacific saury	*220
Pacific tomcod	*250
Prowfish	*215
Rockfish, black (GOA)	*142
Rockfish, blue (GOA)	*167
Sardine, Pacific (pilchard)	*170
Scallop, weathervane	*850
Scallop, pink (or calico)	*851
Sea cucumber	*895
Sea urchin, green	*893
Sea urchin, red	*892
Shad	*180
Shrimp:	
Pink	*961
Sidestripe	*962
Humpy	*963
Coonstripe	*964
Spot	*965
Skilfish	*715
Smelt, surf	*515
Snails	*890
Sturgeon, general	*680

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

Species code	FMP species	Product code											
		1, 2, 41, 86, 92, 93, 95 Whole Fish	3, 42 Bled	4 Gutted head on	5 Gutted head off (net weight)	6 H&G with roe	7 H&G western cut	8 H&G eastern cut	10 H&G w/o tail	11 Kirimi	12 SaltED & split	13 Wings	14 Roe
110	Pacific Cod	1.00	0.98	0.85		0.63	0.57	0.47	0.44		0.45		0.05
121	Arrowtooth Flounder	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
122	Flathead Sole	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
123	Rock Sole	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
124	Dover Sole	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
125	Rex Sole	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
127	Yellowfin Sole	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
134	Greenland Turbot	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
143	Thornyhead Rockfish	1.00	0.98	0.88		0.55	0.60	0.50					
160	Sculpins	1.00	0.98	0.87			0.50	0.40					
193	Atka Mackerel	1.00	0.98	0.87		0.67	0.64	0.61					
270	Pollock	1.00	0.98	0.80		0.70	0.65	0.56	0.50	0.25			0.07
510	Smelts	1.00	0.98	0.82			0.71						
511	Eulachon	1.00	0.98	0.82			0.71						
516	Capelin	1.00	0.98	0.89			0.78						
689	Sharks	1.00	0.98	0.83			0.72						
700	Skates	1.00	0.98	0.90				0.32				0.32	
710	Sablefish	1.00	0.98	0.89			0.68	0.63	0.50				
710	IFQ Sablefish	1.00	0.98	0.89			0.68	0.63	0.50				
870	Octopus	1.00	0.98	0.81									

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT—Continued

Species code	FMP species	Product code											
		1, 2, 41, 86, 92, 93, 95 Whole Fish	3, 42 Bled	4 Gutted head on	5 Gutted head off (net weight)	6 H&G with roe	7 H&G western cut	8 H&G eastern cut	10 H&G w/o tail	11 Kirimi	12 SaltED & split	13 Wings	14 Roe
875	Squid	1.00	0.98	0.69									
	Rockfish	1.00	0.98	0.88			0.60	0.50					
200	Conversion rates to Net Weight PACIFIC HALIBUT.			0.90	1.0								

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

Species code	FMP species	Product code											
		15 Pectoral Girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets W/Skin & Ribs	21 Fillets W/Skin no Ribs	22 Fillets W/Ribs no skin	23 Fillets Skin-less/ Bnless	24 Fillets Deep Skin	30 Surimi	31 Mince
110	Pacific Cod	0.05		0.05		0.01	0.45	0.35	0.25	0.25		0.15	0.5
121	Arrowtooth Flounder						0.32	0.27	0.27	0.22			
122	Flathead Soleounder						0.32	0.27	0.27	0.22			
123	Rock Sole						0.32	0.27	0.27	0.22			
124	Dover Sole						0.32	0.27	0.27	0.22			
125	Rex Sole						0.32	0.27	0.27	0.22			
127	Yellowfin Sole						0.32	0.27	0.27	0.22		0.18	
134	Greenland Turbotder						0.32	0.27	0.27	0.22			
143	Thornyhead Rockfish		0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25			
160	Sculpins												
193	Atka Mackerel											0.15	
270	Pollock		0.15				0.35	0.30	0.30	0.21	0.16	0.16[1], 0.17[2]	0.22
510	Smelts							0.38					
511	Eulachon							0.38					
516	Capelin												
689	Sharks							0.30	0.30	0.25			
700	Skates												
710	Sablefish			0.05			0.35	0.30	0.30	0.25			
710	IFQ Sablefish			0.05			0.35	0.30	0.30	0.25			
870	Octopus												
875	Squid												
	Rockfish		0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25			
200	Conversion rates Net Weight for PACIFIC HALIBUT.												

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

Species code	FMP species	Product Code (Ice and Slime codes 51, 54, 55, 57, and 58 effective through 12/31/01)												
		32 Meal	33 Oil	34 Milt	35 Stom-achs	36 Mantles	37 Butterfly Back-bone re-moved	51 Whole Fish w/ I&S	54 Gutted, head on w/I&S	55 Gutted, head off w/I&S	57 H&G western w/I&S	58 H&G eastern w/I&S	88, 89 Infested or de-com-posed fish	98, 99 Discards
110	Pacific Cod	0.17												
121	Arrowtooth Flounder	0.17												
122	Flathead Sole	0.17											0.00	01.00
123	Rock Sole	0.17											0.00	01.00
124	Dover Sole	0.17											0.00	01.00
125	Rex Sole	0.17											0.00	01.00
127	Yellowfin Sole	0.17											0.00	01.00
134	Greenland Turbot	0.17											0.00	01.00
143	Thornyhead Rockfish	0.17											0.00	01.00
160	Sculpins	0.17											0.00	01.00
193	Atka Mackerel	0.17											0.00	01.00
270	Pollock	0.17					0.43						0.00	01.00
510	Smelts	0.17											0.00	01.00
511	Eulachon	0.17											0.00	01.00
516	Capelin	0.17											0.00	01.00
689	Sharks	0.17											0.00	01.00
700	Skates	0.17											0.00	01.00
710	Sablefish	0.17											0.00	01.00
710	IFQ Sablefish	0.17						1.02	0.91		0.70	0.65	0.00	01.00
870	Octopus	0.17				0.85							0.00	01.00
875	Squid	0.17				0.75							0.00	01.00
	Rockfish												0.00	01.00
200	Conversion rates to Net Weight for PACIFIC HALIBUT.								0.88	0.98			0.00	0.75

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through December.
Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR.
To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate.
To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 or multiply by 1.33333.

TABLE 7—TO PART 679.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS

[Other communities may also be eligible, but do not appear on this table]

Aleutian Region:
1. Akutan
2. Atka
3. False Pass
4. Nelson Lagoon
5. Nikolski
6. St. George
7. St. Paul

Bering Strait:
1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Grayling
7. Koyuk
8. Nome
9. Savoonga
10. Shaktoolik
11. St. Michael
12. Stebbins
13. Teller
14. Unalakleet
15. Wales
16. White Mountain

Bristol Bay:

TABLE 7—TO PART 679.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS—Continued

[Other communities may also be eligible, but do not appear on this table]

1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Ekwok
7. Levelock
8. Manokotak
9. Naknek
10. Pilot Point
11. Portage Creek
12. Ugashik
13. Port Heiden/Meschick
14. South Naknek
15. Sovonoski/King Salmon
16. Togiak
17. Twin Hills

Southwest Coastal Lowlands:

TABLE 7—TO PART 679.—COMMUNITIES DETERMINED TO BE ELIGIBLE TO APPLY FOR COMMUNITY DEVELOPMENT QUOTAS—Continued

[Other communities may also be eligible, but do not appear on this table]

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Mountain Village
14. Napaskiak
15. Napakiak
16. Newtok
17. Nightmute
18. Oscarville
19. Platinum
20. Quinhagak
21. Scammon Bay
22. Sheldon's Point (Nunam Iqua)
23. Toksook Bay
24. Tununak
25. Tuntutuliak

TABLE 8 TO PART 679.—HARVEST ZONE CODES FOR USE WITH VESSEL ACTIVITY REPORTS

Harvest zone	Description
A1	BSAI EEZ off Alaska.
A2	GOA EEZ off Alaska.
B	State waters of Alaska.
C	State waters other than Alaska.
D	Donut Hole.
F	Foreign Waters Other than Russia.
I	International Waters other than Donut Hole and Seamounts.
R	Russian waters.
S	Seamounts in International waters.
U	U.S. EEZ other than Alaska.

TABLE 9 TO PART 679.—REQUIRED LOGBOOKS, REPORTS, FORMS AND ELECTRONIC LOGBOOK AND REPORTS FROM PARTICIPANTS IN THE FEDERAL GROUNDFISH FISHERIES

Requirement name	Catcher vessel	Catcher/ Processor	Mothership	Shoreside processor [3]	Buying Station
1. Daily Fishing Logbook (DFL) [1]	Y	N	N	N	N
2. Daily Cumulative Production Logbook (DCPL)1	N	Y	Y	Y	N
3. Buying Station Report (BSR)	N	N	N	N	Y
4. Check-in/Check-out Report	N	Y	Y	Y	N
5. Optional: Electronic Check-in/out report	N	Y	Y	Y	N
6. Weekly Production Report (WPR)	N	Y	Y	Y	N
7. Optional: Electronic WPR	N	Y	Y	Y	N
8. Shoreside Processor Electronic Logbook Report (SPELR) instead of DCPL and WPR when receiving AFA pollock or pollock harvested in a directed pollock fishery.	N	N	N	Y	N
9. Optional: SPELR instead of DCPL and WPR	N	N	N	Y	N
10. U.S. Vessel Activity Report (VAR)	Y	Y	Y	N	N
11. Daily Production Report (DPR) [2]	N	Y	Y	Y	N
12. Product Transfer Report (PTR)	N	Y	Y	Y	N
13. Required use AFA and CDQ at-sea scales, including daily scale test, printed scale output, request for inspection of scales and observer station, scale approval sticker.	N	Y	Y	N	N

TABLE 9 TO PART 679.—REQUIRED LOGBOOKS, REPORTS, FORMS AND ELECTRONIC LOGBOOK AND REPORTS FROM PARTICIPANTS IN THE FEDERAL GROUNDFISH FISHERIES—Continued

Requirement name	Catcher vessel	Catcher/ Processor	Mothership	Shoreside processor [3]	Buying Station
14. VMS when fishing for Atka mackerel or AFA pollock	Y	Y	N	N	N

[1] Two formats of the DFL and catcher/processor DCPL exist: one for trawl gear and one for longline and pot gear.
[2] DPR is submitted only when specifically requested by Regional Administrator.
[3] Also stationary floating processor.

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Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES[1]	INCIDENTAL CATCH SPECIES[1]													
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	SR/RE ERA[3]	DSR SEO[4]	Atka mackerel	Aggregated forage fish[5]	Other species
Pollock (270)	na[6]	20	20	20	20	20	35	1	5	[7]	10	20	2	20
Pacific cod (110)	20	na[6]	20	20	20	20	35	1	5	[7]	10	20	2	20
Deep wtr flatfish [1]	20	20	na[6]	20	20	20	35	7	15	7	1	20	2	20
Rex sole (125)	20	20	20	na[6]	20	20	35	7	15	7	1	20	2	20
Flathead sole (122)	20	20	20	20	na[6]	20	35	7	15	7	1	20	2	20
Shallow wtr flatfish [1]	20	20	20	20	20	na[6]	35	1	5	[7]	10	20	2	20
Arrowtooth (121)	5	5	0	0	0	0	na[6]	0	0	0	0	0	2	0
Sablefish (710)	20	20	20	20	20	20	35		15	7	1	20	2	20
Pacific ocean perch (141)	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Shortraker (152)/ rougheye (151)	20	20	20	20	20	20	35	7	15	na[6]	1	20	2	20
Other rockfish [1]	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Northern rockfish (136)	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Pelagic rockfish [1]	20	20	20	20	20	20	35	7	15	7	1	20	2	20
DSR-SEO [1]	20	20	20	20	20	20	35	7	15	7	na[6]	20	2	20
Thornyhead (143)	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Atka mackerel (193)	20	20	20	20	20	20	35	1	5	[7]	10	na[6]	2	20
Other species [1]	20	20	20	20	20	20	35	1	5	[7]	10	20	2	na[6]
Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	[7]	10	20	2	20

[1]For the definition of grouped species, see footnotes to Table 1 of the GOA groundfish specifications *(http://www.fakr.noaa.gov/sustainablefisheries/2000harvestspecs.htm)*.
[2]Aggregated rockfish means rockfish defined at § 679.2, except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for those species marked with a numerical percentage.
[3]SR/RE ERA = shortraker/rougheye rockfish in the Eastern Regulatory Area.
[4]SEO = Southeast Outside District.
[5]Forage fish are defined at Table 1 of 50 CFR part 679.
[6]na = not applicable
[7]Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish

Table 11 to Part 679--BSAI Retainable Percentages

BASIS SPECIES[1]	INCIDENTAL CATCH SPECIES[1]														
	Pollock	Pacific cod	Atka mackerel	Arrow-tooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish[5]	Short-raker/ rougheye	Aggregated Rockfish[2] (AI)	Squid	Aggregate Forage Fish[3]	Other species
Pollock (270)	na[4]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod (110)	20	na[4]	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel (193)	20	20	na[4]	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth (121)	0	0	0	na[4]	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole(127)	20	20	20	35	na[4]	35	35	35	1	1	2	5	20	2	20
Other flatfish[1]	20	20	20	35	35	na[4]	35	35	1	1	2	5	20	2	20
Rock sole (123)	20	20	20	35	35	35	na[4]	35	1	1	2	5	20	2	20
Flathead sole (122)	20	20	20	35	35	35	35	na[4]	35	15	7	15	20	2	20
Greenland turbot(134)	20	20	20	35	20	20	20	20	na[4]	15	7	15	20	2	20
Sablefish (710)[5]	20	20	20	35	20	20	20	20	35	na[4]	7	15	20	2	20
Other rockfish[1]	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS[1]	20	20	20	35	20	20	20	20	35	15	na[4]	15	20	2	20
Pacific Ocean perch (141)	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin (166)/ Northern(136)-AI	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker (152)/ Rougheye(151)-AI	20	20	20	35	20	20	20	20	35	15	na[4]	15	20	2	20
Squid (875)	20	20	20	35	20	20	20	20	1	1	2	5	na[4]	2	20
Other species[2]	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na[4]
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

[1]For definition of grouped species, see footnotes to Table 1 of the BSAI groundfish specifications at *http://www.fakr.noaa.gov/sustainablefisheries/2000harvestspecs.htm.*

[2]Aggregated rockfish of the genera Sebastes and Sebastolobus except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.

[3]Forage fish are defined at Table 1 to this part.

[4]na = not applicable

[5]For fixed gear restrictions, see 50 CFR 679.7(f)(3)(ii) and 679.7(f)(11).

TABLE 19 TO PART 679.—SEABIRD AVOIDANCE GEAR CODES

Code	Seabird avoidance gear
1	*Bird streamer line.* Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks. Streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. This device can be single or paired.
2	*Buoy bag, bird bag, or other float device.* Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking baited hooks. Each of these devices consist of two components: a length of line (without streamers attached), and one or more float devices at the terminal end. Multiple devices may be used.
3	*Lining tube and/or line shooter.* Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear.
4	*Combination of devices.* Any combination of the above devices (codes 1, 2, and/or 3).
9	*No bird deterrent device* deployed.
0	*Night fishing.* Deploy gear only during the hours specified in § 679.24(e)(3) using only the minimum vessel's lights necessary for safety.

§§ 679.1, 679.2, 679.4, 679.5, 679.6, 679.7, 679.20, 679.21, 679.22, 679.23, 679.24, 679.26, 679.30, 679.32, 679.41, 679.43, 679.50, and Figure 3 to Part 679 [Amended]

16. At each of the locations shown in the ''Location'' column, remove the phrase indicated in the ''Remove'' column and replace it with the phrase indicated in the ''Add'' column.

