6–28–95
Vol. 60 No. 124
Pages 33323–33676

federal register

Wednesday
June 28, 1995

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 575

RIN 3206–AF86

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to provide agencies with greater flexibility in paying recruitment and relocation bonuses and retention allowances (the 3 R's).

EFFECTIVE DATE: These regulations are effective July 28, 1995, except the amendment to 5 CFR 531.101, which is effective on the first day of the first applicable pay period beginning on or after January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On July 5, 1994, the Office of Personnel Management (OPM) published proposed revisions in the current regulations on recruitment and relocation bonuses and retention allowances (59 FR 34393). Interested parties were invited to comment for a 30-day period. OPM received comments from 13 agencies. Eleven agencies expressed support for the majority of the proposed changes and commented favorably on the increased flexibility provided by the proposed regulations. Comments included support for the overall goal of eliminating regulatory restrictions and administrative requirements in the spirit of the National Performance Review. Specific comments are discussed below along with a description of changes made in the final regulations.

Recruitment Bonuses

Service Agreement

One agency proposed that there be no minimum time limit for a service agreement for payment of a recruitment bonus. Another agency proposed keeping the 12-month minimum requirement and stated that it would be difficult for the agency to specify an agency requirement of 12 months if the regulations require a minimum of 6 months. We have not adopted either of these suggestions. The final regulations require a service agreement for a minimum period of 6 months, as proposed, in order to increase agency flexibility while maintaining a requirement for a reasonable minimum period. An agency may require a longer minimum period in its recruitment bonus plan.

Break in Service

One agency commented that the exception to the break-in-service requirement for a temporary appointment in paragraph (b) of the definition of ''newly appointed'' in 5 CFR 575.103 should not be limited to a temporary appointment that is not full-time and not the employee's principal employment. The agency also suggested that a 30-day special need appointment should be an exception to the break-in-service requirement. We have not adopted these suggestions. Allowing payment of a recruitment bonus following an appointment that is not full-time and not the employee's principal employment assists agencies in recruiting candidates for difficult-to-fill positions who have worked for the Federal Government for brief periods, such as physicians who have served as members of boards or advisory committees. However, an employee's acceptance of a full-time temporary appointment without a bonus, such as a special need appointment to begin work before the examining process can be completed, is an indication that a bonus is not needed as a recruitment incentive.

A technical correction has been made in the definition of ''newly appointed'' (§ 575.103) to reflect the recent consolidation of student employment programs into one program entitled the Student Educational Employment Program. (See 5 CFR 213.3202, as revised on December 16, 1994 (59 FR 64839).) Employment in a cooperative work-study program and employment under the Stay-in-School program have been removed and replaced by employment under the Student Educational Employment Program. The Student Educational Employment Program has two components—the Student Temporary Employment Program and the Student Career Experience Program. Employment under either program will not be considered service for purposes of the 90-day break-in-service rule.

An agency questioned whether the term ''principal employment'' in the last paragraph of the definition of ''newly appointed'' in § 575.103 refers to the majority of an individual's hours of employment or to the majority of an individual's income from employment. ''Principal employment'' refers to either the majority of hours of employment or income from employment. If an individual is engaged in Federal employment that accounts for a majority of his or her hours of employment or his or her income from employment, a recruitment bonus is not warranted, and such employment is not an exception to the 90-day break-in-service required to meet the definition of ''newly appointed.''

One agency said it was unclear whether the appointments listed in paragraph (b) of the definition of ''newly appointed'' in § 575.103 are allowed or precluded during the 90-day break-in-service requirement in that paragraph. We believe paragraph (b) clearly indicates that the appointments listed do not count as service in applying the break-in-service requirement for payment of a recruitment bonus.

Candidate Quality

An agency commented that recruitment bonuses should be available for difficult-to-fill positions *or* for highly-qualified candidates. In order to pay a recruitment bonus, it must be determined that an agency would be likely, in the absence of such a bonus, to encounter difficulty in filling the position, as required by 5 U.S.C. 5753(a). Therefore, the requirement that the candidate must be highly qualified is not sufficient, by itself, to justify the payment of a recruitment bonus. (Often, there are many highly qualified canadidates for positions that are not difficult to fill.)

An agency commented that the regulations should continue to require that a candidate be highly qualified for

payment of both recruitment and relocation bonuses. OPM has not adopted this recommendation. OPM has advised agencies to consider using the 3 R's before requesting any new or increased special salary rates because, unlike the 3 R's, special rates are basic pay and, in most situations, are more expensive than the 3 R's. As explained in the supplementary information for the proposed regulations, the requirement that a candidate be highly qualified is being removed because it has been cited as a barrier to considering the payment of recruitment bonuses before requesting new or increased special salary rates under 5 U.S.C. 5305. Provided that minimum qualification requirements established by OPM are met, agencies may tailor qualification requirements to meet the specific needs of the agency. Also, it is up to each agency to determine the level of candidate quality it should target when offering a recruitment or relocation bonus. Another agency questioned whether this change means that bonuses could be offered to candidates who are not well qualified. It does not. Any candidate offered a recruitment bonus must meet the qualification requirements established for the position and be among the best qualified in order to be selected.

Definition of Commuting Area

An agency commented that the definition of ''commuting area'' should not be removed from the regulations for recruitment bonuses because this term appears in the definition of ''involuntarily separated.'' We agree. The definition will not be removed.

Definition of ''Employee''

An agency commented that the definition of ''employee'' for purposes of recruitment bonuses was not clearly worded with respect to the coverage of certain individuals prior to commencement of their appointments. We have revised the definition to make clear that, prior to the starting date of actual employment, only those individuals who have accepted an offer to be newly appointed and who have signed the required service agreement are eligible to be paid recruitment bonuses.

Relocation Bonuses

Case-by-Case Determination

There are certain exceptions to the requirement for case-by-case approval of relocation bonuses, such as relocation of a major organizational unit for which continued operation must be ensured without undue disruption. The positions to which employees are relocated in this circumstance must be determined to be difficult to fill, as required by 5 U.S.C. 5753(a), in order to pay relocation bonuses. One agency requested that an exception be added for a facility that is closing. We have not adopted this suggestion. If a facility closes, employees of that facility who relocate to other positions are typically in various occupations and move to positions in various locations, including locations in the same commuting area. We believe this situation requires approval on a case-by-case basis because the positions in various occupations and locations to which these employees move may or may not meet the ''difficult-to-fill'' requirement in law and may or may not be in a different commuting area. A relocation bonus may be paid only to an employee who must relocate to accept a position in a different commuting area, and the employee must establish residence in the new commuting area before the bonus may be paid. (See §§ 575.201 and 575.205(c).)