Location	Remove	Add	Frequency
§ 679.1 introductory paragraph	Magnuson-Stevens Act	Magnuson-Stevens Act and the Northern Pacific Halibut Act.	1
§ 679.1(f)	(applicable through December 31, 1997).	(applicable through December 31, 2002).	1
§ 679.2 Definition for Area endorsement.	means a	means (for purposes of groundfish LLP) a.	1
§ 679.2 Definition for Area endorsement, paragraph (3).	Central Area of the Gulf of Alaska	Central GOA regulatory area	1
§ 679.2 Definition for Area endorsement, paragraph (5).	Western Area of the Gulf of Alaska	Western GOA regulatory area	1
§ 679.2 Definition for Area/species endorsement, paragraph (1).	Aleutian Islands brown king	Aleutian Islands brown king (see Figure 15 to this part).	1
§ 679.2 Definition for Area/species endorsement, paragraph (2).	Aleutian Islands red king	Aleutian Islands red king (see Figure 15 to this part).	1
§ 679.2 Definition for Area/species endorsement, paragraph (3).	Bristol Bay red king	Bristol Bay red king (see Figure 15 to this part).	1
§ 679.2 Definition for Area/species endorsement, paragraph (4).	Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi*.	Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* (see Figure 16 to this part).	1
§ 679.2 Definition for Area/species endorsement, paragraph (5).	Norton Sound red king and Norton Sound blue king.	Norton Sound red king and Norton Sound blue king (see Figure 15 to this part).	1
§ 679.2 Definition for Area/species endorsement, paragraph (6).	Pribilof red king and Pribilof blue king.	Pribilof red king and Pribilof blue king (see Figure 15 to this part).	1
§ 679.2 Definition for Area/species endorsement, paragraph (7).	St. Matthew blue king	St. Matthew blue king (see Figure 15 to this part).	1
§ 679.2 Definition for Authorized distributor.	taken as bycatch	taken as incidental catch	1
§ 679.2 Definition for Authorized fishing gear.	limitations) means	limitations and Table 15 to this part for gear codes) means.	1
§ 679.2 Definition for Buying station	shoreside processor	shoreside processor, stationary floating processor.	1
§ 679.2 Definition for Central Gulf or GOA Central Regulatory Area.	Central Gulf or GOA Central Regulatory Area.	Central GOA Regulatory Area	1
§ 679.2 Definition for CDQ number or group number.	CDQ number or group number	CDQ group number	1
§ 679.2 Definition for Clearing officer	ports listed in § 679.5(l)(3)(viii)	ports listed in Table 14 to this part	1
§ 679.2 Definition for Crab species	Crab species means	Crab species means (see also king crab and tanner crab).	1
§ 679.2 Definition for Eastern Gulf or GOA Eastern Regulatory Area.	Eastern Gulf or GOA Eastern Regulatory Area.	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Eligible applicant.	means a	means (for purposes of the LLP program) a.	1
§ 679.2 Definition for Eligible community.	means a	means (for purposes of the CDQ program) a.	1
§ 679.2 Definition for Federal waters	EEZ off Alaska	EEZ off Alaska (see also reporting area).	
§ 679.2 Definition for Fishing day	means a	means (for purposes of Subpart E) a.	1
§ 679.2 Definition for Fishing month	refers to	means (for purposes of subpart E) a	1

Location	Remove	Add	Frequency
§ 679.2 Definition for Food bank distributor.	relief agencies	relief agencies (see § 679.26)	1
§ 679.2 Definition for Food bank network.	relief agencies	relief agencies (see § 679.26)	1
§ 679.2 Definition for groundfish license.	means a	means (for purposes of the LLP program) a.	1
§ 679.2 Definition for Halibut CDQ fishing, paragraph (1)(ii).	maximum retainable bycatch amounts.	maximum retainable amounts	1
§ 679.2 Definition for Hunger relief agency.	free of charge	free of charge (see § 679.26)	1
§ 679.2 Definition for IFQ regulatory area, paragraph (1).	chapter III of this title	chapter III of this title (see also Figure 15 to this part).	1
§ 679.2 Definition for IFQ regulatory area, paragraph (2).	limited entry program	limited entry program (see Figure 14 to this part).	1
§ 679.2 Definition for Manager	shoreside processor	shoreside processor, stationary floating processor.	2
§ 679.2 Definition for Observer	vessels or shoreside processors	vessels, shoreside processors, or stationary floating processors.	1
§ 679.2 Definition for Observer contractor.	vessels and shoreside processors	vessels, shoreside processors, or stationary floating processors.	1
§ 679.2 Definition for Red King Crab Savings Area (RKCSA) of the BSAI.	(see § 679.22(a)(3))	(see § 679.22(a)(3) and Figure 11 to this part).	1
§ 679.2 Definition for Red King Crab Savings Subarea (RKCSS) of the BSAI.	(see § 679.21(e)(3) (ii)(B))	(see § 679.21(e)(3) (ii)(B)) and Figure 11 to this part).	1
§ 679.2 Definition for Resident fisherman.	means an	means (for purposes of the CDQ Program) an.	1
§ 679.2 Definition for Rockfish, paragraph (1).	For the Gulf of Alaska	For the GOA	1
§ 679.2 Definition for Rockfish, paragraph (2).	For the Bering Sea and Aleutian Islands Management Area.	For the BSAI	1
§ 679.2 Definition for Southeast Outside District of the GOA.	Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Tender vessel	shoreside processor	shoreside processor, stationary floating processor.	1
§ 679.2 Definition for Transfer, paragraph (1).	or shoreside processor	shoreside processor, or stationary floating processor.	1
§ 679.2 Definition for Transfer, paragraph (1).	at any shoreside processor	at any shoreside processor, stationary floating processor.	1
§ 679.2 Definition for Transfer, paragraph (2).	at any shoreside processor	at any shoreside processor, stationary floating processor.	1
§ 679.2 Definition for Unsorted codend.	mothership or shoreside processor	mothership, shoreside processor, or stationary floating processor.	1
§ 679.2 Definition for Vessel Activity Report (VAR).	(see § 679.5)	(see § 679.5(k))	1
§ 679.2 Definition for Vessel operations category.	(see § 679.4)	(see § 679.5(b)(3))	1
§ 679.2 Definition for West Yakutat District of the GOA.	GOA Eastern Regulatory Area	Eastern GOA Regulatory Area	1
§ 679.2 Definition for Western Gulf or GOA Western Regulatory Areas.	Western Gulf or GOA Western Regulatory Areas.	Western GOA Regulatory Area	1
§ 679.4(b)(4)(ii), (f)(4)(ii)	RAM Division	RAM Program	1
§ 679.4(f)(1)	or vessel of the United States operating solely as a mothership in Alaska State waters.	or stationary floating processor	1
§ 679.4(f)(2)(vi)	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.4(f)(6)(i)	shoreside processor	shoreside processor, or stationary floating processor.	1
§ 679.4(j)	Salmon donation program permits	Prohibited species donation program permits.	1
§ 679.4(k)(1)(i)	issued by NMFS to a qualified person.	issued by NMFS	1
§ 679.4(k)(4)(ii)(C) (*1*), (*2*), (*3*), and (*4*).	Western Area of the Gulf of Alaska	Western GOA regulatory area	once for (*1*), (*2*), (*4*); twice for (*3*)
§ 679.4(k)(4)(ii)(D) (*1*), (*2*), and (*3*)	Central Area of the Gulf of Alaska	Central GOA regulatory area	1
§ 679.6 (b)(7) introductory text, (d)(1)(iii), (d)(1)(v), (d)(1)(vi), (d)(2), (e) introductory text, (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(7), (e)(8).	experimental fishing	exempted fishing	1
§ 679.6(b) introductory text, (b)(3), (b)(9), (d)(1) introductory text.	experimental fishing	exempted fishing	2

Location	Remove	Add	Frequency
§ 679.6(f)	Experimental fishing	Exempted fishing	2
§ 679.6(f)	Experimental fishng	Exempted fishing	1
§ 679.7(a)(15)	or vessel of the United States operating solely as a mothership in Alaska State waters.	or stationary floating processor	1
§ 679.7(a)(16)	maximum retainable groundfish bycatch amount.	maximum retainable groundfish amount.	1
§ 679.7(d)(16)	retainable bycatch amounts	maximum retainable amounts	1
§ 679.7(d)(20)	shoreside processor	shoreside processor, stationary floating processor.	1
§ 679.8	§ 600.740	§ 600.730	1
§ 679.20(a)(4)(i) heading	GOA Eastern Area	Eastern GOA regulatory area	1
§ 679.20(a)(4)(i) text	Eastern Area of the GOA	Eastern GOA regulatory area	1
§ 679.20(a)(4)(ii) heading	GOA Central and Western Areas	Central and western GOA regulatory areas.	1
§ 679.20(a)(4)(ii)(A)	Central and Western Areas of the GOA.	Central and western GOA regulatory areas.	1
§ 679.20(a)(4)(ii)(A)	Central and Western Areas	Central and western GOA regulatory areas.	1
§ 679.20(e) heading	Maximum retainable bycatch amounts.	Maximum retainable amounts	1
§ 679.20(e)(1), (e)(2)(i), (e)(2)(iii)	maximum retainable bycatch amount.	maximum retainable amount	1
§ 679.21(d)(4)(iii)(A)	GOA Eastern Regulatory Area	Eastern GOA regulatory areas	1
§ 679.22(a)(3)	§ 679.21(e)(4)(ii)(B)	§ 679.21(e)(3)(ii)(B)	1
§ 679.22(a)(11)(iv)(B) introductory text.	SCA	SCA (see Figure 20 to this part)	1
§ 679.22(b)(3)(iii)(A)	defined at § 679.23(d)(3) of this part	defined at § 679.23(d)(3) and Figure 20 to this part.	1
§ 679.22(b)(3)(iii)(B) introductory text	Shelikof Strait conservation area	Shelikof Strait conservation area (see Figure 19 to this part).	1
§ 679.23(h)(1)	Western and Central Regulatory Areas of the GOA.	Western and Central GOA regulatory areas.	1
§ 679.23(h)(2)	Western Regulatory Area of the GOA.	Western GOA regulatory area	2
§ 679.23(h)(3)	Central Regulatory Area of the GOA	Central GOA regulatory area	2
§ 679.24(c)(2) heading, (c)(2)(i)(A)	GOA Eastern Area	Eastern GOA regulatory area	1
§ 679.24(c)(2)(ii) (A), (B)	GOA Eastern Regulatory Area	Eastern GOA regulatory area	1
§ 679.24(c)(3) heading	GOA Central and Western Areas	Central and Western GOA regulatory areas.	1
§ 679.24(c)(3)	GOA Central and Western Regulatory Areas.	Central and western GOA regulatory areas.	1
§ 679.24(d)(2) introductory text	in this paragraph (d)	in this paragraph (d) and in Figure 7 to this part.	1
§ 679.26(b)(3) heading	SDP Permit	PSD Permit	1
§ 679.26(c)(3)	until 1 year after	until 3 years after	1
§ 679.30(a)(5)(i)(B) heading	Shoreside processors	shoreside processors or stationary floating processors.	1
§ 679.30(a)(5)(i)(B)	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.32(c)	shoreside processors	shoreside processors or stationary floating processors.	1
§ 679.32(c)(3)heading	Shoreside processors and vessels of the United States operating solely as a mothership in Alaska State waters.	shoreside processors and stationary floating processors.	1
§ 679.32(c)(3) introductory text	shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska State waters.	shoreside processor or stationary floating processor.	1
§ 679.32(d)(1)	shoreside processor or the operator of a vessel of the U.S. operating solely as a mothership in Alaska State waters.	shoreside processor or stationary floating processor.	1
§ 679.32(f)(1)	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.32(f)(3)	shoreside processor	shoreside processor or stationary floating processor.	2
§ 679.41(e)(2)(iii)	Central Gulf area	Central GOA regulatory area	1
§ 679.41(e)(2)(iv)	Western Gulf area	Western GOA regulatory area	1
§ 679.43(a)	under part 679 of this chapter	under this subpart D as well as portions of subpart C of this part.	1
§ 679.50(c)(1)(vi)	Eastern Regulatory Area of the GOA.	Eastern GOA regulatory area	1

Location	Remove	Add	Frequency
§ 679.50(c)(3)(iii)	shoreside processor or to a mothership processor vessel in Alaska State waters.	shoreside processor or stationary floating processor.	1
§ 679.50(d) introductory text heading	shoreside processors	shoreside processors and stationary floating processors.	1
§ 679.50(d) introductory text and (d)(4)(i).	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.50(e)(2), (g)	vessels or shoreside processors	vessels, shoreside processors or stationary floating processors.	1
§ 679.50(f)(2) heading	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.50(f)(2)	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.50(f)(2)(iii) (A), (f)(2)(iv), (f)(2)(v).	shoreside processors	shoreside processors or stationary floating processors.	1
§ 679.50(h)(2)(i)(A)(*4*)	vessel or shoreside processor	vessel, shoreside processor, or stationary floating processor.	1
§ 679.50(i)(2)(v)(A)	shoreside processor	shoreside processor or stationary floating processor.	1
§ 679.50(i)(2)(v)(C)	vessels and/or shoreside processors	vessels, shoreside processors and/or stationary floating processors.	1
§ 679.50(i)(2)(xiv) (B), (C), and (D)	vessel or shoreside processor	vessel, shoreside processor, or stationary floating processor.	1
§ 679.50(i)(2)(xiv) (G)(*3*) and (*4*)	shoreside processors	shoreside processors or stationary floating processors.	1
§ 679.50(j)(4)(i)	vessels and shoreside processors	vessels, shoreside processors, and stationary floating processors.	1

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August 8, 2001

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7024–9]

RIN 2060–AH42

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for flexible polyurethane foam fabrication operations. The EPA has identified flexible polyurethane foam fabrication facilities as potential major sources of hazardous air pollutants (HAP) emissions such as methylene chloride, hydrochloric acid (HCl), 2,4-toluene diisocyanate (TDI), and hydrogen cyanide (HCN). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes, effects on the central nervous system, and cancer.

These proposed NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring flexible polyurethane foam fabrication facilities that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The EPA estimates that these proposed NESHAP will reduce nationwide emissions of HAP from flexible polyurethane foam fabrication operations by approximately 6.5 tons per year (tpy) for each new or reconstructed affected source. The emissions reductions achieved by these proposed NESHAP, when combined with the emissions reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the CAA.

DATES: *Comments.* Submit comments on or before October 9, 2001.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 28, 2001, a public hearing will be held on September 7, 2001.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–43, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and information Center (6102), Attention Docket Number A–2000–43, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at 10:00 a.m. in the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–2000–43 contains supporting information used in developing the proposed standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information about the proposed NESHAP, contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5607; facsimile number (919) 541–3470; electronic mail address *noell.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must note the docket number: A–2000–43. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Maria Noell, c/o OAQPS Document Control Officer (Room 740B), U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. A request for a public hearing must be made by the date specified under the DATES section. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact: Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5607 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Maria Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* Additional related information may also be found on the Air Toxics Website at *http://www.epa.gov/ttn/uatw/.* The TTN provides information and technology exchange in various areas of air pollution control. If more information

regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated entities. Categories and entities potentially affected by this action include:

Category	SIC [a]	NAICS [b]	Regulated entities
Industry	3086	32615	Fabricators of flexible polyurethane foam.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8782 of the proposed NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT SECTION.**

Outline. The information presented in this preamble is organized as follows:

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B. What are the primary sources of emissions and what are the emissions?
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I. Executive Order 13211 (Energy Effects)

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. On June 4, 1996 (61 FR 28197), we added the flexible polyurethane foam fabrication operation source category to our initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576). Based on information available in 1996, there were flexible polyurethane foam fabrication operations considered to be major sources because of the use of methylene chloride-based adhesives. Major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy impacts.

C. What Are the Health Effects Associated With Flexible Polyurethane Foam Fabrication Operations HAP Emissions?

The primary HAP emitted from the use of adhesives to glue pieces of foam together or to other substrates is methylene chloride. The primary HAP emitted from flame lamination of foam is HCl; HCN and TDI also are present in small quantities.

The HAP that would be controlled with these proposed NESHAP are associated with a variety of adverse health effects. These adverse health effects include acute and chronic health disorders that include irritation of the lung, eye, and mucous membranes and effects on the central nervous system. We have classified methylene chloride as a probable human carcinogen, and the International Agency for Research on Cancer (IARC) has classified TDI as a possible human carcinogen.

We do not have the type of current detailed data on each of the facilities covered by the emissions standards for this source category, or on the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we

do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed NESHAP will reduce emissions and subsequent exposures.

We present a discussion of the HAP-specific health effects in the following paragraphs.

1. Methylene Chloride

Acute (short-term) exposure to methylene chloride by inhalation affects the nervous system, causing decreased visual, auditory, and motor functions. These effects are reversible once exposure ceases. The effects of chronic (long-term) exposure to methylene chloride suggest that the central nervous system is a potential target in both humans and animals. Limited animal studies have reported developmental effects. Human data are inconclusive regarding methylene chloride and cancer. Animal studies have shown increases in liver and lung cancer and benign mammary gland tumors following the inhalation of methylene chloride. We have classified methylene chloride as a Group B2, probable human carcinogen.

2. Hydrochloric Acid

Hydrochloric acid is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified HCl for carcinogenicity.

3. 2,4-Toluene Diisocyanate

Acute exposure to high levels of TDI in humans by inhalation results in severe irritation of the skin and eyes and affects the respiratory, gastrointestinal, and central nervous systems. Chronic inhalation exposure to TDI in humans has resulted in significant decreases in lung function in workers, an asthma-like reaction characterized by wheezing, dyspnea, and bronchial constriction, and effects on the liver, blood, and kidneys. No information is available on the carcinogenic effects of TDI in humans, but animal studies have reported increased incidences of tumors of the pancreas, liver, and mammary glands from oral exposure to TDI. We have not classified TDI for carcinogenicity. The IARC has classified TDI as a Group 2B, possible human carcinogen.

4. Hydrogen Cyanide

Acute inhalation exposure to high levels of HCN can result in death. Chronic inhalation exposure of humans to HCN results primarily in effects on the central nervous system. Other effects in humans include cardiovascular and respiratory effects, an enlarged thyroid gland, and irritation to the eyes and skin. No data are available on the developmental effects of cyanide in humans via inhalation, but animal studies have suggested that oral exposure to cassava (a cyanide-containing vegetable) may be associated with malformations in the fetus and low fetal body weights. No studies are available on the carcinogenic effects of cyanide in humans or animals. We have classified cyanide as a Group D, not classifiable as to human carcinogenicity.

II. Summary of the Proposed Standards

A. What Source Categories and Subcategories Are Affected by These Proposed NESHAP?

Today's proposed NESHAP apply to the Flexible Polyurethane Foam Fabrication Operations source category. This source category includes operations engaged in cutting, gluing, and/or laminating pieces of flexible polyurethane foam. This includes fabrication operations that are located at foam production plants, as well as those that are located off-site from foam production plants.

We have identified two subcategories under the Flexible Polyurethane Foam Fabrication Operations source category. These subcategories are loop slitter HAP-based adhesive use and flame lamination. Loop slitters are equipment at foam fabrication operations that are used to slice large foam blocks into thin sheets. Flame lamination refers to the bonding of foam to other substrates (i.e., cloth, foam, plastic, and other materials), where the bonding agent is scorched or melted foam.

B. What Are the Primary Sources of Emissions and What Are the Emissions?

This section describes the primary sources of potential HAP emissions from loop slitter adhesive use and flame lamination.

1. Loop Slitter Adhesive Use

A loop slitter is a large machine used to create thin sheets of foam from the large blocks of foam or ''buns'' created at a foam production plant. Because of the difficulty of transporting the buns, loop slitters are generally located at foam production plants. A slitter consists of a large, vertical, oval conveyor belt, and a cutting mechanism. The buns are mounted on the conveyor and glued end-to-end, forming a loop. The conveyor spins the looped bun rapidly past a blade, which shaves off a sheet of foam in the desired thickness. The foam buns are very large (10 feet wide by 10 feet high by 200 feet long). As a result, the slitters typically operate for several hours before they must be reloaded with new buns of foam.

The only portion of the loop slitter process that uses adhesives is when attaching the buns end-to-end to form a loop. However, because of the nature of the process and the product produced, the adhesives used have different requirements than other typical foam fabrication adhesives. The rapidly spinning buns are subjected to great stress as soon as the machine is turned on, so the adhesive used must bond rapidly. Also, the seam where the buns are joined is a potential defect in the foam sheets that are the product of the process. Some adhesives (particularly water-based adhesives) produce a hard seam which is considered a product defect and can dull the knife-blades of the slitter. In order to comply with Occupational Health and Safety Administration (OSHA) regulations, loop slitters have converted from a reliance on methylene chloride-based adhesives to other non-HAP alternatives since the mid-1990's. As a result of the OSHA regulations, we believe that the foam fabrication industry has effectively discontinued use of methylene chloride-based adhesives, resulting in zero estimated baseline HAP emissions from loop slitter adhesive use.

2. Flame Lamination

In the flame lamination process, foam is scorched to adhere it to various substrates. This process releases particulates and HAP. We have identified HCN, TDI, and HCl as HAP emitted as a result of flame lamination. These HAP are a product of the combustion of unreacted diisocyanates from the foam production process (HCN and TDI) and the chlorinated fire retardant additives that are present in some polyurethane foams (HCl). Specific HAP released are dependant on the contents of the foam being laminated at a given time. With the

exception of HCl, these HAP are generally released in very small amounts.

The baseline emission estimates are generated from data obtained from individual facilities, as well as from State agencies to which facilities reported their annual emissions. Where reported emissions are not available, we calculated emission estimates using a HAP emission factor, the laminator's operating schedule, the number of flame lamination lines, and the percent of the operating time that fire retardant foam is laminated (used only when calculating HCl emissions). We estimated total nationwide baseline HAP emissions from flame lamination as 58.8 tpy HCl, 10.3 tpy HCN, and 3.0 tpy TDI, which amounts to a total of 72.1 tpy HAP.

C. What Are the Proposed Affected Sources?

The proposed NESHAP define two affected sources related to each of the proposed subcategories. The loop slitter adhesive use affected source is the collection of loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site. Loop slitter affected sources, located at plant sites that are major sources of HAP, that are using HAP-based adhesives on or after [Date of publication of the final rule in the **Federal Register**] would be subject to the NESHAP, including the applicable emission limit and reporting and recordkeeping requirements. However, loop slitter affected sources that have eliminated use of HAP-based adhesives by [Date of publication of the final rule in the **Federal Register**] would not be subject to the NESHAP. The flame lamination affected source is the collection of all flame laminators and associated rollers at a flexible polyurethane foam fabrication plant site associated with the flame lamination of foam to any substrate.

D. What Are the Emission Limitations and Compliance Dates?

For existing, new, or reconstructed loop slitter adhesive use affected sources, we are proposing an emission limit of zero HAP emissions from adhesives use. This can be achieved through the use of non-HAP-based adhesives. Existing affected sources must be in compliance by [Date 1 year after date of publication of the final rule in the **Federal Register**]. New or reconstructed sources must be in compliance by the date of startup of the affected source, or by [Date of publication of the final rule in the **Federal Register**], whichever is later.

We are defining HAP-based adhesives as adhesives containing detectable HAP, where the concentration of HAP may be determined using EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph). Method 311 is an established method that is appropriate for measuring the types of HAP used in these materials. The affected source may use approved alternative methods for measuring HAP content, or other reasonable means of HAP content determinations.

We are not proposing any emission limitations for existing flame lamination affected sources. Therefore, existing flame lamination affected sources would not be subject to the proposed NESHAP, except for a requirement to submit an initial notification within 120 days after [Date of publication of the final rule in the **Federal Register**]. For new and reconstructed flame lamination affected sources, the proposed NESHAP would require that facilities reduce HAP emissions from these affected sources by 90 percent. These affected sources would be required to be in compliance upon startup or by [Date of publication of the final rule in the **Federal Register**], whichever is later.

E. What Are the Testing, Initial Compliance, and Continuous Compliance Requirements?

We present the proposed testing, initial compliance, and continuous compliance requirements for the flexible polyurethane foam fabrication loop slitter adhesive use and flame lamination affected sources in the following paragraphs.

1. Loop Slitter Adhesive Use

We are proposing that loop slitter affected sources demonstrate initial and continuous compliance by certifying that no HAP-based adhesives are or will be used. The initial certification must be submitted within 60 days of the compliance date. The certification would be accompanied by documentation stating what the facility will use for adhesives, along with supporting information to document the HAP content of adhesives used at the facility, such as Method 311 results or other approved information. Thereafter, on a yearly basis, the source would recertify compliance, including HAP content information on any new adhesives used at the source.

While sources may use EPA Method 311, an approved alternative method, or any other reasonable means for determining the HAP content of adhesives, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations. Other reasonable means include a material safety data sheet (MSDS), provided it contains appropriate information; a certified product data sheet (CPDS); or a manufacturer's hazardous air pollutant data sheet. Sources are not required to test the materials used, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content.

2. Flame Lamination

For new or reconstructed flame lamination affected sources, we are proposing that initial compliance be demonstrated by conducting a performance test within 180 days after the compliance date that demonstrates that HAP emissions are being reduced by 90 percent. In order to demonstrate continuous compliance with this emissions limit, we are proposing to require continuous monitoring of control device parameters. Specifically for venturi scrubbers, which we believe will be the control device of choice in most situations, the proposed NESHAP would require that the pH of the scrubber effluent, the scrubber liquid flow rate, and the pressure drop across the venturi be monitored continuously. Continuous compliance would be demonstrated by these monitored parameters staying within the operating limits. Operating limits would be established for each parameter based on monitoring conducted during the initial performance test and reported in the facility's Notification of Compliance Status Report.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

The proposed NESHAP would require owners or operators of foam fabrication operations at major sources to submit several notifications and reports, which are listed and then briefly described in this section. First, we are proposing to require all owners or operators of affected sources to submit an Initial Notification. In addition, owners or operators of all flexible polyurethane loop slitter adhesive use affected sources and new or reconstructed flame lamination affected sources must also submit the following notification and reports:

- Notification of Intent to conduct a performance test (new or reconstructed flame laminators only)
- Notification of Compliance Status (NOCS) Reports

- Periodic Compliance Reports
- Startup, Shutdown, and Malfunction Reports (new or reconstructed flame laminators only).

For the Initial Notification, we are proposing to require that each owner or operator notify us that their facility is subject to the flexible polyurethane foam fabrication operations NESHAP, and that they provide specified basic information about their facility. This notification would be required to be submitted within 120 days after [Date of publication of the final rule in the **Federal Register**] for existing affected sources. New or reconstructed affected sources would be required to submit the application for construction or reconstruction required by § 63.9(b)(iii) of the 40 CFR part 63, subpart A General Provisions in lieu of the Initial Notification.

For the Notification of Intent Report, we are proposing that each new or reconstructed flame lamination affected source owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin. The NOCS Report would be submitted within 60 days of completion of the performance test. A certified notification of compliance that states the compliance status of the facility, along with supporting information (e.g., performance test results and operating parameter values and ranges) would be submitted as part of the NOCS.

For sources complying with the standards for loop slitter adhesive use, the NOCS would be due within 60 days of the compliance date. These NOCS must list each adhesive used at the affected source, the manufacturer or supplier of each, and the individual HAP content (percent by mass) of each adhesive that is used.

For the Periodic Compliance Report, we are proposing that facilities subject to control requirements under the proposed NESHAP report on continued compliance with the flame lamination new source emission limit semiannually, and report on continued compliance with the loop slitter adhesive use HAP-based usage limit annually.

Finally, for the Startup, Shutdown, and Malfunction Report, we are proposing that each owner or operator of a new or reconstructed flame lamination affected source report any startup, shutdown, or malfunction during the reporting period that is not in the facility's startup, shutdown, and malfunction plan.

We also would require that each owner or operator maintain records of reported information and other information necessary to document compliance (e.g., records related to malfunction, records that show continuous compliance with emission limits) for 5 years.

III. Rationale for Selecting the Proposed Standards

A. How Are We Defining the Source Category?

On June 4, 1996 (61 FR 28197), we added the Flexible Polyurethane Foam Fabrication Operations source category to our initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576). Based on information available in 1996, there were flexible polyurethane foam fabrication operations that were major sources because of the use of methylene chloride-based adhesives. Today's proposed NESHAP revise the 1996 definition of the source category. We are proposing that only fabrication operations using HAP-based adhesives to bond foam for use on a loop slitter and fabrication operations using flame lamination should be included in the source category. We are proposing to exclude non-slitter adhesive use from the source category.

In our analysis, we discovered that there are three distinct processes used in the gluing together of polyurethane foam pieces (i.e., use of adhesives on a loop slitter, use of adhesives in other foam fabrication operations, and use of flame lamination). We considered whether non-slitter and loop slitter adhesive use pose a potential to emit HAP, given the impact of the OSHA permissible exposure limit (PEL), which has resulted in foam fabricators moving to non-methylene chloride-based adhesives. Depending on the emission source, we believe companies potentially have different options to comply with the OSHA work place limits on methylene chloride. For example, loop slitter adhesive use is brief and intermittent, typically not occurring more than once during a single shift, and it is possible that some facilities could meet a time weighted average exposure if use were infrequent enough. Additionally, the adhesive could be applied by workers wearing respiration equipment, or a hood or other ventilation equipment could be added to the adhesive application station. All of these application methods have the potential to meet the exposure limits set by OSHA, but still result in methylene chloride emissions. In fact, we believe that most loop slitters have converted to non-HAP adhesives, but the potential for using ventilation-based compliance methods exists.

In contrast, non-slitter adhesive use generally occurs at numerous work stations, with multiple workers applying adhesive to foam parts throughout the work period. These conditions do not lend themselves easily to workers wearing respiration equipment or the air flow requirements to ventilate the working areas well enough to meet OSHA's PEL. Therefore, we believe these sources must convert to non-methylene chloride-based adhesives to meet the OSHA PEL, which eliminates methylene chloride emissions from the source.

In order to further evaluate current trends regarding the use of adhesives in foam fabrication, we contacted adhesive suppliers and foam fabricators. We found that acceptable alternatives to HAP-based adhesives are available and commonly used for many applications. Information available from owners or operators of 99 foam fabrication facilities indicates that they do not use any methylene chloride adhesives for their non-loop-slitter foam fabrication operations. The alternatives most frequently mentioned include water-based adhesives and non-HAP solvent-based adhesives using n-propyl bromide or acetone.

We do not believe that any non-slitter adhesive sources are using HAP-based adhesives, unless they are failing to comply with the OSHA PEL for methylene chloride. This is because the nature of the foam fabrication process at these facilities makes the use of individual respiration equipment or workplace ventilation infeasible. Based on available information and current conditions, we do not believe that additional controls from the NESHAP, such as a prohibition against the use of HAP-based adhesives, would result in any additional emissions reductions either now or in the future. In fact, the only impact would be the imposition of additional monitoring, reporting, and recordkeeping burden on the part of the industry that is thought to contain many small businesses.

As a result of this analysis, we are proposing to revise the source category definition to exclude non-slitter adhesive use. We are requesting comment and supporting information on this revision to the source category definition. Should we learn through the comment period on these proposed NESHAP that there are non-slitter adhesive sources using HAP-based adhesives that are located on the site of a major source, we would retain them in the source category and treat them as a third subcategory. A preliminary analysis indicates that a ban on HAP-

based adhesive use would represent the MACT floor for that subcategory.