Another agency requested an exception to the requirement for case-by-case approval on the basis of category during a reorganization. We have not adopted this suggestion because specificity is required to determine whether the position in a new commuting area to which an employee is moving is a position that is difficult to fill. Therefore, case-by-case approval is necessary.

Definition of ''Employee''

An agency commented that the definition of ''employee'' for purposes of relocation bonuses should include the phrase ''without a break in service.'' We agree and have revised the definition accordingly.

Service Agreement

An agency commented that, as in the case of recruitment bonuses, a minimum service agreement of 6 months also should be required for payment of a relocation bonus. We have not adopted this suggestion. The regulations already include a provision in § 575.206 allowing agencies to determine any length of time to be appropriate for a service agreement in the case of a relocation bonus paid for a temporary change in duty station. A 6-month minimum requirement would be more restrictive. Agencies, of course, may include criteria for establishing time periods in the agency plan for relocation bonuses.

Candidate Quality

An agency commented that the term ''high-quality employee'' should not be removed. We have not adopted this suggestion for the same reasons discussed above for recruitment bonuses.

Retention Allowances

Reason for Being Likely to Leave

Three agencies expressed concern that allowing retention allowances to be paid to employees who would leave the Federal service for any reason, including retirement, could be subject to abuse. We believe the previous provision that allowed payment only to employees who leave the Federal service for other employment was too narrow and that additional flexibility is warranted. An agency may limit the circumstances under which a retention allowance may be paid in the criteria in the agency's plan for payment of retention allowances.

One agency expressed concern that the proposed changes in the retention allowance regulations could lead to costly competition among Federal agencies. This is not the case, since the regulations continue to restrict payment of a retention allowance to employees who would otherwise leave the Federal service. Therefore, a retention allowance may not be paid to an employee who would leave one Federal agency to go to another Federal agency. A second agency commented that the regulations should allow payment of a retention allowance to an employee who is leaving for another Federal agency. A third agency commented that the regulations should allow payment of a retention allowance by an agency that is closing to an employee who would otherwise leave for another Federal agency, if the closing agency needs to retain the employee until the closure date because the employee's leaving would create an undue disruption in an essential function of the closing agency. We have not adopted these suggestions because we must be cognizant of the needs of every agency and do not believe it would be desirable to allow Federal agencies to enter into bidding wars.

An agency suggested that payment of a retention allowance to an employee who is planning to leave for retirement should be limited to 1 year because this would allow time for management to find a replacement. We have not included this limitation in the regulations because agencies already are authorized to limit the circumstances under which a retention allowance may be paid as a part of their own retention

allowance plans. Also, as required by § 575.306(c), agencies must review each determination to pay a retention allowance at least annually. To continue payment of a retention allowance, the conditions giving rise to the original determination to pay the allowance must still exist.

In view of the change allowing payment of a retention allowance when an employee would leave the Federal Government for a reason other than employment, an agency commented that, for consistency, we should remove a phrase in § 575.305(c)(1) referring to employment. We agree and have removed the phrase.

Aggregate Limitation

One agency commented that payment of a retention allowance should be allowed even if it would cause an employee's aggregate compensation to exceed the aggregate limit (level I of the Executive Schedule) at the end of the calendar year. We have not adopted this suggestion. The requirement in § 575.306(b) prohibiting authorization of a retention allowance that would cause the aggregate compensation of an employee to exceed the rate payable for level I of the Executive Schedule was established (1) to prevent accumulation of large amounts that would be carried over from one calendar year to the next and paid only upon separation or death, thus potentially obligating the expenditure of appropriated funds for several years in advance, and (2) because accumulation of a large amount that would be payable in a lump sum upon separation could be an incentive for an employee to leave.

Miscellaneous

Executive Order 12944 of December 29, 1994, deleted the San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area (CMSA) as an interim geographic adjustment area because locality pay rates implemented in January 1995 for the San Francisco CMSA are greater than interim geographic adjusted rates for 1995. Therefore, OPM is removing the San Francisco CMSA from the definition of *interim geographic adjustment area* in § 531.101.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking for the rule in 5 CFR 531.101 and making this rule effective retroactively. Executive Order 12944 of December 29, 1994, deleted the San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area as an interim geographic adjustment area effective on the first day of the first applicable pay period beginning on or after January 1, 1995. The amendment to 5 CFR 531.101 is being made effective on the effective date of the Executive order.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Law enforcement officers, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending parts 531 and 575 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR, 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR 1993 Comp., p. 682.

2. In § 531.101, the definition of interim geographic adjustment area is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Interim geographic adjustment area means either of the following Consolidated Metropolitan Statistical Areas (CMSA's), as defined by the Office of Management and Budget (OMB):

(a) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA; or

(b) Los Angeles-Riverside-Orange County CA.

* * * * *

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

3. The authority citation for part 575 continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) 104 Stat. 1462 and 1466, respectively; E.O. 12748, February 1, 1991, 3 CFR, 1992 Comp. p. 316.

4. Section 575.101 is revised to read as follows:

§ 575.101 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a recruitment bonus of up to 25 percent of the annual rate of basic pay to a newly appointed employee, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

5. In § 575.103, the definitions of *employee* and *newly appointed* are revised to read as follows:

§ 575.103 Definitions.

* * * * *

Employee means—

(a) An employee in or under an agency who is newly appointed; or

(b) An individual not yet employed who has received a written offer to be newly appointed and has signed a written service agreement in accordance with § 575.106 prior to payment of the recruitment bonus.

* * * * *

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government; or

(b) An appointment as an employee of the Federal Government following a break in service of at least 90 days from the candidate's last period of Federal employment, other than—

(1) Employment under the Student Educational Employment Program under § 213.3202;

(2) Employment as a law clerk trainee under § 213.3102(e) of this chapter;

(3) Employment while a student during school vacations under a short-term temporary appointing authority;

(4) Employment under a provisional appointment designated under

§ 316.403 if the new appointment is permanent and immediately follows the provisional appointment; or

(5) Employment under a temporary appointment that is neither full-time nor the principal employment of the candidate.

* * * * *

6. In § 575.104, paragraphs (b)(2), (c)(1), and (c)(2) (i) and (iii) are revised to read as follows:

§ 575.104 Agency recruitment bonus plans; higher level review and approval; and criteria for payment.