B. How Did We Select the Affected Source?

For the purposes of implementing a NESHAP, an affected source is defined to mean the stationary source, or portion of a stationary source, that is regulated by a relevant standard or other requirement established under section 112 of the CAA. In other words, the affected source is composed of the group of unit operations, equipment, and emission points that are subject to the NESHAP. Under each relevant standard, we must designate the ''affected source'' for the purpose of implementing that standard. We do this for each source category (or subcategory) by deciding which HAP emission sources (i.e., emission points or groupings of emission points) are most appropriate for establishing separate emission standards or work practices in the context of the CAA statutory requirements and the industry operating practices for the particular source category.

We can define the affected source as narrowly as a single item of equipment or as broadly as all equipment at the plant site that is used to produce the product that defines the source category. The affected source also identifies the collection of equipment that would be evaluated to determine whether replacement of components at an existing affected source would qualify as reconstruction. Defining the affected source narrowly could affect whether some parts of a process unit would be subject to new source requirements and other parts of the process unit would be subject to existing source requirements.

We propose to separate the Flexible Polyurethane Foam Fabrication Operations source category into two subcategories: loop slitter adhesive use and flame lamination. We also propose to treat each subcategory as a separate affected source, because the HAP emissions, processes, and controls are significantly different between the two subcategories. Flame lamination emissions result from combustion products based on the composition of the foam rather than from evaporation of HAP-based adhesives. Add-on controls are feasible for flame lamination, whereas loop slitter adhesive use emissions reductions have resulted from pollution-prevention measures such as changing the type of adhesive to a water-based or other non-HAP based material.

We also considered how broadly to define each affected source. In both cases, HAP emissions are tied to a collection of specific equipment. Therefore, the loop slitter adhesive use affected source is the collection of loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site. The flame lamination affected source is all flame lamination lines (flame laminators and associated rollers) at a flexible polyurethane foam fabrication plant site associated with the flame lamination of foam to any substrate.

C. How Did We Select the Form of the Standards?

Section 112(d) of the CAA requires that standards be specified as a numerical emission standard, whenever possible. However, if we determine that ''it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants,'' section 112(h) indicates that a design, equipment, work practice, or operational standard may be specified.

For the proposed standards, we selected an emission limit of zero HAP emissions from use of adhesives at loop slitter adhesive use affected sources. This format is consistent with current practices, because sources have converted to the use of non-HAP-based adhesives to comply with the OSHA PEL. In order to recognize the industry trend, we are proposing that sources that are not using HAP-based adhesives before the effective date of the NESHAP would not face any requirements under the NESHAP.

We selected a numerical emission limit combined with parametric operating limits for new and reconstructed flame lamination affected sources. Specifically, we are proposing requiring a 90 percent emission reduction of HAP at new and reconstructed flame lamination affected sources. The sources would then establish operating limits using performance test results and control device operating parameters.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

For source categories/subcategories with greater than 30 sources, MACT for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources. Further, MACT for source categories/subcategories with fewer than 30 sources cannot be less stringent than the average emission limitation achieved by the best-performing 5 sources. We have determined that ''average'' means any measure of central tendency, whether it be the arithmetic mean, median, or mode, or some other measure based on the best measure decided on for determining the central tendency of a data set (59 FR 29196, June 6, 1994).

1. Loop Slitter Adhesive Use MACT

We estimate that there are 40 facilities nationwide with loop slitters. Information available from owners and operators of 30 facilities where loop slitters are located indicates that 22 facilities (55 percent of the total estimated number of facilities) use non-HAP adhesives. However, some facilities report that they may continue to use methylene chloride adhesives, at least in small quantities. We believe that it is feasible that loop slitters could continue to use these adhesives and still meet the OSHA exposure limits through technological means. Since non-HAP use represents greater than 12 percent of the loop slitter facilities, we concluded that the MACT floor for existing, new, and reconstructed loop slitters is the prohibition on the use of HAP-based adhesives.

2. Flame Lamination MACT

Of 21 known flame lamination facilities, we estimate that there are eight flame lamination facilities in the United States that are major sources of HAP (based on actual or potential HCl emissions). Because there are fewer than 30 sources, we evaluated the performance of the best performing five facilities to determine the MACT floor. Of the top five major sources, three facilities are uncontrolled and two facilities use scrubbers, which were installed to control particulate emissions and also reduce HCl and HCN emissions. Based on the mode of this data set, we concluded that the existing source MACT floor is no control.

After determining the MACT floor for flame lamination existing sources, we evaluated whether a level of control beyond the floor is justified. We considered requiring the use of a scrubber to reduce HCl and HCN emissions. However, the HAP emissions reductions that would be achieved by requiring a scrubber do not warrant the cost without further evaluation of risk. We determined the average incremental cost per ton of HAP emissions reduced to be approximately $18,000.

We also considered whether the use of incineration would be a reasonable beyond-the-floor option to control HCN and TDI emissions from the flame lamination affected source. Two existing area source facilities presently control TDI and HCN emissions from these sources by using an incinerator, but do

not control HCl emissions. However, controlling these additional HAP emissions would cost approximately $70,300 per ton of HAP emissions reduced for a representative source; thus, we are not proposing to control these emissions.

However, because we lack information on every operation in this industry, we are proposing to require existing major sources to submit an initial notification. This will ensure that if other information becomes available that would indicate a need for an emission limitation, we can readily identify potential major sources in this subcategory.

Since at least one facility uses a venturi scrubber that controls HCl and HCN emissions, we concluded that the new source MACT floor is based on manufacturer's claims that 90 percent reduction of HCl and HCN emissions is achievable using a venturi scrubber. Therefore, we selected a 90 percent HAP (measured as either HCl or HCN) emission reduction as MACT for new and reconstructed flame lamination affected sources.

It is possible that another control technology could achieve a larger emission reduction of the gaseous emissions. Venturi scrubbers, which are designed primarily to control particulate matter via impaction, interception and diffusion mechanisms, cannot achieve larger gaseous reductions because the high gas velocity does not permit sufficient contact time between the liquid and gas to allow more than 90 percent of the pollutant gas to be absorbed into the scrubber liquid. In contrast, scrubbers designed primarily for gas absorption (i.e., packed-tower scrubbers) can achieve a 99 percent gaseous pollutant removal efficiency when properly designed. However, gas absorbers are not recommended for use with gas streams containing particulate matter because they can become plugged with particulate matter, which would decrease their efficiency. Therefore, we concluded that it is not practical to use a gas absorber on a gas stream containing particulate matter.

We also considered whether controlling TDI and the residual HCN emissions from new sources was a reasonable beyond-the-floor option. However, reducing these additional HAP emissions would cost the same as for existing sources (approximately $70,300 per ton of HAP reduced for a representative source); therefore, we are not proposing to control these emissions at this time.

Finally, we considered whether banning the flame lamination of foam containing chlorinated compounds was a feasible beyond-the-floor option for existing, new, or reconstructed sources. We considered this option because we believe that HCl is emitted from flame laminators only when the foam being laminated contains chlorinated fire retardant. Therefore, banning the flame lamination of chlorinated fire retardant foams would effectively eliminate HCl emissions from flame lamination. This option does not achieve any control of HCN or TDI. However, no alternative fire retardant has been identified that would be adequate and appropriate for all flame lamination applications in which fire retardant foams are required, and we determined that this option is not feasible. We request comment and data on this issue.

E. How Did We Select the Testing, Initial, and Continuous Compliance Requirements?

We selected the proposed testing, initial, and continuous compliance requirements based on requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A). These requirements were adopted for flexible polyurethane foam fabrication facilities to be consistent with other part 63 NESHAP. These requirements will ensure that we obtain or have access to sufficient information to determine whether an affected source is complying with the standards specified in the proposed NESHAP.

1. Loop Slitter Adhesive Use

We determined that certifying use of complying adhesives and submitting supporting documentation on the HAP content of the adhesives used is the best method of assuring initial and continued compliance with a zero HAP emission limit for loop slitters. Therefore, we propose to require that initial and continued compliance with the zero HAP emission limit be demonstrated by having the owner or operator submit a certification in the Notification of Compliance Status Report stating that they are compliant, and will continue to be compliant, with the prohibition. We chose to require that this certification be supported with documentation that states what the facility uses for adhesives (i.e., materials and quantity) and that no HAP-based adhesives are used.

We determined that it would be an unnecessary burden for a facility to submit semiannual certifications if a facility does not use HAP-based adhesives and certifies with their initial certification that they will not use HAP-based adhesives in the future. Therefore, we only require annual certifications.

If after a facility submits the Notification of Compliance Status, it uses an adhesive for which it has not previously verified percent HAP mass using the methods in 40 CFR 63.8802, the facility must verify that each adhesive used in the affected source meets the emission limit, using any of the methods in § 63.8802. The facility must then update the list of all the adhesives used at the affected source and include this information in the next compliance report. If a HAP-based adhesive was used during this time, or if the facility added HAP-containing solvents to the adhesive as purchased, the facility would report a violation of the emission limit.

2. Flame Lamination

The proposed NESHAP would require a compliance test to determine initial compliance with the control efficiency requirement proposed for flame lamination operations at new or reconstructed sources. As proposed, sources that use chlorinated fire retardants and emit HCl would use EPA Method 26A (HCl) to determine the percent reduction of HCl emissions from the control device. Because HCN is at least as soluble in aqueous solutions, especially caustic solutions, as HCl, we believe testing for a single HAP (HCl) will demonstrate compliance with the requirement to reduce 90 percent of the HAP entering the control device.

However, some sources do not use chlorinated fire retardants in their foam. These sources would only emit HCN. Unfortunately, an EPA test method for HCN does not exist at this time. Therefore, the proposed rule would require sources to submit a proposed test method for the Administrator's approval prior to conducting the test. While we plan to develop an HCN method for inclusion in the final rule, we request your comments on potential test methods.

The General Provisions (at § 63.7(e)(3)) require that each test consist of at least three separate test runs. The proposed NESHAP adopt this requirement. Further, the proposed NESHAP require that each test run be at least 1 hour long.

In order to assure continuous compliance with the new source emissions limit for flame lamination operations, we are proposing to require the use of continuous parameter monitoring systems to monitor the pH of the scrubber effluent, the scrubber liquid flow rate, and, if a venturi scrubber is used, pressure drop. Continuous compliance would be demonstrated by these monitored parameters staying within the operating

limits, which would be established based on monitoring conducted during the initial performance test. These parameters were chosen to demonstrate continuous compliance because they are the best indicators of continued performance of scrubber control efficiency.

We considered requiring the use of HCl and HCN continuous emission monitoring systems (CEMS), but rejected that option. We were unable to identify any CEMS for HCN, which leaves parametric monitoring of the scrubber to demonstrate compliance as the only option. While there are readily available HCl CEMS, the cost of these compared to the cost of the control device is unreasonable. We calculated the capital cost for a venturi scrubber on a new or reconstructed flame lamination source to be approximately $58,000, with an annualized capital cost of $8,300. In contrast, the total cost to install and operate an extractive-based CEMS to monitor the efficiency of the scrubber is at least $215,600, with annualized costs of nearly $61,000 to monitor HCl. Use of Fourier Transform Infrared Spectroscopy (FTIS) is even more expensive (i.e., up to $271,900 capital cost and $104,600 annualized costs.) In contrast, the capital costs for parametric monitoring devices and a data recording device would be less than $10,000 per facility.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the proposed notification, recordkeeping, and reporting requirements based on requirements specified in the NESHAP General Provisions (40 CFR part 63, subpart A). As with the proposed initial and continuous compliance requirements, these requirements were adopted for flexible polyurethane foam fabrication plants to be consistent with other part 63 NESHAP.

IV. Summary of Environmental, Energy, Cost, and Economic Impacts

A. What Are the Air Quality Impacts?

We estimate that current HAP emissions from loop slitter adhesive users are essentially zero because of changes in adhesive composition as a result of the OSHA PEL for methylene chloride. Therefore, we do not expect any decreases from this subcategory resulting from the proposed NESHAP.

Nationwide baseline emissions from the flame lamination subcategory are 58.8 tpy HCl, 10.3 tpy HCN, and 3.0 tpy TDI, for a total of 72.1 tpy HAP. We have not proposed any emissions limitations for existing flame lamination sources; therefore, we do not expect any emissions reductions from the baseline. However, the proposed NESHAP should result in a 90 percent reduction in HCl and HCN emissions from any new or reconstructed major sources. We calculate that a typical flame lamination operation emits 7.3 tpy of combined HCl and HCN, which would be reduced by 90 percent, for a total HAP emission reduction of 6.5 tpy from each new or reconstructed affected source. In addition, particulate matter emissions from flame lamination would also be reduced by any scrubber used to reduce the HAP emissions.

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on our analysis, we calculate that 64,700 gallons per year of wastewater will be generated by a new or reconstructed flame lamination source. The annual cost to treat this wastewater is less than $250 per year. We do not expect that there will be any significant adverse non-air health, environmental, or energy impacts associated with the proposed NESHAP for flexible polyurethane foam fabrication plants.

C. What Are the Cost and Economic Impacts?

We have calculated no capital costs for loop slitter adhesive users and existing flame laminators because we are proposing that these sources only be subject to reporting and recordkeeping costs. We estimate that up to three new flame laminators may be built in the next 3 years, but only one of these would be a major source subject to the proposed NESHAP. This source would face capital costs associated with installation of a control device (e.g., scrubber) and monitoring equipment. The control and monitoring device capital cost is approximately $65,000, and the annualized capital cost is approximately $9,300. The average annual costs include labor costs associated with monitoring, reporting, and recordkeeping requirements and the operation, and maintenance of the required control equipment is approximately $63,000 per year. In contrast, total industry revenues in 1997 (based on a North American Industry Classification System code of 32615) were approximately $6.7 billion. Given that only one source will be affected and the cost of control is a very small portion of industry revenues, the economic impacts associated with this proposed rule are considered to be negligible.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

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

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed rule.

The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because the proposed rule applies to affected sources in the flexible polyurethane foam fabrication industry, not to States or local governments. Nor will State law be preempted or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise), it did consult with State governments during development of this proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, because we are not aware of any Indian tribal governments or communities affected by the proposed rule. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

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 we have 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based solely on technology performance. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Additionally, this proposed rule is not ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total annual cost of this proposed rule for any 1 year has been estimated at $60,000 per year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of today's proposed NESHAP on small entities, a small entity is defined based on definitions provided by the Small Business Administration (SBA). Based on the SBA definitions, there are no small entities affected by the proposed NESHAP. Pursuant to the provisions of 5 U.S.C. 605(b), we hereby certify that the proposed NESHAP, if promulgated, will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2027.01), and you may obtain a copy from Sandy Farmer by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 3,634 labor hours, and the annual average burden is 1,211 labor hours. The labor cost over the 3-year period is $154,399 or $51,466 per year. The annualized capital cost for monitoring equipment is $997. Annual operation and maintenance costs are $4,982 over 3 years, averaging $1,661 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping.

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 purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 8, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by September 7, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 4, 26A, 311, and a method to measure HCN (section 63.7(c)(2)(i)). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, nor a method to measure HCN. The search and review results have been documented and are placed in the docket (A–2000–43) for this proposed rule.

Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are incorporated by reference in EPA Method 311. One additional voluntary consensus standard was found in the search that is acceptable as an alternative to EPA Method 311. The voluntary consensus standard ISO 11890–2 Part 2, ''Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content—Gas Chromatographic Method'' is acceptable as an alternative for the measurement of HAP content of adhesives for the purposes of this proposed rule.

The search for emission measurement procedures identified eight other voluntary consensus standards applicable to this proposed rule. The EPA determined that six of these eight standards were impractical alternatives to EPA test methods for the purposes of this proposed rule. Therefore, EPA does not propose to adopt these standards today. The reasons for this determination for the six methods are discussed below.

The standard ISO 10780:1994, ''Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' is impractical as an alternative to EPA Method 2 in this proposed rule. This standard recommends the use of L-shaped pitots, which historically have not been recommended by EPA because the S-type design has large openings which are less likely to plug up with dust.

The standard ASTM D3464–2001, ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' is impractical as an alternative to EPA Method 2 for the purposes of this proposed rule primarily because applicability specifications are not clearly defined, e.g., range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard, limit EPA's ability to make a definitive comparison of the method in these areas.

The European standard EN 1911–1,2,3 (1998), ''Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text,'' is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26 or 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Methods 26 and 26A use an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The remaining two of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of this proposed rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3796–90 (Reapproved 1996), ''Standard Practice for Calibration of Type S Pitot Tubes,'' for EPA Method 2; and ASTM E337–84 (Reapproved 1996), ''Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),'' for EPA Method 4; and ASTM D3154–91 ''Standard Method for Average Velocity in a Duct (Pilot Tube Method),'' for EPA Methods 1, 2 2C, and 4.

The following two of the eight voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 1 (and possibly 2); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2. While we are not proposing to include these two voluntary consensus standards in today's action, the EPA will consider the standards when finalizing the rule.

The EPA takes comment on the compliance demonstration requirements in this proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why this proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A, was used).

Sections 63.8800 and 63.8802 of the proposed standard list the EPA testing methods included in the proposed rule. Under § 63.8 of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Flexible polyurethane foam fabrication operations, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 31, 2001.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart MMMMM to read as follows:

Subpart MMMMM—National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

What this Subpart Covers

Sec.

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63.8818 What reports must I submit and when?

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Other Requirements and Information

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Tables

Table 1 to Subpart MMMMM—Emission Limits
Table 2 to Subpart MMMMM—Operating Limits for New or Reconstructed Flame Lamination Affected Sources
Table 3 to Subpart MMMMM—Performance Test Requirements for New or Reconstructed Flame Lamination Affected Sources
Table 4 to Subpart MMMMM—Initial Compliance With Emission Limits
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Table 6 to Subpart MMMMM—Requirements for Reports
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What This Subpart Covers

§ 63.8780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted from flexible polyurethane foam fabrication operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.8782 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a flexible polyurethane foam fabrication plant site that operates a flame lamination affected source, as defined at § 63.8784 (b)(2), and that is located at, or is part of a major emission source of hazardous air pollutants (HAP) or that operates a loop slitter affected source, as defined at § 63.8784 (b)(1), that meets the criteria in paragraphs (a)(1) and (2) of this section.

(1) The loop slitter affected source uses one or more HAP-based adhesives at any time on or after [Date of publication of the final rule in the **Federal Register**].

(2) The loop slitter affected source is located at or is part of a major source of HAP.

(b) A flexible polyurethane foam fabrication plant site is a plant site where pieces of flexible polyurethane foam are bonded together or to other substrates using HAP-based adhesives or flame lamination.

(c) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

(d) This subpart does not apply to the following processes in paragraphs (d)(1) and (2) of this section:

(1) Processes that produce flexible polyurethane or rebond foam as defined in subpart III of this part.

(2) A research and development process.

§ 63.8784 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in flexible polyurethane foam fabrication.

(b) The affected sources are defined in this section in paragraph (b)(1), loop slitter adhesive use, and paragraph (b)(2), flame lamination, of this section.

(1) The loop slitter adhesive use affected source is the collection of all loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site.

(2) The flame lamination affected source is the collection of all flame lamination lines associated with the flame lamination of foam to any substrate at a flexible polyurethane foam fabrication plant site.

(c)(1) A new affected source is one that commences construction after August 8, 2001 and meets the applicability criteria of § 63.8782 at the time construction commences.

(2) If you add one or more flame lamination lines at a plant site where flame lamination lines already exist, the added line(s) shall be a new affected source and meet new source requirements if the added line(s) has the potential to emit 10 tons per year or more of any HAP or 25 tons or more per year of any combination of HAP.

(d) A reconstructed affected source is one that commences reconstruction after August 8, 2001 and meets the criteria for reconstruction as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.8786 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your new or reconstructed affected source before [Date of publication of the final rule in the **Federal Register**], then you must comply with the emission standards for new or reconstructed sources in this subpart no later than [Date of Publication of the Final Rule in the **Federal Register**].

(2) If you start up your new or reconstructed affected source after [Date of publication of the final rule in the **Federal Register**], then you must comply with the emission standards for new or reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing loop slitter affected source, you must comply with the emission standards for existing sources no later than 1 year after [Date of publication of the final rule in the **Federal Register**].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, the provisions in paragraphs (c)(1) and (2) of this section apply.

(1) A new affected source as specified at § 63.8784(c) or a reconstructed affected source as specified at § 63.8784(d) must be in compliance with this subpart upon startup.

(2) An existing affected source as specified at § 63.8784(e) must be in compliance with this subpart no later than 1 year after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.8816 according to the schedule in § 63.8816 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission standards in this subpart.

(e) If you have a loop slitter affected source, you must begin collecting data prior to the compliance date specified in paragraph (b) of this section as necessary to demonstrate that your adhesives contain no HAP. The types of data necessary are described in §§ 63.8802 and 63.8810.

Emission Limitations

§ 63.8790 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

General Compliance Requirements

§ 63.8794 What are my general requirements for complying with this subpart?

(a) For each loop slitter adhesive use affected source, you must be in compliance with the requirements in this subpart at all times.

(b) For each new or reconstructed flame lamination affected source, you

must be in compliance with the requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(c) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(d) During the period between the compliance date specified for your new or reconstructed flame lamination affected source in § 63.8786, and the date upon which continuous compliance monitoring systems have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(e) For each new or reconstructed flame lamination affected source, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(f) For each monitoring system required in this section for new or reconstructed flame lamination sources, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements in paragraphs (f)(1) through (3) of this section.

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(g) In your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (g)(1) through (3) of this section.

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.8804;

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c),(e)(1), and (e)(2)(i).

Testing and Initial Compliance Requirements

§ 63.8798 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For each loop slitter affected source, you must conduct the initial compliance demonstration by the compliance date that is specified for your source in § 63.8786.

(b) For each new or reconstructed flame lamination affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8786 and according to the provisions in § 63.7(a)(2).

§ 63.8800 What performance tests and other procedures must I use to demonstrate compliance with the emission limit for flame lamination?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions in Table 3 of this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e) You must determine the percent reduction of HAP emissions during the performance test according to paragraphs (e)(1) through (3) of this section.

(1) If you use chlorinated fire retardant foams, determine the percent reduction of hydrochloric acid (HCl) to represent HAP emissions from the source. If you do not use chlorinated fire retardant foams, determine the percent reduction of hydrogen cyanide (HCN) to represent HAP emissions from the source.

(2) Calculate the concentration of HAP at the control device inlet and at the control device outlet using the procedures in the specified test method.

(3) Compare the calculated HAP concentration at the control device inlet to the calculated HAP concentration at the control device outlet to determine the percent reduction over the period of the performance test, using equation 1 of this section:

$$R = \frac{\sum_{i=1}^{n} E_{inlet,\,i} - \sum_{i=1}^{n} E_{outlet,\,i}}{\sum_{i=1}^{n} E_{inlet,\,i}} (100) \qquad \text{[Eq. 1]}$$

Where:

R = Efficiency of control device, percent.

$E_{inlet,\,i}$ = HAP concentration of control device inlet stream for test run i, mg/dscm.

$E_{outlet,\,i}$ = HAP concentration of control device outlet stream for test run i, mg/dscm.

n = Number of runs conducted for the performance test.

(f) You must also meet the requirements in paragraphs (f)(1) and (2) of this section.

(1) Conduct the performance tests using foams that are representative of foams typically used at your flame lamination affected source. If you use foams containing chlorinated fire retardants, you must conduct the performance tests using these foams.

(2) Establish all applicable operating limits that correspond to the control system efficiency as described in Table 3 to this subpart.

§ 63.8802 What methods must I use to demonstrate compliance with the emission limitation for loop slitter adhesive use?

To determine the HAP content in the adhesive used at your loop slitter affected source, use EPA Method 311 of appendix A of 40 CFR part 63, an approved alternative method, or any other reasonable means for determining the HAP content of your adhesives. Other reasonable means include, but are not limited to, a material safety data sheet (MSDS), provided it contains

appropriate information; a certified product data sheet (CPDS); or a manufacturer's hazardous air pollutant data sheet. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

§ 63.8804 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.8800(f)(2) to monitor, you must install, operate, and maintain each continuous parameter monitoring system (CPMS) according to the requirements in § 63.8794(f) and (g) and in paragraphs (a)(1) through (6) of this section.

(1) You must operate your CPMS at all times that the process is operating.

(2) You must collect data from at least four equally spaced periods each hour.

(3) For at least 75 percent of the hours in a 24-hour period, you must have valid data (as defined in your site-specific monitoring plan) for at least four equally spaced periods each hour.

(4) For each hour that you have valid data from at least four equally spaced periods, you must calculate the hourly average value using all valid data.

(5) You must calculate the daily average using all of the hourly averages calculated according to paragraph (a)(3) of this section for the 24-hour period.

(6) You must record the results for each inspection, calibration, and validation check as specified in your site-specific monitoring plan.

(b) For liquid flow monitoring devices such as various types of flow meters, including magnetic, mass, thermal, fluidic oscillating, vortex formation, turbine, and positive displacement, you must meet the requirements in paragraphs (a) and (b)(1) through (4) of this section.

(1) You must locate the flow sensor and other necessary equipment in or as close to a position that provides a representative flow;

(2) You must use a flow sensor with a minimum measurement uncertainty of 2 percent of the flow rate;

(3) You must conduct at least semiannually a flow sensor calibration check; and

(4) You must perform at least monthly inspections of all components for integrity, of all electrical connections for continuity, and of all mechanical connections for leakage.

(c) For pH monitoring devices, you must meet the requirements in paragraphs (a) and (c)(1) through (4) of this section.

(1) You must locate the pH sensor so that a representative pH is provided;

(2) You must ensure the sample is properly mixed and representative of the fluid to be measured;

(3) You must check the pH meter's calibration on at least two points every 8 hours of process operation; and

(4) You must perform at least monthly inspections of all components for integrity and of all electrical connections for continuity.

(d) For pressure monitoring using devices such as manometers, gauges, and transducers (including strain gauges), you must meet the requirements in paragraphs (a) and (d)(1) through (5) of this section.

(1) You must locate the pressure sensor(s) so that a representative pressure is provided;

(2) You must use a means to minimize or eliminate pulsating pressure, vibration, and internal and external corrosion;

(3) You must use a gauge with a minimum measurement uncertainty of one-half inch of water or a transducer with a minimum measurement uncertainty of 1 percent of the pressure range;

(4) You must conduct daily pressure tap pluggage checks and quarterly calibration checks with manometers for gauges or monthly calibration checks with manometers for transducers; and

(5) You must conduct calibrations more frequently after prolonged excursions above the sensor's maximum rated operating pressure range.

(e) If you install a control device that requires monitoring parameters other than those listed in paragraphs (b) through (d) of this section, you must install a CPMS in accordance with paragraph (a) of this section, and you must include the information in paragraphs (e)(1) through (3) of this section in your site-specific monitoring plan, which is required at § 63.8794(f).

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

§ 63.8806 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8800 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8816(e) through (h).

Continuous Compliance Requirements

§ 63.8810 How do I monitor and collect data to demonstrate continuous compliance?

(a) If you own or operate a loop slitter adhesive use affected source, you must meet the requirements in paragraphs (a)(1) and (2) of this section.

(1) Maintain a list of each adhesive and the manufacturer or supplier of each.

(2) Maintain a record of EPA Method 311, approved alternative method, or other reasonable means of HAP content determinations indicating the mass percent of each HAP for each adhesive.

(b) If you own or operate a new or reconstructed flame lamination affected source, you must meet the requirements in paragraphs (b)(1) through (3) of this section if you use a scrubber, or paragraph (b)(4) of this section if you use any other control device.

(1) Keep records of the daily average scrubber inlet liquid flow rate.

(2) Keep records of the daily average scrubber effluent pH.

(3) If you use a venturi scrubber, keep records of daily average pressure drop across the venturi.

(4) Keep records of operating parameter values for each operating parameter that applies to you.

(c) If you own or operate a new or reconstructed flame lamination affected source, you must meet the requirements in paragraphs (c)(1) through (4) of this section.

(1) Except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating. A monitoring malfunction includes, but is not limited to, any sudden, infrequent, not reasonably preventable failure of the monitoring device to provide valid data. Monitoring failures that are caused by

poor maintenance or careless operation are not malfunctions.

(2) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during monitoring malfunctions, associated repairs, or recorded during required quality assurance or control activities. Nor may such data be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) You must report each instance in which you did not meet each emission limit and each operating limit in Tables 1 and 2 to this subpart that apply to you. For new or reconstructed flame lamination affected sources, this includes periods of startup, shutdown, and malfunction. These instances are deviations from the operating limits in this subpart. These deviations must be reported according to the requirements in § 63.8818.

(c) For each new or reconstructed flame lamination affected source, you must operate in accordance with the startup, shutdown, and malfunction plan during periods of startup, shutdown, and malfunction.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(e) You also must meet the following requirements if you are complying with the adhesive use ban for loop slitter adhesive use described in § 63.8790(a).

(1) If, after you submit the Notification of Compliance Status, you use an adhesive for which you have not previously verified percent HAP mass using the methods in § 63.8802, you must verify that each adhesive used in the affected source meets the emission limit, using any of the methods in § 63.8802.

(2) You must update the list of all the adhesives used at the affected source.

(3) With the compliance report for the reporting period during which you used the new adhesive, you must submit the updated list of all adhesives and a statement certifying that, as purchased, each adhesive used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

Notification, Reports, and Records

§ 63.8816 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f), and 63.9(b) through (h) that apply to you.

(b) If you own or operate an existing loop slitter or flame lamination affected source, submit an initial notification no later than 120 days after [Date of publication of the final rule in the **Federal Register**].

(c) If you own or operate a new or reconstructed loop slitter or flame lamination affected source, submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.

(d) If you own or operate a new or reconstructed flame lamination affected source, submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you own or operate a loop slitter affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) within 60 days of the compliance date specified in § 63.8786.

(f) If you own or operate a new or reconstructed flame lamination affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) that includes the results of the performance test conducted according to the requirements in Table 3 to this subpart. You must submit the notification before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(g) For each new or reconstructed flame lamination affected source, the Notification of Compliance Status must also include the information in paragraphs (g)(1) and (2) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (for example, average pH).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Table 1 to this subpart.

(h) For each loop slitter adhesive use affected source, the Notification of Compliance Status must also include the information listed in paragraphs (h)(1) and (2) of this section.

(1) A list of each adhesive used at the affected source, its HAP content (percent by mass), and the manufacturer or supplier of each.

(2) A statement certifying that each adhesive that was used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

§ 63.8818 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each compliance report for new or reconstructed flame lamination affected sources semiannually according to paragraphs (b)(1) through (4) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8786 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.8786.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8786.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(c) For each loop slitter adhesive use affected source, you may submit annual compliance reports in place of semiannual reports.

(d) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraph (b)(1) through (4) of this section.

(e) The compliance report must contain the information in paragraphs (e)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(5) For each deviation from an emission limitation that occurs, the compliance report must contain the information specified in paragraphs (e)(5)(i) through (iii) of this section.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(iii) Information on the number, duration, and cause for CPMS downtime incidents, if applicable, other than downtime associated with zero and span and other daily calibration checks.

(f) The compliance report for a new or reconstructed flame lamination affected source must also contain the following information in paragraphs (f)(1) through (3) of this section.

(1) If you had a startup, shutdown or malfunction at your new or reconstructed flame lamination affected source during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(2) If there were no periods during which the CPMS was out-of-control in accordance with the monitoring plan, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(3) If there were periods during which the CPMS was out-of-control in accordance with the monitoring plan, the date, time, and duration of each out-of-control period.

(g) The compliance report for a loop slitter adhesive use affected source must also contain the following information in paragraphs (g)(1) and (2) of this section.