* * * * *

(b) * * *

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria for offering recruitment bonuses in advance and authorize the recommending official to offer a recruitment bonus (in any amount within a pre-established range) to any candidate without further review or approval.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Such a determination shall be made before the employee actually enters on duty in the position for which he or she was recruited. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future and may make the required written determination to offer a recruitment bonus on a group basis.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor-market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future;

* * * * *

7. Section 575.105 is revised to read as follows:

§ 575.105 Payment of recruitment bonus.

A recruitment bonus shall be calculated as a percentage of the employee's annual rate of basic pay (not to exceed 25 percent) and paid as a lump sum. It shall not be considered part of an employee's rate of basic pay for any purpose.

8. Section 575.106 is revised to read as follows:

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or successor agency in the event of a transfer of function).

(b) The minimum period of employment to be established under a service agreement for a recruitment bonus shall be 6 months.

9. Section 575.108 is revised to read as follows:

§ 575.108 Internal monitoring.

Each agency shall monitor the use of recruitment bonuses to ensure that its recruitment bonus plan conforms to the requirements established under this subpart and that the payment of recruitment bonuses conforms to the criteria established under this subpart.

10. Section 575.201 is revised to read as follows:

§ 575.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5753, which authorizes payment of a relocation bonus of up to 25 percent of the annual rate of basic pay to an employee who must relocate to accept a position in a different commuting area, provided there is a determination that, in the absence of such a bonus, difficulty would be encountered in filling the position.

11. In § 575.203, the definitions of *employee* and *service agreement* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Employee means an employee in or under an agency who is appointed without a break in service to a position in a different commuting area or whose duty station is changed permanently or temporarily to a different community area.

* * * * *

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency at the new duty station to which relocated in return for payment of a relocation bonus.

12. In § 575.204, paragraphs, (c)(1), (c)(2)(i), (c)(2)(iii), and (d) are revised to read as follows:

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

* * * * *

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. An agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

(2) * * *

(i) The success of recent efforts to recruit candidates for similar positions, including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

(iii) Labor market factors that may affect the ability of the agency to recruit candidates for similar positions now or in the future; and

* * * * *

(d) *Exceptions to case-by-case approval.* The head of an agency may waive, for a specified period of time, the case-by-case approval requirement for any employee whose rating of record is at least Level 3 (''Fully Successful'' or equivalent), when—

(1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of the agency determines that relocation bonuses are necessary to ensure the agency's ability to retain employees subject to such an agreement; or

(2) A major organizational unit of the agency is relocated to a different commuting area, and the head of the agency determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

13. In § 575.205, paragraphs (a) and (b) are revised to read as follows:

§ 575.205 Payment of relocation bonus.

(a) A relocation bonus shall be calculated as a percentage of the employee's annual rate of basic pay and paid as a lump sum. Except as provided in paragraph (b) of this section, the amount of a relocation bonus may not exceed 25 percent of the employee's annual rate of basic pay. It shall not be considered part of an employee's rate of basic pay for any purpose.

(b) The amount of a relocation bonus may not exceed the greater of $15,000 or

25 percent of a law enforcement officer's annual rate of basic pay in the case of—

(1) A law enforcement officer, as defined in § 550.103 of this chapter, with respect to whom the provisions of chapter 51 of title 5, United States Code, apply;

(2) A member of the United States Secret Service Uniformed Division;

(3) A member of the United States Park Police;

(4) A special agent within the Diplomatic Security Service;

(5) A probation officer (referred to in section 3672 of title 18, United States Code; and

(6) A pretrial services officer (referred to in section 3153 of title 18, United States Code).

* * * * *

14. Section 575.206 is revised to read as follows:

§ 575.206 Service agreement.

Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified period of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

15. Section 575.208 is revised to read as follows:

§ 575.208 Internal monitoring.

Each agency shall monitor the use of relocation bonuses to ensure that its relocation bonus plan conforms to the requirements established under this subpart and that the payment of relocation bonuses conforms to the criteria established under this subpart.

16. In § 575.302, paragraph (c) is revised to read as follows:

§ 575.302 Delegation of authority.

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

* * * * *

17. In § 575.303, the definition of *employee* is revised to read as follows:

§ 575.303 Definitions.

* * * * *

Employee means an employee in or under an agency.

* * * * *

18. In § 575.304, paragraphs (a) and (b) are revised to read as follows:

§ 575.304 Conditions for payment.

(a) An agency may not begin payment of a retention allowance during a period of employment established under any service agreement required by payment of a recruitment bonus under subpart A of this part or relocation bonus under subpart B of this part. After retention allowance payments have commenced, a relocation bonus may be paid without affecting the payment of a retention allowance.

(b) An agency may pay a retention allowance to an employee if the employee is likely to leave the Federal service for any reason.

* * * * *

19. In § 575.305, paragraph (c)(1) is revised to read as follows:

§ 575.305 Agency retention allowance plans; higher level review and approval; and criteria for payment.

* * * * *

(c) *Criteria for payment.* (1) Each allowance paid under this subpart shall be based on a written determination that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that, in the absence of such an allowance, the employee would be likely to leave the Federal service.

* * * * *

20. In § 575.306, a new paragraph (d) is added to read as follows:

§ 575.306 Payment of retention allowance.

* * * * *

(d) A retention allowance is not pay for purposes of a lump-sum payment for annual leave under 5 U.S.C. 5551 or 5552.

21. Section 575.308 is revised to read as follows:

§ 575.308 Internal monitoring.

Each agency shall monitor the use of retention allowances to ensure that its retention allowance plan conforms to the requirements established under this subpart and that the payment of retention allowances conforms to the criteria established under this subpart.

[FR Doc. 95–15713 Filed 6–27–95; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 630

RIN 3206–AG48

Absence and Leave; SES Annual Leave Accumulation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules governing annual leave accumulation for members of the Senior Executive Service (SES). SES members are now subject to a 90-day (720-hour) maximum limitation on the amount of annual leave that may be carried over from one leave year to the next.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On December 21, 1994, the Office of Personnel Management (OPM) issued interim regulations (59 FR 65704) implementing section 201of the Government Management Reform Act of 1994 (Pub. L. 103–356, enacted October 13, 1994). Section 201 amended 5 U.S.C. 6304(f) to provide a 90-day (720-hour) limit on the amount of annual leave a member of the Senior Executive Service (SES) may carry over from one leave year to the next. Section 201 also contained a grandfather clause to allow SES members who had accumulated more than 90 days (720 hours) of annual leave as of the first day of the first pay period beginning after October 13, 1994, to retain the higher amount as a personal leave ceiling. The personal leave ceiling is the maximum amount of accrued annual leave an affected SES member may carry over from one leave year to the next. The personal leave ceiling is subject to reduction under 5 U.S.C. 6304(c) if the SES member uses more leave than he or she earns in a leave year.

The 60-day comment period ended on February 21, 1995. OPM received one comment from an agency that requested information on how to apply the statutory and regulatory limitations on annual leave accrual for individuals entering the SES. We agree that this information is necessary and have added this information to 5 CFR 630.301(b). (Previously, this information was provided in former FPM Supplement 920–1, Operations Handbook for the Senior Executive Service, which expired on December 31, 1994.)

Employees in non-SES positions are subject to a 30-day or 45-day maximum annual leave ceiling under 5 U.S.C. 6304 (a), (b), or (c), as appropriate. When an employee in a non-SES position moves to a position in the Senior Executive Service, any annual leave accumulated prior to movement remains to the employee's credit. Annual leave in excess of the 30-day or 45-day leave ceilings that accrued prior to the employee's entry into the SES and that is not used by the beginning of the next leave year is subject to forfeiture. Annual leave that is not in excess of the

30-day or 45-day maximum limitations and any annual leave accrued while serving in the SES is carried forward and becomes subject to the 90-day maximum limitation on accrued annual leave for SES members.

Example: A GS–15 employee who has 300 hours of accumulated annual leave (i.e., 60 hours in excess of the 240-hour (30-day) leave ceiling) is appointed to an SES position on June 14, 1995. The employee earns 100 additional hours of annual leave in the SES before the end of the 1995 leave year. If the SES member uses only 40 of the 60 hours of excess annual leave during the remainder of the 1995 leave year, his or her leave balance at the beginning of the 1996 leave year will be 340 hours (the maximum 240 hours carried over as a GS–15 employee, plus the 100 hours earned while in the SES). The remaining 20 hours of excess leave will be forfeited at the beginning of the 1996 leave year. If the SES member uses more than 60 hours of excess annual leave (e.g., 80 hours) during the remainder of the 1995 leave year, his or her leave balance at the beginning of the 1996 leave year will be 320 hours (the maximum 240 hours carried over as a GS–15 employee, plus the 100 hours earned while in the SES, minus the 20 hours of leave used above the 60 hours of excess annual leave).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Absence and leave.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722 and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566, 102 Stat. 2834 and 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–566 and 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart C—Annual Leave

2. In § 630.301, paragraph (b) is revised to read as follows:

§ 630.301 Annual leave accumulation—Senior Executive Service.

* * * * *

(b) When an employee in a position outside of the Senior Executive Service moves to a position in the Senior Executive Service, any annual leave accumulated prior to movement shall remain to the employee's credit.

(1) Annual leave accumulated prior to movement to the Senior Executive Service that is in excess of the amount allowed for the former position by 5 U.S.C. 6304 (a), (b), or (c) and that is not used by the beginning of the first full biweekly pay period in the next leave year shall be subject to forfeiture.

(2) If an employee serves less than a full pay period under an appointment in the Senior Executive Service, only that portion of accrued annual leave that is attributable to service in the Senior Executive Service shall be subject to the 90-day (720-hour) limitation on accumulation of annual leave provided in paragraph (a) of this section. Annual leave accrued during the remainder of the pay period shall be subject to the limitations in 5 U.S.C. 6304(a), (b), and (c), as appropriate.

* * * * *

[FR Doc. 95–15535 Filed 6–27–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

[FV–94–705FR]

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This amendment will expand the scope and applicability of the Department of Agriculture's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Fluid Milk Promotion Act of 1990; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993; the Lime Research, Promotion, and Consumer Information Act of 1990, as amended; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Pecan Promotion and Research Act of 1990; the Sheep Promotion, Research, and Information Act of 1994; and the Soybean Promotion, Research, and Consumer Information Act.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, D.C. 20090–6456, telephone: (202) 720–5976.

SUPPLEMENTARY INFORMATION: The Fluid Milk Promotion Act of 1990 [Pub. L. 101–624, 7 U.S.C. 6401–6417]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993 [Pub. L. 103–190, 7 U.S.C. 6801–6814]; the Lime Research, Promotion, and Consumer Information Act of 1990, as amended, [Pub. L. 101–624, 7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [Pub. L. 101–624, 7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [Pub. L. 101–624, 7 U.S.C. 6001–6013]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; and the Soybean Promotion, Research, and Consumer Information Act [Pub. L. 101–624, 7 U.S.C. 6301–6311]; each authorizes the assessment of civil penalties and the issuance of cease and desist orders against any person found to be in violation of the respective Act, order, plan, or regulation issued thereunder.

The Department of Agriculture has established uniform rules of practice [7 CFR part 1, subpart H], which govern the conduct of adjudicatory proceedings under numerous statutes. In order to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the Acts listed above should also be governed by these uniform procedures.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect, and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking [5 U.S.C. 553] do not apply to the promulgation of agency rules of practice. Further, this action simply extends the applicability of the Department's uniform rules of practice

to newly passed statutes. Accordingly, this action is made effective upon publication in the **Federal Register**.

In consideration of the foregoing, 7 CFR part 1, subpart H, is amended as follows:

PART 1—AMENDED

1. The authority citation for part 1, subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6808, 7107; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

§ 1.131 [Amended]

Section 1.131(a) is amended by inserting the following statutory references in the list of statutes in alphabetical order: Fluid Milk Promotion Act of 1990, section 1999L [7 U.S.C. 6411], Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993, section 9 [7 U.S.C. 6808], Lime Research, Promotion, and Consumer Information Act of 1990, as amended, section 1958 [7 U.S.C. 6207], Mushroom Promotion, Research, and Consumer Information Act of 1990, section 1928 [7 U.S.C. 6107], Pecan Promotion and Research Act of 1990, section 1914 [7 U.S.C. 6009], Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7107], and Soybean Promotion, Research, and Consumer Information Act, section 1972 [7 U.S.C. 6307].

Dated: June 22, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–15856 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–02–P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV95–905–2IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Expenses and Assessment Rate for 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the 1995–96 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1995, through July 31, 1996. Comments received by July 28, 1995, will be considered prior to any finalization on this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456 or by Fax: (202) 720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or William Pimenthal, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1995–96 fiscal year, beginning August 1, 1995, through July 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the Committee and submitted to the Department for

approval. The Committee members are handlers and producers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by the expected cartons (4/5 bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The annual budget and assessment rate are usually recommended by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met May 23, 1995, and unanimously recommended expenses of $215,000 for the 1995–96 fiscal year, with an assessment rate of $0.00325 per 4/5 bushel carton of fresh fruit shipped.

In comparison, 1994–95 budget expenses were $210,000 with an approved assessment of $0.003. Thus, for the 1995–96 fiscal year, expenses are being increased $5,000 and the assessment rate is being increased $0.00025 from the levels established in 1994–95.