(1) For each annual reporting period during which you use an adhesive that was not included in the list submitted with the Notification of Compliance Status in § 63.8816(h)(1), an updated list of all adhesives used at the affected source.

(2) A statement certifying that each adhesive that was used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

(h) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(3)(iii)(A) or 40 CFR 71.6(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(3)(iii)(A) or 40 CFR 71.6(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit) in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(i) For each startup, shutdown, or malfunction during the reporting period that occurs at a new or reconstructed flame lamination affected source and that is not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown and malfunction report.

(1) An initial report containing a description of the actions taken for the event must be submitted by fax or telephone within 2 working days after starting actions inconsistent with the plan.

(2) A followup report containing the information listed in § 63.10(d)(5)(ii) must be submitted within 7 working days after the end of the event unless you have made alternative reporting arrangements with the permitting authority.

§ 63.8820 What records must I keep?

(a) You must keep a copy of each notification and report that you submit to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(b) For each new or reconstructed flame lamination affected source, you must also keep the following records specified in paragraphs (b)(1) through (4) of this section.

(1) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(2) Records of performance tests, as required in § 63.10(b)(2)(viii).

(3) Records of operating parameter values.

(4) Records of the date and time that each deviation started and stopped and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) For each loop slitter adhesive use affected source, you must keep the following records specified in paragraphs (c)(1) and (2) of this section.

(1) A list of each adhesive and the manufacturer or supplier of each.

(2) A record of EPA Method 311, approved alternative method, or other reasonable means of determining the mass percent of total HAP for each adhesive used at the affected source.

§ 63.8822 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8826 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8828 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) that cannot be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to requirements in §§ 63.8780, 63.8782, 63.8784, 63.8786, and 63.8790.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8830 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Adhesive means any chemical substance that is applied for the purpose of bonding foam to foam, foam to fabric, or foam to any other substrate, other than by mechanical means. Products used on humans and animals, adhesive tape, contact paper, or any other product with an adhesive incorporated onto it in an inert substrate shall not be considered adhesives under this subpart.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit); or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Flame lamination means the process of bonding flexible foam to one or more layers of material by heating the foam surface with an open flame.

Flame lamination line means the flame laminator and associated rollers.

HAP-based adhesive means an adhesive containing detectable HAP, according to EPA Method 311 or another approved alternative.

Loop slitter means a machine used to create thin sheets of foam from the large blocks of foam or ''buns'' created at a slabstock flexible polyurethane foam production plant.

Responsible official means responsible official as defined in 40 CFR 70.2.

Tables

TABLE 1 TO SUBPART MMMMM.—EMISSION LIMITS

[As stated in § 63.8790(a), you must comply with the emission limits in the following table:]

For . . .	You must . . .
1. Each existing, new, or reconstructed loop slitter adhesive use affected source.	Limit emissions from adhesives to zero HAP emissions.
2. Each new or reconstructed flame lamination affected source	Reduce HAP emissions by 90 percent.
3. Each existing flame lamination affected sources	There are no emission limits for existing flame lamination sources. However, you must submit an initial notification per § 63.8816(b).

TABLE 2 TO SUBPART MMMMM.—OPERATING LIMITS FOR NEW OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

[As stated in § 63.8790(b), you must comply with the operating limits in the following table:]

For each . . .	You must . . .
1. Scrubber	a. Maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. b. Maintain the daily average scrubber effluent pH within the operating range value established during the performance test. c. If you use a venturi scrubber, maintain the daily average pressure drop across the venturi within the operating range value established during the performance test.
2. Other type of control device to which flame lamination emissions are deducted.	Maintain your operating parameter(s) within the ranges established during the performance test and according to your monitoring plan.

TABLE 3 TO SUBPART MMMMM.—PERFORMANCE TEST REQUIREMENTS FOR NEW OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

[As stated in § 63.8800, you must comply with the requirements for performance tests for new or reconstructed flame lamination affected sources in the following table using the requirements in rows 1 through 5 of the table if you are measuring HCl and using a scrubber, row 6 if you are measuring HCN and using a scrubber, and row 7 if you are using any other control device:]

For each new or reconstructed flame lamination affected source, you must . . .	Using . . .	According to the following requirements . . .
1. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the inlet and outlet of the scrubber and prior to any releases to the atmosphere.
2. Determine velocity	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter.	
3. Determine gas molecular weight	Not applicable	Assume a molecular weight of 29 (after moisture correction) for calculation weight.
4. Measure mositure content of the stack gas	Method 4 in appendix A to part 60 of the stack this chapter..	
5. Measure HCl concentration if you use chlorinated fire retardants in the laminated foam.	Method 26A in appendix A to part 60 of this chapter.	a. Measure total HCl emissions and determine the reduction efficiency of the control device using Method 26A. b. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for Venturi scrubbers) over the period of the performance test by computing the average of all of the 15-minute readings.
6. Measure HCN concentration if you do not use chlorinated fire retardants in the laminated foam.	A method approved by the Administrator	a. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). Measure total HCN emissions and determine the reduction use efficiency of the control device. b. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for the venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) over the period of the performance test by computing the average of all of the 15-minute readings.
7. Determine control device efficiency and establish operating parameter limit with which you will demonstrate continuous compliance with the emission limit that applies to the source if you use any control device other than a scrubber.	EPA-approved methods and data from the continuous parameter monitoring system.	a. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). b. Collect operating parameter data as specified in the site-specific test plan.

TABLE 4 TO SUBPART MMMMM.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.8806, you must comply with the requirements to demonstrate initial compliance with the applicable emission limits in the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each new, reconstructed, or existing loop slitter adhesive use affected source.	Limit emissions from adhesives to zero HAP emissions.	You do not use HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source using a scrubber.	Reduce HAP emissions by 90 percent	The average HAP emissions, measured over the period of the performance test(s), are reduced by 90 percent.
3. Each new or reconstructed flame lamination affected source using any other control device.	Reduce HAP emissions by 90 percent	The average HAP emissions, measured over the period of the performance test(s), are reduced by 90 percent.

TABLE 5 TO SUBPART MMMMM.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

[As stated in § 63.8812(a), you must comply with the requirements to demonstrate continuous compliance with the applicable emission limits or operating limits in the following table:]

For . . .	For the emission limits or operating limits . . .	You must demonstrate continuous compliance by . . .
1. Each new, reconstructed, or existing loop slitter affected source.	Limit emissions from adhesives to zero HAP source.	Not using HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source using a scrubber.	a. Maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance. b. Maintain the daily average scrubber effluent pH within the operating range established during the performance test. c. Maintain the daily average pressure drop across the venturi within the operating range established during the performance test. If you use another type of scrubber (e.g., packed bed or spray tower scrubber), monitoring pressure drop is not required.	i. Collecting the scrubber inlet liquid flow rate and effluent pH monitoring data according to § 63.8804(a) through (c). ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.8804(a). iii. Maintaining each daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. iv. Maintaining the daily average scrubber effluent pH within the operating range established during the performance test. v. If you use a venturi scrubber, maintaining the daily average pressure drop across the venturi within the operating range established during the performance test.
3. Each new or reconstructed flame lamination affected source using any other control device.	Maintain the daily average operating parameters above the minimum value established during the performance test, or within the range established during the performance test, as applicable.	a. Collected the operating parameter data according the site-specific test plan. b. Reducing the data to one-hour averages according to the requirements in § 63.8804(a). c. Maintaining the daily average rate above the minimum value established during the performance test, or within the range established during the performance test, as applicable.

TABLE 6 TO SUBPART MMMMM.—REQUIREMENTS FOR REPORTS

[As stated in § 63.8818(a), you must submit a compliance report that includes the information in § 63.8818(e) through (g) as well as the information in the following table. Rows 1 and 3 of the following table apply to loop slitter affected sources. Rows 1 through 5 apply to flame lamination affected sources. You must also submit startup, shutdown, and malfunction reports according to the requirements in the following table if you own or operate a new or reconstructed flame lamination affected source.]

If . . .	Then you must submit a report or statement that:
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from the emission limitations during the reporting period.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CPMS were out-of-control during the reporting period.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.8818(e)(5).
4. There were periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan..	Contains the information in § 63.8818(f)(3).
5. There was a startup, shutdown, or malfunction at a new or reconstructed flame lamination affected source during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	Contains the information in § 63.8818(i).

TABLE 7 TO SUBPART MMMMM.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to Subpart MMMMM	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	

TABLE 7 TO SUBPART MMMMM.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to Subpart MMMMM	Explanation
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.8830.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements—applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved].	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources specifies that become major.	Yes	§ 63.8786 specifies compliance dates
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that specifies become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)–(2)	Operation and maintenance requirements.	Yes.	
§ 63.6(e)(3)	Startup, shutdown, and malfunction plans.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.6(f)(1)	Compliance except during SSM	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards.	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2).	Performance test dates	Yes	Except for loop slitter affected sources as specified in § 63.8798(a).
§ 63.7(a)(3)	Administrator's section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling.	Yes.	
§ 63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(3)	Applicability of monitoring requirements	Yes	Unless otherwise specified, all of § 63.8 applies only to new or reconstructed flame lamination sources. Additional monitoring requirements for these sources are found in §§ 63.8794(f) and (g) and 63.8804.
§ 63.8(a)(4)	Monitoring with flares	No	Subpart MMMMM does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system (CMS) operation and maintenance.	Yes	Applies as modified by §§ 63.8794(f) and (g).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.8794(g).
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart MMMMM does not have opacity or visible emission standards.

TABLE 7 TO SUBPART MMMMM.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to Subpart MMMMM	Explanation
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.8794(f).
§ 63.8(c)(7)–(8)	Out-of-control periods, including reorting	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by § 63.8794(f) and (g).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.8794(g).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.8816(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test.	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart MMMMM does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes.	
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 3.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.8820 and 63.8822 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Records related to startup, shutdown, and malfunction periods and CMS.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.8794(g).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.8818 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes.	
§ 63.10(d)(3)	Opacity or visible emissions observations.	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)(ii)	Results of COMS performance evaluations.	No	Subpart MMMMM does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(4)	Continuous opacity monitoring system data reports.	No	Subpart MMMMM does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability.	No	Facilities subject to subpart MMMMM do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.8828 lists those sections of subparts MMMMM and A that are not delegated.
§ 63.13	Addresses	Yes.	

TABLE 7 TO SUBPART MMMMM.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to Subpart MMMMM	Explanation
§ 63.14	Incorporation by reference	Yes	Subpart MMMMM does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality	Yes.	

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Federal Register

Wednesday,
August 8, 2001

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Environmental Protection Agency

Nutrient Science for Improved Watershed Management Program: Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

ENVIRONMENTAL PROTECTION AGENCY

National Center for Environmental Research; Nutrient Science for Improved Watershed Management Program: Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA and the National Center for Environmental Research, USEPA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: As a collaborative, interagency effort, the Cooperative State Research, Education, and Extension Service (CSREES) of the U.S. Department of Agriculture (USDA) and the National Center for Environmental Research (NCER) of the U.S. Environmental Protection Agency (USEPA) are soliciting proposals for the Nutrient Science for Improved Watershed Management Program. It is anticipated that the amount available for support of this program in fiscal year (FY) 2002 will be approximately $7,000,000 ($4,000,000 from NCER and $3,000,000 from CSREES). This joint request for proposals (RFP) is soliciting proposals that integrate research and extension activities aimed at addressing nutrient management issues at the watershed scale.

This notice sets out the objectives for the Nutrient Science for Improved Watershed Management Program projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a grant under this RFP.

By this notice, CSREES and NCER additionally solicit stakeholder input from any interested party regarding the FY 2002 Nutrient Science for Improved Watershed Management Program for use in the development of any future RFP's for this program.

DATES: Proposals must be received by close of business (COB) on November 6, 2001 (5 p.m. Eastern Time). Proposals received after this date will not be considered for funding. Comments regarding this RFP are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Nutrient Science for Improved Watershed Management; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Waterfront Centre, Room 1307; 800 9th Street, SW., Washington, DCY 20024; Telephone: (202) 401–5048.

Proposals sent via the U.S. Postal Service must be sent to the following address: Nutrient Science for Improved Watershed Management Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW, Washington, DC 20250–2245.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW., Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding.

FOR FURTHER INFORMATION: Applicants and other interested parties are encouraged to contact Dr. Michael P. O'Neill; National Program Leader for Water Quality; Natural Resources and Environment Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210; Telephone: (202) 205–5952; Fax: (202) 401–1706; email: moneill@reeusda.gov; or Ms. Barbara Levinson; National Center for Environmental Research (NCER); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone: (202) 564–6911; Fax: (202) 565–2448; e-mail: *levinson.barbara@epa.gov.*

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Stakeholder Input

CSREES and NCER are soliciting comments regarding this RFP from any interested party. These comments will be considered in the development of any future RFP for the program. Such comments will be used to meet the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. No. 105–185, as amended (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFP from persons who conduct or use agricultural research, education and extension for use in formulating future RFP's for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance (CFDA) for CSREES under CFDA No. 10.303, Integrated Research, Education, and Extension Competitive Grants Program and for NCER under CFDA No. 66.500, Environmental Protection Consolidated Research.

Part I—General Information

A. Legislative Authority and Background

The funding provided by CSREES for this program is governed by section 406 of AREERA (7 U.S.C. 7626). That section authorized the Secretary of Agriculture to establish an integrated research, education, and extension competitive grants program to provide funding for integrated, multifunctional agricultural research, extension, and education activities. Subject to the availability of appropriations to carry out this program, the Secretary may award grants to colleges and universities (as

defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), Pub. L. No. 95–113, as amended (7 U.S.C. 3103)) on a competitive basis for integrated research, education, and extension projects. Grants are to be awarded to address priorities in United States agriculture that involve integrated research, education, and extension activities.

CSREES administers the Integrated Research, Education, and Extension Competitive Grants Program by determining priorities in United States agriculture through Agency stakeholder input processes and in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. See 7 U.S.C. 7601(4) and 7626(c). Each RFP for the different program areas (e.g., Water Quality) is developed each fiscal year based on these established priorities and the resulting approaches to solving these critical agricultural issues. Although this overall grant program seeks to solve critical agricultural issues through an integration of research, education, and extension activities, a component of a RFP, depending on the priority being addressed and/or the stage at which the priority is being addressed, may request proposals that are research, education, or extension only, or a combination thereof. However, the overall, overarching approach to solving the critical agricultural issue, priority, or problem will be through an integration of research, education, and extension activities within each individual program area.

For FY 2001, Congress appropriated funds pursuant to section 406 of AREERA to CSREES for an integrated research, education, and extension competitive grants program in seven areas: Water Quality, Food Safety, National Agriculture Pesticide Impact Assessment, Food Quality Protection Act Risk Mitigation for Major Food Crop Systems, Food Quality Protection Act Implementation, Methyl Bromide Transition, and Organic Transition. H.R. Conf. Rep. No. 106–948, at 10–11 (2000). It is anticipated that the same level of funding will be available in FY 2002 for the Water Quality area. The goal of the CSREES Water Quality Program under this authority is to fund appropriate research, extension, and education efforts at the national, regional, state, and local levels necessary to protect or improve the quality of water resources in the United States and its territories, particularly in agriculturally managed watersheds to address the impacts of agricultural activities on those resources. Projects funded by CSREES should contribute to this goal through an integration of research and extension programs in natural or managed agricultural watersheds. The FY 2002 RFP's for the other program areas funded under the AREERA section 406 authority will be published in the **Federal Register** at a later date.

The funding provided by NCER is governed by separate statutory provisions. The Clean Water Act (CWA) of 1972, Pub. L. No. 92–240, as amended, was passed to restore and maintain the chemical, physical, and biological integrity of the Nations' waters. The Clean Air Act (CAA), Pub. L. No. 88–206, as amended, mandates USEPA to investigate, monitor, assess, and control nitrogen in its various forms. The CAA amendments of 1990, Pub. L. No. 104–316, mandate USEPA to reduce year-round nitrogen loadings to curb effects of acid deposition on aquatic and terrestrial ecosystems. Both Acts authorize research to meet their legislative mandates.