The assessment rate, when applied to anticipated shipments of 66,000,000 cartons of assessable fruit, will yield a total of $214,500 in assessment income. Interest income for 1995–96 is estimated at $3,500. Income will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $100,000, will be within the maximum permitted by the order of approximately one-half of one fiscal year's expenses.

Major expense categories for the 1995–96 fiscal year include $101,740 for salaries, $36,000 for the Manifest Department, and $13,350 for insurance and bonds.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 905.234 is added to read as follows:

§ 905.234 Expenses and assessment rate.

Expenses of $215,000 by the Citrus Administrative Committee are authorized and an assessment rate of $0.00325 per 4/5 bushel carton of assessable fruit is established for the fiscal year ending July 31, 1996. Any unexpended funds may be carried over as a reserve.

Dated: June 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15859 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–02–P

Consolidated Farm Service Agency

7 CFR Parts 718, 790, and 791

Commodity Credit Corporation

7 CFR Parts 1413, 1414, 1415, and 1416

RIN 0560–AD 72, AD00

1994 Wheat, Feed Grains, Cotton and Rice Programs

AGENCIES: Consolidated Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The statutory requirements that relate to the feed grains, rice, upland and extra long staple cotton, and wheat programs were amended by the Agricultural Reconciliation Act of 1993 (the 1993 Act). An interim rule was published on November 16, 1994, (59 FR 59280) to set forth changes necessary to implement these provisions. Accordingly, this rule adopts the interim rule as final.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bruce D. Hiatt, Agricultural Program Specialist, CFSA, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–690–2798.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Final Regulatory Impact Analyses

Final Regulatory Impact Analyses were prepared with respect to the programs for the 1994 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from Tom Witzig, CFSA–USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013–2415.

Federal Assistance Numbers

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat

Production Stabilization—10.058; and Rice Production Program—10.065.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Consolidated Farm Service Agency (CFSA) nor Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0004 and 0560–0092.

Background

The interim rule published on November 16, 1994 set forth amendments: to conform to the provisions of the 1993 Act; to make certain technical corrections; to delete references to obsolete provisions; to add references relating to current policy, to set forth the provisions for the Options Pilot Program (OPP) and Voluntary Production Limitation Program (VPLP); and to improve the operations of these programs through the 1994 through 1997 crop years.

Discussion of Comments

No comments were received relevant to the publication of the interim regulation published on November 16, 1994. Agency review of the interim rule revealed that 7 CFR 1413.49 had been inadvertently left out of the interim rule.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Appeals, Feed grains, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

Accordingly, under the authority of 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR parts 718, 790, 791, 1413, 1414, 1415, and 1416 which was published at 59 FR 59280 on November 16, 1994, is adopted as a final rule with the following change:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority for part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445-b–3a, 1461–1469, 15 U.S.C. 714b, and 714c.

2. Subpart H is amended by adding a new § 1413.49 to read as follows:

Subpart H—Program Agreement and Enrollment Provisions

§ 1413.49 Nature of agreement.

(a) The agreement shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The agreement shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR and the acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the agreement.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with parts 1421 and 1427 of this chapter. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments shall be made to such operator and producers.

(c) The agreement shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The agreement shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the agreement. The purpose of an acreage reduction, or land diversion program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once an agreement has been entered into between CCC and producers, USDA, and other segments of the agricultural community act based upon the assumption that the agreement will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with an agreement undermines the basis for these actions, damages the credibility of USDA's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with an agreement are obvious, it would be impossible to compute the actual damages suffered by CCC.

(e) Producers who elect to rescind an agreement to participate in an annual program, or producers who violate an agreement, and the COC makes no determination of good faith, must pay liquidated damages to CCC as provided in the CCC–477. Such producers shall be considered as nonparticipating in the acreage reduction program established for such crop.

(f) If a producer violates the provisions of this part or the CCC–477, and the COC determines a good faith effort was made to comply, standard payment reductions will apply. The reduction will be calculated as the difference between the reported and determined acreage of the crop, multiplied by the program payment yield, multiplied by 50 percent of the established price for the crop.

* * * * *

Signed in Washington, DC on June 18, 1995.

Bruce R. Weber,

Acting Administrator, Consolidated Farm Service Agency, and Acting Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 95–15862 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 125CE, Special Condition 23–ACE–81]

Special Conditions; Twin Commander Model 695 Airplane

AGENCY Federal Aviation Administration (FAA), DOT.

ACTION; Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Twin Commander Model 695 airplane modified by Garrett Aviation Services, Augusta, Georgia. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is June 28, 1995. Comments must be received on or before July 28, 1995.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 125CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 125CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: ''Comments to Docket No. 125CE.'' The postcard will be date stamped and returned to the commenter.

Background

On October 31, 1994, Garrett Aviation Services, 1550 Hangar Road, Augusta, Georgia 30906, made an application to the FAA for a supplemental type certificate (STC) for the Twin Commander Model 695 airplane. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Twin Commander Model 695 Airplane is given in Type Certification Data Sheet No. 2A4 plus the following:

§ 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41 and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this remaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Garrett Aviation Services, plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe

flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarly with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Twin Commander Model 695 Airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register.** However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Twin Commander Model 695 airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on June 1, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15889 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 94–NM–252–AD; Amendment 39–9285; AD 95–13–05]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with Rolls Royce Model RB211 Series Engines

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 modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is

prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1995.

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: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 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 February 7, 1995 (60 FR 7140). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

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 support the proposed rule.

Revision of Descriptive Language

One commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to ''the structural fail-safe capability of the strut-to-wing attachment.'' The commenter states that this description is inaccurate, since it implies that the strut-to-wing attachment is inadequate. The commenter suggests that a more accurate description would be ''damage tolerance capability of the strut-to-wing attachment.'' The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording in the preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers the new structure of the strut as meeting the damage tolerance requirements of amendment 45 of section 25.571, ''Damage—tolerance and fatigue evaluation of structure of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

This same commenter provides additional information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but ''reduces the reliance on non-routine inspections,'' as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to this final rule to include wording relevant to this aspect.