Grants by USEPA in this program will be awarded under the authority of section 104 of CWA.

B. Purpose, Priorities, and Fund Availability

Excessive nutrients have been linked to a wide variety of human health and environmental problems. These include lake acidification, soil degradation, hazardous algal blooms, dissolved oxygen problems in coastal waters, and forest declines, among others. If these complex problems are to be addressed, new integrative approaches that consider the management of multiple sources across multiple spatial and temporal scales must be developed and implemented. In order to pro-actively mitigate the nutrient over-enrichment problem, NCER and CSREES have come together to sponsor this solicitation. The outcome of this research will provide the scientific foundation for improved tools for managing and controlling nutrients by enhancing our understanding of the fate of nutrients from sources (i.e., atmospheric and terrestrial) through biogeochemical cycling in ecosystems to their effects on biological communities.

An extensive body of literature exists regarding nutrient pollution in the Nation's water bodies. There remains, however, a need to conduct basic research to identify substantial nutrient sources and processes in the Nation's watersheds at a variety of spatial and temporal scales and across a broad spectrum of geographic locations. Much of the past research focused on the examination of nutrient loads in specific water bodies, such as streams, rivers, lakes, groundwater and estuaries. However, much of this research has been conducted without detailed documentation of the interactions among terrestrial, atmospheric, and hydrologic components of the nutrient cycle. Moreover, these sources and processes that act to remove nutrients from the watershed system require investigation across entire watersheds at a variety of spatial and temporal scales. Unlike most previous research, new efforts must focus on the integration of nutrient dynamics across a watershed and the evaluation of linkages among sources, processes for removal of nutrients, and the overall quality of water resources in these watersheds.

Similarly, much of the past research focused on the utility of specific management practices to reduce nutrient inputs to streams, lakes, rivers, and groundwater. This work traditionally has been conducted on specific plots or stream reaches. Impacts of different management activities within the sub-basin need to be considered within the context of an entire watershed. Thus, research is needed to establish how land management strategies work to complement or counteract one another within a specific watershed.

Equally important to resolving watershed nutrient pollution is enhancing the community's understanding of environmental issues, building the capacity for communities to address these problems, developing tools, information and data to assist communities in addressing environmental problems, and ensuring communities have access to the most creditable available scientific information. For this competition, the proposals will demonstrate involvement of local governments and/or community groups from inception (developing the research questions and designing the project) to completion of the research project (analyzing and disseminating the results of research). Because nutrient management is fundamentally related to activities that occur in time and space, communication efforts (dissemination of results) that make use of Geographic Information Systems (GIS) or other graphical approaches to convey research findings are especially sought. All research projects funded through this solicitation must include innovative efforts to establish effective communication of scientific results to the appropriate audiences through outreach and extension efforts.

CSREES' highest priority is to fund research in agricultural watersheds.

NCER's interest lies in multiple use watersheds.

There is no commitment by CSREES or NCER to fund any particular proposal or to make a specific number of awards. It is anticipated that the participating agencies will have a total of approximately $7 million available for this Program in FY 2002 ($4 million from NCER and $3 million from CSREES). CSREES and NCER will fund awards separately.

C. Eligibility

Academic institutions and non-profit organizations are eligible to receive awards through this joint program. Details regarding specific eligibility for the two agencies are presented below.

1. CSREES Funds

The source of CSREES funds for the Nutrient Science for Improved Watershed Management Program is the Integrated Research, Education, and Extension Competitive Grants Program established pursuant to section 406 of AREERA. Under this program, proposals may be submitted by colleges and universities as defined in section 1404 of NARETPA. The terms ''college'' and ''university'' mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information). Eligible applicants may subcontract to organizations not eligible under these requirements. Please note that a research foundation maintained by a college or university is not eligible to receive an award under this program. Proposals received from research foundations will not be considered for CSREES funding.

2. NCER Funds

Academic and not-for-profit institutions located in the United States and state or local governments are eligible for NCER funds under all existing authorizations. Profit-making firms and Federal agencies and national laboratories funded by Federal agencies (*e.g.*, Federally-funded Research and Development Centers (FFRDC's)) are not eligible for NCER funds.

Federal employees are not eligible to serve in a principal leadership role on a grant. FFRDC employees may cooperate or collaborate with eligible applicants within the limits imposed by applicable legislation and regulations (40 CFR 30.20 *et seq*). They may participate in planning, conducting, and analyzing the research directed by the principal investigator, but may not direct projects on behalf of the applicant organization or principal investigator. The principal investigator's institution may provide funds through its grant from NCER to a FFRDC for research personnel, equipment, and other expenses directly related to research. However, salaries for permanent FFRDC employees may not be provided through this mechanism.

Federal employees may not receive salaries or in other ways augment their agency's appropriations through grants made by this program. However, Federal employees may interact with grantees so long as their involvement is not essential to achieving the basic goals of the grant. NCER encourages interaction between its own laboratory scientists and grant principal investigators for the sole purpose of exchanging information in research areas of common interest that may add value to their respective research activities. However, this interaction must be incidental to achieving the goals of the research under a grant. Interaction that is ''incidental'' is not reflected in a research proposal and involves no resource commitments.

The principal investigator's institution may also enter into an agreement with a Federal agency to purchase or utilize unique supplies or services unavailable in the private sector. Examples are the purchase of satellite data, census data tapes, chemical reference standards, analyses, or use of instrumentation or other facilities not available elsewhere, etc. A written justification of Federal involvement must be included in the application, along with an assurance statement from the Federal agency involved which commits it to supply the specified service.

D. Types of Proposals

In FY 2002, it is anticipated that most projects under the Nutrient Science for Improved Watershed Management Program will be submitted as new proposals. However, applicants who applied previously to the Integrated Research, Education, and Extension Competitive Grants Program—Water Quality and were not awarded grants may choose to submit a proposal to the Nutrient Science for Improved Watershed Management Program as a resubmission. Therefore, two types of proposals may be submitted:

(1) New proposal. This is a project proposal that has not been previously submitted to the Integrated Research, Education, and Extension Competitive Grants Program—Water Quality. All new proposals will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

(2) Resubmitted proposal. This is a proposal that had previously been submitted to the Integrated Research, Education, and Extension Competitive Grants Program—Water Quality but not funded. The resubmitted proposal should clearly indicate the changes that have been made in the project proposal. Further, a clear statement acknowledging comments from the previous reviewers, indicating revisions, rebuttals, etc., can positively influence the review of the proposal. Therefore, for resubmitted proposals, the investigator(s) must respond to the previous panel summary on no more than one page, titled ''RESPONSE TO PREVIOUS REVIEW,'' which is to be placed directly after the Project Summary as described in Part III—Preparation of a Proposal. Resubmitted proposals will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

E. Matching Requirements

1. CSREES Funds

(a) General Requirement

If a grant awarded with CSREES funds provides a particular benefit to a specific agricultural commodity, the grant recipient is required to provide funds or in-kind support to match the amount of the grant funds provided (7 U.S.C. 7626(d)(1)). See section 13.c. on ''Matching Funds'' under Part III, B, ''Content of Proposals'' for more details.

(b) Waiver

CSREES may waive the matching funds requirement specified in the above paragraph for a grant if CSREES determines that (a) the results of the

project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or (b) the project involves a minor commodity, the project deals with scientifically important research, and the grant recipient is unable to satisfy the matching funds requirement (7 U.S.C. 7626(d)(2)).

2. NCER Funds

NCER does not require matching funds.

F. Funding Restrictions

CSREES and NCER have determined that grant funds awarded under these authorities may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

Part II—Program Description

A. Project Types

Approximately $7,000,000 will be available for Nutrient Science for Improved Watershed Management Program proposals. The maximum total award is $750,000, with an annual funding limitation of $250,000. The project period may be one to three years in duration.

B. Program Area Description

CSREES and NCER seek proposals for research that will provide scientifically defensible methods for integrated management of nutrients within a watershed. The nutrients of interest for this solicitation are nitrogen and phosphorus. The intent of this solicitation is to develop methods suitable for managing watershed nutrients throughout the United States. However, proposals of more limited scope are anticipated. Such proposals are acceptable if they demonstrate ''proof of concept'' over large watershed areas and if the study design is able to address nutrient issues in disparate ecological settings.

The focus of this research should be on methods to identify and integrate all significant sources and sinks of nutrients within air-sheds and watersheds, across a variety of land cover types and land management activities. Methods are sought that will permit evaluation of linkages among nutrient sources, processes for nutrient removal, and the overall quality of water resources within watersheds. In addition, the research should result in methods for determining how air, water, and land management strategies for managing nutrients complement or negate one another within a specific watershed with respect to meeting water quality objectives. The research must also provide the basis for, and be integrated with, approaches for communicating results to land managers and the public through outreach and extension efforts. The ultimate focus and application of this research is the management of nutrients across a spectrum of spatial (nested watersheds: small to eco-regional) and temporal (daily, seasonal, inter-annual) scales. Consequently, proposals for research that enable estimation and visualization of the spatial and temporal dynamics of alternative nutrient management options are especially desired.

It is expected that projects will address at least two of the following questions and clearly identify their relationship to a management objective. For example, if the management objective were to calculate the total loading of nutrients into the Everglades from agricultural lands, but instead elucidated the denitrification processes in isolation, the proposal would be non-responsive. The questions are:

(1) What are the sources and magnitudes of nutrients (particularly nitrogen and phosphorous) entering watersheds and how do these sources and magnitudes vary with watershed size (small watershed to ecoregion), geographic location, and position within a watershed?

(2) What processes (ground and surface waters, terrestrial) control the biogeochemical cycling of nutrients to and through an ecosystem and how do these processes vary over space and through time?

(3) How do terrestrial, freshwater, and estuarine communities respond to changes in nutrient loads?

(4) What land management activities are responsible for measureable fluxes of nutrients into and out of watersheds and how can these activities be altered to improve the quality of water resources within a watershed?

(5) How do interactions between management practices with competing objectives affect the delivery of nutrients to streams, rivers, lakes, groundwater and estuaries and how can management practices be adapted to better control nutrient delivery across an entire watershed?

In addition to addressing two of the five questions presented above, all projects must include a description of how results will be communicated to land managers and the public through appropriate outreach and extension efforts. Projects also should address how the impacts of these outreach and extension efforts will be assessed in the project.

In research projects in which models are developed or applied, the grantee must provide, as part of the Quality Assurance Statement described in the Standard Instructions, information on how the quality of the data used for or produced by the models will be assured. Special attention to this need should be applied to the six points for consideration in the Quality Assurance Statement. Of particular importance will be the aspects of model development, such as software verification and validation, the need for quality control of data used for modeling, and assurance that information obtained by GIS and/or remote sensing is accurate and verifiable. Reviewers will be asked to critically evaluate this aspect of the application.

Part III—Preparation of a Proposal

The participating agencies have agreed to use the CSREES guidelines for proposal format (see below) and application kit. Other material may be required at the time of funding to facilitate the implementation of the award. Proposals that are funded by NCER must meet additional submission and reporting requirements at the time of award.

A. Program Application Materials

Program application materials are available at the Integrated Research, Education, and Extension Competitive Grants Program website *(http://www.reeusda.gov/integrated/)*. If you do not have access to the CSREES web page or have trouble downloading material, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the FY 2002 Nutrient Science for Improved Watershed Management Program. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. State that you want a copy of the Program Description and application materials (orange book) for the Fiscal Year 2002 Nutrient Science for Improved Watershed Management Program.

B. Content of Proposals

1. General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each

proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, Times Roman).

(b) Each page of the proposal, beginning with the Project Description and including the budget pages, required forms, and any appendices, should be numbered sequentially.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 14 copies (15 total) must be submitted in one package, along with 10 copies of the ''Project Summary'' as a separate attachment.

(d) If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal to prevent loss of meaning through poor quality reproduction.

2. Cover Page (Form CSREES–661)

Each copy of each grant proposal must contain an ''Application for Funding'', Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the ''Application for Funding'' form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (140-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as ''investigation of,'' ''research on,'' ''education for,'' or ''outreach that'' should not be used.

(b) Program to Which You Are Applying (Block 7). ''Nutrient Science for Improved Watershed Management Program.''

(c) Type of Award Request (Block 13). Check the block for ''new'' or ''resubmission.''

(d) Principal Investigator(s)/Project Director(s) (PI/PD) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processing. Listing multiple co-PI/PD's, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(e) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant Institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box ''03'' should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(f) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA or USEPA and other programs funded by CSREES or NCER to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES Program Director as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES or NCER; however, duplicate support for the same project will not be provided. Complete the ''Application for Funding,'' Form CSREES–661, in its entirety.

(g) One copy of the ''Application for Funding'' form must contain the signatures of the PI/PD(s) and authorized organizational representative for the applicant organization.

3. Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the cover page. The Table of Contents should contain page numbers for each component of the proposal. Page numbers should begin with the first page of the Project Description.

4. Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page which should be placed immediately after the Table of Contents and should not be numbered. The names and affiliated organizations of all PI/PD's and co-PI/PD's should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to regional, State, or local water quality efforts aimed at addressing nutrient management issues at the watershed. The importance of a concise, informative Project Summary cannot be overemphasized.

5. Response to Previous Review

This requirement only applies to ''Resubmitted Proposals'' as described under Part I, D, ''Types of Proposals.'' For these proposals, the investigator(s) must respond to the previous panel summary on no more than one page, titled ''RESPONSE TO PREVIOUS REVIEW,'' which is to be placed directly after the Project Summary. If desired, additional comments and responses to the previous panel summary may be included in the text of the Project Description, subject to the page limitation.

6. Project Description

The project description may not exceed 15 single-or double-spaced pages of written text and may not exceed a total of 20 pages after inclusion of figures and tables.

The Project Description must include all of the following:

a. Introduction: A clear statement of the long-term goal(s) and supporting objectives of the proposed activities should be included. Summarize the body of knowledge or other past activities which substantiate the need for the proposed project. Describe ongoing or recently completed significant activities related to the proposed project including the work of key project personnel. Preliminary data/information pertinent to the proposed project should be included. In addition, this section should include in-depth information on the following, when applicable:

(1) Estimates of the magnitude of the issues and their relevance to stakeholders, land managers, and the public;

(2) Role of the stakeholders in problem identification, planning, and

implementation and evaluation as appropriate; and

(3) Reasons for having the work performed at the proposing institution.

b. Objectives: Clear, concise, complete, and logically arranged statement(s) of specific aims of the proposed effort must be included in all proposals.

Projects should address at least two of the six questions identified in Part II, B, ''Program Area Description'' and clearly identify their relationship to the stated management objectives.

c. Methods: The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

(1) A description of stakeholder involvement in problem identification, planning, implementation and evaluation;

(2) A description of the proposed project activities in the sequence in which it is planned to carry them out;

(3) Techniques to be employed, including their feasibility and rationale for their use in this project;

(4) Kinds of results expected;

(5) Means by which extension and outreach activities will be evaluated;

(6) Means by which data will be analyzed or interpreted;

(7) Details of plans to communicate results to stakeholders, land managers and the public;

(8) Pitfalls that might be encountered; and

(9) Limitations to proposed procedures.

d. Cooperation and Institutional Units Involved: Cooperative, multi-institutional and multi-disciplinary applications are encouraged. Identify each institutional unit contributing to the project and designate the lead institution or institutional unit. Clearly define the roles and responsibilities of each institutional partner of the project team.

e. Facilities and Equipment: All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. All items of major equipment or instrumentation available for use or assignment to the proposed project should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

f. Project Timetable: The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

7. References

All references cited should be complete, including titles and all co-authors, and should conform to an accepted journal format.

8. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project and are limited to a total of two of the following: reprints (papers that have been published in peer reviewed journals) and preprints (manuscripts in press for a peer reviewed journal; these must be accompanied by a letter of acceptance from the publishing journal).

9. Quality Assurance Statement

For any project involving data collection or processing, conducting surveys, environmental measurements, and/or modeling, or the development of environmental technology (whether hardware-based or via new techniques) for pollution control and waste treatment, provide a statement on quality processes that will be used to assure that results of the research satisfy the intended project objectives. The statement must describe a quality system that complies with the requirements of ANSI/ASQC E4, Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs, and must not exceed two consecutively numbered, 8.5x11-inch pages of single-spaced standard 12-point type with 1-inch margins. This Statement should, for each item listed below, present the required information, reference the specific page and paragraph number of the Research Plan containing the information, or provide a justification as to why the item does not apply to the proposed research:

a. Discuss the activities to be performed or hypothesis to be tested and criteria for determining acceptable data quality.

Note: Such criteria may be expressed in terms of precision, accuracy, representativeness, completeness, and comparability or in terms of data quality objectives or acceptance criteria. Furthermore, these criteria must also be applied to determine the acceptability of existing or secondary data to be used in the project. In this context secondary data may be defined as data previously collected for other purposes or from other sources, including the literature, compilations from computerized data bases, or results from models of environmental processes and conditions.

b. Describe the study design, including sample type and location requirements, all statistical analyses that were or will be used to estimate the types and numbers of physical samples required, or equivalent information for studies using survey and interview techniques.

c. Describe the procedures for the handling and custody of samples, including sample collection, identification, preservation, transportation, and storage.

d. Describe the procedures that will be used in the calibration and performance evaluation of all analytical instrumentation and all methods of analysis to be used during the project. Explain how the effectiveness of any new technology will be measured and how it will be benchmarked to improve existing processes, such as those used by industry.

e. Discuss the procedures for data reduction and reporting, including a description of all statistical methods, with reference to any statistical software to be used, to make inferences and conclusions; discuss any computer models to be designed or utilized with associated verification and validation techniques.

f. Describe the quantitative and/or qualitative procedures that will be used to evaluate the success of the project, including any plans for peer or other reviews of the study design or analytical methods prior to data collection.

ANSI/ASQC E4, ''*Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs*,'' is available for purchase from the American Society for Quality, phone 1–800–248–1946, item T55. Only in exceptional circumstances should it be necessary to consult this document. A USEPA guidance document, *Guidance on Satisfying EPA Quality System Requirements for STAR Grants* (EPA QA/G–1STAR) is available for potential applicants which addresses in detail how to comply with ANSI/ASQC E4 for STAR grants. This may be found on the Internet at *http://www.epa.gov/ncerqa.*

10. Key Personnel

The following should be included, as applicable:

(a) The roles and responsibilities of each PI/PD and/or collaborator should be clearly described;

(b) An estimate of the time commitment involved for each PI/PD and/or collaborator, including current and pending projects; and

(c) Vitae of each PI/PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not Federal grant funds are

sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. A chronological list of all publications in *refereed journals* during the past *four (4) years,* including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Also list only those *non-refereed* publications that have *relevance* to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

11. Conflict-of-Interest List

A Conflict-of-Interest List must be provided for all individuals involved in the project (i.e., each individual submitting a vitae in response to item 10.(c) of this part). Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (a) All collaborators on projects within the past four years, including current and planned collaborations; (b) all co-authors on publications within the past four years, including pending publications and submissions; (c) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded; and (d) all thesis or postdoctoral advisees/advisors within the past four years (some may wish to call these life-time conflicts). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the personnel in the grant proposal. The Program Director must be informed of any additional conflicts-of-interest that arise after the proposal is submitted.

12. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. If the need for consultant services is anticipated, the proposal narrative should provide a justification for the use of such services, a statement of work to be performed, a resume or curriculum vita for each consultant, and rate of pay for each consultant. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR 3015.205, part of the USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from Sections 3019.40–.48 (''Procurement Standards'') and Appendix A (''Contract Provisions'') of 7 CFR Part 3019 should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

13. Budget (Form CSREES–55)

a. Budget Form

Prepare the budget, Form CSREES–55, in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget narrative to justify their budgets (see section b below.)

The following guidelines should be used in developing your proposal budget(s):

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES/NCER-Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (e.g., social security and retirement) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 (or lower depending on institutional policy) or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the budget narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the budget narrative.

5. Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. If travel is proposed, the destination, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR 3015.205(b)(4) for further guidance.

6. Publication Costs/Page Charges. Include anticipated costs associated with publications in a journal (preparing and publishing results including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) and audio-visual materials that will be produced. Photocopying and printing brochures, etc., should be shown in

Section I., ''All Other Direct Costs'' of Form CSREES–55.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university-or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the budget narrative. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services, telephone, facsimile, shipping costs, and fees necessary for laboratory analyses. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category. Form AD–1048 must be completed by each subcontractor or consultant and retained by the grantee.

9. Indirect Costs. When submitting a proposal, institutions should use their current Federal negotiated rate for indirect costs. Please note that pursuant to section 1462 of NARETPA (7 U.S.C. 3310), indirect costs for all competitive proposals funded by CSREES are capped at 19% of total Federal funds provided under the award. Therefore, awards made by CSREES for the Nutrient Science for Improved Watershed Management Program are subject to the 19% indirect costs limitation. (This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.) A method for calculating the maximum allowable amount of indirect costs for an CSREES award is by multipling total direct costs by 0.23456. To accommodate the differences in allowable indirect costs between CSREES and NCER, the applicant may be required at the time of award to submit a separate budget with indirect cost rates appropriate to each agency. If no rate has been negotiated, a reasonable dollar amount (equivalent to or less than 19% of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by CSREES.

b. Budget Narrative

All budget categories, excluding Indirect Costs, for which support is requested, must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper which should be placed immediately behind the Budget Form. For grants awarded with CSREES funds, explanations of matching funds or the lack thereof on commodity-specific projects also are to be included in this section.

c. Matching Funds

If a grant awarded with CSREES funds provides a particular benefit to a specific agricultural commodity, the grant recipient is required to provide funds or in-kind support to match the amount of grant funds provided.

If an applicant for CSREES funds concludes that matching funds are not required as specified under Part I, E, ''Matching Requirements,'' a justification should be included in the budget narrative. CSREES will consider this justification when ascertaining final matching requirements or in determining if required matching can be waived. See Section E1(b) of Part I—General Information. CSREES retains the right to make final determinations regarding matching requirements.

For those grants requiring matching funds as specified under Part I, E, proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circular A–21, Cost Principles for Educational Institutions, for further guidance and other requirements relating to matching and allowable costs.

Although NCER does not require matching funds, proposed budgets should provide matching funds (when applicable) so that awards will not be delayed should CSREES be the Funding Agency.

14. Current and Pending Support (Form CSREES–663)

All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which personnel (i.e., individuals submitting a vitae in response to 10.(c) of this subpart) identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA and USEPA Programs or agencies. Concurrent submission of identical or similar proposals to possible sponsors will not prejudice proposal review or evaluation by CSREES and NCER for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Note that the project being proposed should be included in the pending section of the form.

15. Assurance Statement(s), (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will involve the following:

a. Recombinant DNA or RNA Research

As stated in 7 CFR 3015.205 (b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the ''yes'' box in Block 19 of Form CSREES–661 (the Cover Page) and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES or NCER funds will be released.

b. Animal Care

Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES or NCER rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel identified in a proposal and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, Pub. L. No. 89–544, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary of USDA in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check ''yes'' in block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

c. Protection of Human Subjects

Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES or NCER rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the ''yes'' box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

16. Certifications

Note that by signing Form CSREES–661 the applicant is providing the certifications required by 7 CFR part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplaces, and 7 CFR part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the proposal since by signing Form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted with the application.

17. Compliance With the National Environmental Policy Act (NEPA) (Form CSREES–1234)

As outlined in 7 CFR Part 3407 (*i.e.,* the Cooperative State Research, Education, and Extension Service regulations implementing NEPA, Pub. L. No. 91–190, as amended), the environmental data for any proposed project is to be provided to CSREES so that the cooperating agencies may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form,'' must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of this proposal.

Even though a project may fall within the categorical exclusions, the agencies may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

The USEPA regulations implementing NEPA are found in 40 CFR part 6, Subpart G.

C. Submission of Proposals

1. When To Submit (Deadline Date)

Proposals must be received by COB on November 6, 2001 (5:00 p.m. Eastern Time). Proposals received after this date will not be considered for funding.

2. What To Submit

An original and 14 copies must be submitted. In addition submit 10 copies of the proposal's Project Summary. All copies of the proposals and the Project Summaries must be submitted in one package.

3. Where to Submit

Applicants are strongly encouraged to submit completed proposals via overnight mail or delivery service to ensure timely receipt by CSREES. The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Nutrient Science for Improved Watershed Management Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Waterfront Center, Room 1307; 800 9th Street, SW.; Washington, DC 20024; Telephone: (202) 401–5048.

Proposals sent via the U.S. Postal Service must be sent to the following address: Nutrient Science for Improved Watershed Management Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245.

D. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of proposal by letter.

Once the proposal has been assigned an identification number, please cite that number on all future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the Program Director.

Part IV—Review Process

A. General

Each proposal will be evaluated in a multi-part process. First, each proposal will be screened to ensure that it meets the administrative requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a peer review panel.

Peer review panel members will be selected based upon their training and experience in relevant scientific, education or extension fields taking into account the following factors: (a) The level of formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education and/or extension activities; (b) the need to include as peer reviewers experts from various areas of specialization within relevant scientific, education, and extension fields; (c) the need to include as reviewers other experts (e.g., producers, range or forest managers/operators, and consumers) who can assess the relevance of the proposals to targeted audiences and to program needs; (d) the need to include as peer reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations), and geographic locations; (e) the need to maintain a balanced composition of peer review groups with regard to minority and female representation and an equitable age distribution; and (f) the need to include members that can judge the effective usefulness to producers and the general public of each proposal.

Proposals rated highly by the peer reviewers are subjected to a programmatic review within the agencies to assure a balanced research portfolio. Proposals are selected for award on the basis of agency goals, technical merit, relevancy to agency research priorities, program balance, and budget.

B. Evaluation Criteria

Technical merit and relevance to program goals and potential impact will be evaluated for each proposal. Proposals must show evidence of strength in each of these areas to be rated highly for funding. Specific criteria for these proposal attributes are listed below.

(1) Technical merit of all aspects of the proposal, including research and extension components.

(a) Conceptual adequacy of overall approach;

(b) Extent to which proposed work addresses identified stakeholder needs;

(c) Conceptual adequacy of hypothesis or hypotheses on which plan is based;

(d) Suitability and feasibility of the methodology for conducting the work;

(e) Time allocated for attainment of objectives;

(f) Qualifications of project personnel;

(g) Institutional experience and competence in the identified area of work;

(h) Adequacy of available support personnel, equipment, and facilities;

(i) Extent to which proposed work integrates research with extension and outreach programs;

(j) Suitability and feasibility of the methodology for evaluating the effectiveness of extension and outreach activities; and

(k) Appropriateness of the Quality Assurance Plan outlined above (III.B.9).

(2) Relevancy to Program Goals and Potential Impact.

(a) Relationship of project objectives to national issues and objectives;

(b) Regional or national magnitude of problem addressed;

(c) Applicability to other watersheds or regions;

(d) Evidence of partnerships with other disciplines and institutions;

(e) Extent to which end users are involved in problem identification, planning, implementation and evaluation;

(f) Probability of success of the project; and

(g) Extent to which potential impact can be documented.

C. Conflicts-of-Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts-of-interest that may impact review or evaluation. For the purpose of determining conflicts-of-interest, the academic and administrative autonomy of an institution shall be determined by reference to the 2000 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2305.

Names of submitting institutions and individuals, as well as proposal content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular proposal.

Part V—Grant Awards

The Nutrient Science for Improved Watershed Management Program will be administered and managed as an interagency program involving both participating agencies throughout the entire process from development of the program announcement to the review, selection, and monitoring of awards. The interagency program managers will coordinate program administration activities such as review of periodic reporting of project evaluations and annual investigator team meetings.

CSREES and NCER will fund awards separately. The amount of each award will be determined jointly by CSREES and NCER and their representatives after the panel review process has been completed. Other material may be required prior to funding to facilitate the implementation of the award from participating agencies.

A. General

Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the awarding official as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted under this RFP shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the applicable participating agency assistance regulations.

B. Funding Mechanisms

The two mechanisms by which grants may be awarded are as follows:

(1) Standard grant. This is a funding mechanism whereby the Federal government agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) Continuation grant. This is a funding mechanism whereby the Federal government agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support will be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSREES or NCER, a grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

C. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFP, if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the awarding agency as part of the preaward process.

D. Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(1) Legal name and address of performing organization or institution to whom the Agency has awarded a grant under the terms of this request for proposals;

(2) Title of project;

(3) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(4) Identifying grant number assigned by the Funding Agency;

(5) Project period, specifying the amount of time the Funding Agency intends to support the project without requiring recompetition for funds;

(6) Total amount of financial assistance approved by the Agency during the project period;

(7) Legal authority(ies) under which the grant is awarded;

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(9) Other information or provisions deemed necessary by the granting agency to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will provide pertinent instructions or information to the grantee that is not included in the grant award document.

Part VI—Additional Information

A. Access To Review Information

Copies of summary reviews, not including the identity of reviewers, will be sent to the applicant PI/PD after the review process has been completed.

B. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) or NCER Grants Officer for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO or the grants officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding agency official prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO or the grants officer prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by the sponsoring agency without additional financial support, for such additional period(s) as the ADO or the Grants Officer determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon a prior request by the grantee and approval in writing by the ADO or Grants Officer, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO or the Grants Officer prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

C. Expected Program Outputs and Reporting Requirements

It is expected that outputs from successful projects will include: the development of watershed management partnerships, increased involvement of community and business sectors in watershed restoration and management, enhanced understanding of regionally-appropriate watershed management practices, increased coordination and partnership between universities and other Federal research and management agencies, and the establishment and maintenance of monitoring and

assessment activities including agricultural-water quality interface.

Successful projects should describe how implementation of the project will lead to overall improvements in the quality of water resources. Additionally, projects should describe all measureable outcomes and results and where appropriate, how they will evaluate the effectiveness of extension and outreach programs.

All projects selected for award will be required to deliver metadata and annual reports, a final summary report, a bibliography of publications and training materials resulting from support, and an impacts analysis. All reports will be geo-referenced to the watersheds where activities were performed. The final summary report must include total funding (Federal, matching and other) and a listing of students who worked on the project (report graduate degrees awarded and undergraduates trained).

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than 10 pages, using 12-point, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

All projects funded by CSREES under this program will be required to submit copies of the above reports and materials to the appropriate Regional Water Quality Coordination Project funded under the Integrated Research, Education, and Extension Competitive Grants Program pursuant to AREERA, section 406.

D. Applicable Federal Statutes and Regulations

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. For CSREES awards, applicable regulations are those cited in Part VI. D. of the FY 2001 Integrated Research, Education, and Extension Competitive Grants Program—Water Quality RFP published in the **Federal Register** on March 13, 2001 [66 FR 14774, 14786]. For NCER awards, the applicable regulations are cited in the section entitled REGULATION, GUIDELINES, AND LITERATURE in the Catalog of Federal Domestic Assistance under CFDA No. 66.500, Environmental Protection Consolidated Research.

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Agency determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, Pub. L. No. 104–13, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 30th day of July, 2001.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

Peter W. Preuss,

Director, National Center for Environmental Research, U.S. Environmental Protection Agency.

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S. 468/P.L. 107–23
To designate the Federal building located at 6230 Van Nuys Boulevard in Van Nuys, California, as the "James C. Corman Federal Building". (Aug. 3, 2001; 115 Stat. 198)

H.R. 1954/P.L. 107–24
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