This commenter also provides further clarification of the description of the requirements of the existing AD's that address unsafe conditions associated with the strut attachment assemblies on Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines. The description in the Discussion section of the preamble to the proposal states that the existing AD's require ''sections of the strut, and strut-to-wing attachment structure.'' The commenter states that a more complete description of the existing AD's would be ''inspections of the strut fuse pins, and strut-to-wing attachment structure.'' The FAA concurs that the commenter's wording is clearer. However, the following provides a more complete description: The existing AD's require ''inspections of the diagonal brace and midspar fuse pins, and strut-to-wing attachment structure.'' Since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

AD's Terminated by this Final Rule

Additionallly, this commenter requests a revision of proposed paragraph (c), which lists the AD's that will be terminated upon accomplishment of the proposed modification of the nacelle strut and wing structure. The commenter states that since AD 79–17–07, amendment 39–3533, is not applicable to Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines, that AD should be removed from the list. The FAA concurs; paragraph (c) of the final rule has been revised accordingly.

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.

Cost Estimate

Currently, there are no Model 747 series airplanes of the affected design, equipped with Rolls Royce Model RB211 series engines, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 6,545 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. The manufacturer will incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The median age for the fleet of Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines is estimated to be 6 years. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD will be $117,810 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 5 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

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 FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing these costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD action, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–13–05 Boeing: Amendment 39–9285. Docket 94–NM–252–AD.

Applicability: Model 747 series airplanes having line positions 292 through 1033 inclusive, equipped with Rolls Royce Model RB211 series engines; 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 use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, at the time specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 5 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(1) For Model 747–400 series airplanes having line positions 705 through 1033 inclusive, equipped with Rolls Royce Model RB211–524G and H engines: Within 80 months after the effective date of this AD.

(2) For all other Model 747 series airplanes equipped with Rolls Royce Model RB211 series engines not subject to the requirements of paragraph (a)(1) of this AD: Within 56 months after the effective date of this AD.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, and 13 of the Accomplishment Instructions on pages 109 and 110 of Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
93–17–07	39–8678	58 FR 45827	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513	Mar. 18, 1993.
92–24–51	39–8439	57 FR 60118	Dec. 18, 1992.
90–20–20	39–6725	55 FR 37859	Sept. 14, 1990.
89–07–15	39–6167	54 FR 11693	Mar. 22, 1989

AD No.	Amendment No.	Federal Register citation	Date of publication
87–04–13 R1	39–5836	53 FR 2005	Jan. 26, 1988.
86–05–11 R1	39–5334	51 FR 21900	June 17, 1986.
86–23–01	39–5450	51 FR 37712	Oct. 26, 1986.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747–54A2157, dated January 12, 1995. 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.

(g) This amendment becomes effective on August 28, 1995.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15298 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–208–AD; Amendment 39–9287; AD 95–13–07]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric Model CF6–45 or –50 Series Engines, or Pratt & Whitney Model JT9D–70 Series Engines

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 modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on non-routine inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 28, 1995.

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: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 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 January 3, 1995 (60 FR 66). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

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 support the proposed rule.

One commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to ''the structural fail-safe capability of the strut-to-wing attachment.'' The commenter states that this description is inaccurate since it implies that the strut-to-wing attachment is inadequate. The commenter suggests that a more accurate description would be ''damage tolerance capability of the strut-to-wing attachment.'' The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording in the preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers that the new structure of the strut meets the damage tolerance requirements of amendment 45 of section 25.571, ''Damage—tolerance and fatigue evaluation of structure,'' of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

This same commenter provides further information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing attachments, but ''reduces the reliance on non-routine inspections,'' as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to the final rule to include relevant wording.

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.

There are approximately 145 Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney Model JT9D–70 series engines of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD.

The full strut modification required by this AD will take as many as 6,600 to 7,151 work hours to accomplish, depending upon the configuration of the airplane. The manufacturer will incur the cost of labor, on a pro-rated basis, with 20 years being the expected life of these airplanes. The total cost impact of this AD on U.S. operators is based on the median age for the fleet of Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney Model JT9D–70 series engines, which is estimated to be 15 years. The average labor rate is estimated to be $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $3,564,000 ($297,000 per airplane) and $3,861,540 ($321,795 per airplane).

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, that are required to be accomplished prior to or concurrently with the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

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. However, the FAA is aware that some operators have already installed the strut modification that is required by this AD; therefore, the future economic cost impact of this rule on U.S. operators is reduced by that amount.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–13–07 Boeing: Amendment 39–9287. Docket 94–NM–208–AD.

Applicability: Model 747 series airplanes, equipped with General Electric Model CF6–45 or –50 series engines, or Pratt & Whitney Model JT9D–70 series engines, 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 use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD.

In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, within 56 months after the effective date of this AD. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment

of the modification of the nacelle strut and wing structure required by this paragraph.

(b) Perform the inspections and checks specified in paragraph III, NOTES 8, 9, 10, and 11 of the Accomplishment Instructions on page 129 of Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies found in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
94–22–08	39–9057	59 FR 58761	Nov. 15, 1994.
93–17–07	39–8678	58 FR 45827	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513	Mar. 18, 1993.
92–24–51	39–8439	57 FR 60118	Dec. 18, 1992.
90–20–20	39–6725	55 FR 37859	Sept. 14, 1990.
89–07–15	39–6167	54 FR 11693	Mar. 22, 1989.
87–04–13 R1	39–5836	53 FR 2005	Jan. 26, 1988.
86–23–01	39–5450	51 FR 37712	Oct. 24, 1986.
86–08–03	39–5289	51 FR 12836	Apr. 16, 1986.
86–07–06	39–5270	51 FR 10821	Mar. 31, 1986.
86–05–11 R1	39–5334	51 FR 21900	June 17, 1986.
80–08–02	39–3738	45 FR 24450	Apr. 10, 1980.
79–17–07	39–3533	44 FR 50033	Aug. 27, 1979.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(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.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994. 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.

(g) This amendment becomes effective on July 28, 1995.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15299 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–224–AD; Amendment 39–9286; AD 95–13–06]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric Model CF6–80C2 Series Engines or Pratt & Whitney Model PW4000 Series Engines

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 modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. This amendment is prompted by the development of a modification of the strut and wing structure that improves the damage tolerance capability and durability of the strut-to-wing attachments, and reduces reliance on non-routine inspections of those attachments. The actions specified by this AD are intended to prevent failure of the strut and subsequent loss of the engine.

DATES: Effective July 28, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 1995.

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: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 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 January 6, 1995 (60 FR 2033). That action proposed to require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies in the adjacent structure, and correction of discrepancies.

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

One commenter supports the proposed rule.

Revision of Descriptive Language

One commenter provides additional information to describe the purpose of the proposed modification of the nacelle strut and wing structure. This commenter suggests that the rule should specify that the modification not only significantly improves the load-carrying and durability of the strut-to-wing

attachments, but ''reduces the reliance on non-routine inspections,'' as well. The FAA concurs with this suggestion and has revised the Summary section of the preamble to the final rule to include relevant wording.

This same commenter notes that the description of the unsafe condition that appeared in the Discussion section of the preamble to the notice refers to ''the structural fail-safe capability of the strut-to-wing attachment.'' The commenter states that this description is inaccurate since it implies that the strut-to-wing attachment is inadequate.

The commenter suggests that a more accurate description would be ''damage tolerance capability of the strut-to-wing attachment.'' The FAA acknowledges that the commenter's wording is more accurate. The pertinent wording in the preamble to the final rule has been revised to reflect this change. Furthermore, the FAA considers that the new structure of the strut meets the damage tolerance requirements of amendment 45 of section 25.571, ''Damage—tolerance and fatigue evaluation of structure,'' of the Federal Aviation Regulations (14 CFR 25.571, amendment 45), which provides an even higher level of safety than simply fail-safe requirements.

This commenter also provides further clarification of the description of the requirements of the existing AD's that address unsafe conditions associated with the strut attachment assemblies on Model 747 series airplanes equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines. The description in the Discussion section of the preamble to the proposal states that the existing AD's require ''inspection of the strut, midspar fittings, diagonal brace, and midspar fuse pins.'' The commenter states that a more complete description of the existing AD's would be ''inspection of the strut midspar fittings, spring beam lugs, diagonal brace, and midspar fuse pins.'' The FAA acknowledges that the commenter's description of the requirements of the existing AD's is more succinct. However, since the Discussion section is not restated in this final rule, no change to the final rule is necessary.

Further, this commenter states that the description of the modification that appeared in the Explanation of Service Information section of the preamble to the proposal is detailed differently from the wording that appears in the alert service bulletin that is referenced in the proposal as the appropriate source of service information. The FAA acknowledges that paragraph I.C., Description, on page 6 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, provides another description of the actions involved in accomplishing the subject modification. However, although the service bulletin's description is worded somewhat differently, its intent is comparable to and consistent with the description that appeared in the preamble to the proposal.

Clarification of Note 1

One commenter requests that Note 1 of the proposal be clarified since it is too vague to determine exactly when FAA approval of alternative methods of compliance (AMOC) is necessary. The FAA concurs. Although every effort is made to keep the language simple and clear, it is apparent that some additional explanation is necessary to clarify the intent of Note 1. Performance of the requirements of this final rule is ''affected'' if an operator is unable to perform those requirements in the manner described in this AD. For example, if an AD requires a visual inspection in accordance with a certain service bulletin, and the operator cannot perform that inspection because of the placement of a repair doubler over the structure to be inspected, then ''performance of the AD is affected.''

In addition, performance of the requirements of an AD is ''affected'' if it is physically possible to perform the requirements, but the results achieved are different from those specified in the AD. For example, if the AD requires an NDT inspection in accordance with a certain service bulletin, and the operator is able to move the NDT probe over the specified area in the specified manner, but the results are either meaningless or inaccurate because of the repair doubler over that area, then ''performance of the AD is affected.''

While Note 1 itself is not capable of addressing every possible situation, ''affected'' is normally an easy standard to apply: either it is possible to perform the requirements as specified in the AD and achieve the specified results, or it is not possible. Therefore, if the requirements of this AD cannot be performed, then operators must submit a request for an approval of an AMOC from the FAA, in accordance with the provision of paragraph (d) of this final rule.

Accomplishment of any modification requirement of an AD, such as the modification of the nacelle strut and wing structure required by this final rule, does not ''affect performance of the AD;'' it is performance of the AD. Every AD includes a provision, with which operators are familiar, that states, ''Compliance required as indicated, unless accomplished previously.'' If an operator performs such a requirement before the AD is issued, the FAA is confident that the operator will recognize that it has already complied with the AD and no further action (including obtaining approval of an AMOC) is required. This is consistent with current law and practice, which Note 1 is not intended to change.

Compliance Time for Modification

One commenter requests that the compliance time of proposed paragraph (a), which requires modification of the nacelle strut and wing structure, be extended by 4 months. The commenter notes that a 4-month extension of the compliance time would coincide with the time recommended in the referenced Boeing Alert Service Bulletin 747–54A2156 for that modification. Further, this commenter alleges that a difference of 4 months will ''significantly impact'' its operations.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Further, the FAA took into account the 7-year compliance time recommended by the manufacturer, as well as the number of days required for the rulemaking process; in consideration of these factors, the FAA finds that 80 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer.

However, under the provisions of paragraph (b) of the final rule, any operator may submit requests for adjustments to the compliance time along with data demonstrating that such requests will not compromise safety. In evaluating such requests for adjustments to the compliance time, the FAA will closely examine the operator's explanation of why an extension is needed. The FAA will also consider the operator's good faith attempt at complying within the compliance time contained in this final rule, which can be demonstrated by accomplishing the modification on a significant percentage of the airplanes in the operator's fleet prior to submitting a request for adjustment to the compliance time. The FAA will take into consideration the

number of airplanes in the operator's fleet on which the modification has been accomplished and the number of unmodified airplanes remaining in the operator's fleet. Additionally the operator would be asked to submit a schedule for accomplishing the modification on the airplanes remaining in its fleet.

Requirements Redundant to Part 121

One commenter requests that proposed paragraph (b) be deleted since the proposed inspection and repair of components (referenced in Notes 8, 9, and 10 of the Accomplishment Instructions on page 91 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994) are redundant to the requirements of part 121 of the Federal Aviation Regulations (14 CFR 121).

The FAA does not concur with the commenter that the requirements of paragraph (b) should be deleted from the final rule. According to section 39.1 of the Federal Aviation Regulations (14 CFR 39.1), the issuance of an AD is based on the finding that an unsafe condition exists or is likely to develop in aircraft of a particular type design.

Further, it is within the FAA's authority to issue an AD to require actions to address unsafe conditions that are not otherwise being addressed (or addressed inadequately) by normal maintenance procedures. The FAA points out that fatigue cracking and corrosion in the strut-to-wing attachments have resulted in several incidents and catastrophic accidents. Although 14 CFR 121 addresses damage found on components during other maintenance activities, the FAA has determined that the catastrophic consequences of the unsafe condition are such that reiterating the necessity of performing inspections and repairs when any damage or corrosion is found while performing the modification of the nacelle strut and wing structure is warranted and necessary. The AD is the appropriate vehicle for mandating such actions.

Clarification of Note 11 in the Alert Service Bulletin

This same commenter also notes that a torque check would be more appropriate to detect loose fasteners of the diagonal brace fittings (referenced in Note 11 of the alert service bulletin). Further, the commenter asserts that these torque checks should be accomplished in accordance with the actual Accomplishment Instructions of the Boeing Alert Service Bulletin 747–54A2156, rather than in accordance with a Note that precedes the actual Accomplishment Instructions as stated in proposed paragraph (b).

The FAA concurs that a torque check would be more appropriate to detect loose fasteners. The FAA's intent was to require a torque check and the follow-on corrective action indicated in Note 11 of the alert service bulletin. Obviously, the torque check was inadvertently omitted from that version of the alert service bulletin; however, the follow-on action to ''torque any loose fasteners'' was included in that version of the alert service bulletin. The manufacturer has notified the FAA that Revision 1 of the alert service bulletin, planned for release later this year, will correct this omission. However, the FAA does not consider that delaying this action until after the release of the revision of the service bulletin is warranted. Therefore, paragraph (b) of the final rule has been revised to clarify that a torque check must be performed to detect loose fasteners.

Clarification of Cost Estimate Information

One commenter requests that the cost estimate be revised to include the cost of out-of-service time for each aircraft during the time that the modification is accomplished, and the additional fuel costs that would be incurred due to the additional weight added to each aircraft by the modification hardware. Another commenter, Boeing, requests that the cost estimate be revised to indicate that it will absorb the cost of labor to accomplish the proposed modification of the nacelle strut and wing structure. However, the commenter states that any costs in excess of those quoted in Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, will be borne by the operator.

The FAA concurs that a revision to the cost estimate is necessary to remove the labor costs that the manufacturer will incur; therefore, the economic impact information, below, has been revised accordingly. However, the FAA does not concur that a revision is necessary to include the costs for out-of-service time or the costs for additional fuel. The appropriate number of hours required to accomplish the required actions, specified as 6,253 work hours in the economic impact information, below, was developed with data provided by the manufacturer.

Note: The manufacturer has informed the FAA that it will incur labor costs up to a maximum of 6,253 work hours.

This number represents the time required to gain access, remove parts, inspect, modify, install, and close up. The cost analysis in AD rulemaking actions typically does not include out-of-service time for each aircraft or additional fuel costs, as was suggested by the commenter. These costs would be impossible to calculate accurately due to the differences in out-of-service time for each operator. Furthermore, the increase in fuel costs due to the weight added by the modification, would vary greatly from operator to operator, depending upon airplane utilization.

The Air Transport Association of America (ATA) requests that the FAA include costs ''beyond just parts and labor costs'' when calculating the estimated costs to accomplish the proposed actions. The ATA points out that the FAA should consider such costs to avoid requiring actions that the ATA considers inconsequential.

The FAA does not concur. Contrary to the ATA's assertion, in establishing the requirements of all AD's, the FAA does consider cost impact to operators beyond the estimates of parts and labor costs contained in AD preambles. For example, where safety considerations allow, the FAA attempts to impose compliance times that generally coincide with operator's maintenance schedules. However, because operators' schedules vary substantially, the FAA is unable to accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, the FAA does not consider it appropriate to attribute to the AD, the costs associated with the type of special scheduling that might otherwise be required.

Furthermore, because the FAA generally attempts to impose compliance times that coincide with operator's scheduled maintenance, the FAA considers it inappropriate to attribute the costs associated with aircraft ''downtime'' to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if, in some cases, additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. Therefore, attempting to estimate such costs would be futile.

The FAA points out that this AD is an excellent example of the fact that costs to operators are fully considered beginning at the earliest possible stages of AD development. In this case, the alert service bulletin that is referenced

in this final rule was developed by Boeing only after extensive and detailed consultations with large numbers of operators of Model 747 series airplanes. The compliance times and various optional means of compliance presented in his AD are based on those consultations, and were developed in order to minimize the economic impacts on operators to the extent possible consistent with the service bulletin's and this AD's safety objectives. Therefore, the costs that the ATA asserts were not considered by the FAA have, in fact, been a major consideration throughout this AD process; the fact that the FAA has not attempted to quantify speculative costs does not diminish the extent of this consideration.

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.

Cost Impact

There are approximately 257 Model 747 series airplanes equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD.

The full strut modification required by this AD will take approximately 6,253 work hours per airplane to accomplish, at an average labor cost of $60 per work hour. The manufacturer will incur the cost of labor up to a maximum of 6,253 work hours per airplane. However, if the operator exceeds 6,253 work hours to accomplish the modification, the additional labor costs must be borne by the operator. The FAA does not have the ability to predict those additional work hours for operators to accomplish the modification. Therefore, attempting to estimate such costs would be futile. Required parts will be supplied by the manufacturer at no cost to the operators. Based on the above data, the requirements of this AD may have no cost impact to U.S. operators.

However, the cost impact, above, does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in its fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in its fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table 2 of the Boeing alert service bulletin.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rule 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–13–06 Boeing: Amendment 39–9286. Docket 94–NM–224–AD.

Applicability: Model 747 series airplanes having line positions 679 through 1046 inclusive, equipped with General Electric Model CF6–80C2 series engines or Pratt & Whitney Model PW4000 series engines; 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 use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of the engine, accomplish the following:

(a) Within 80 months after the effective date of this AD, accomplish the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994. All of the terminating actions described in the service bulletins listed in paragraph I.C., Table 2, ''Prior or Concurrent Service Bulletins,'' on page 7 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, must be accomplished in accordance with those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph.

(b) Perform the inspections and checks (including a torque check to detect loose fasteners) specified in paragraph III, Notes 8, 9, 10, and 11 of the Accomplishment Instructions on page 91 of Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, concurrently with the modification of the nacelle strut and wing structure required by paragraph (a) of this AD. Prior to further flight, correct any discrepancies in accordance with the alert service bulletin.

(c) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994, constitutes terminating action for the inspections required by the following AD's:

AD No.	Amendment No.	Federal Register citation	Date of publication
93–17–07	39–8678	58 FR 45827.	Aug. 31, 1993.
93–03–14	39–8518	58 FR 14513.	Mar. 18, 1993.
93–24–51	39–8439	57 FR 60118.	Dec. 18, 1992.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 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.

(f) The modification, inspections, checks, and correction of discrepancies shall be done in accordance with Boeing Alert Service Bulletin 747–54A2156, dated December 15, 1994. 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.

(g) This amendment becomes effective on July 28, 1995.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15300 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Nicarbazin Type A Medicated Article

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Planalquimica Industrial Ltda. The ANADA provides for the use of a nicarbazin-containing Type A medicated article in making Type C medicated chicken feeds for the prevention of coccidiosis.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil, has filed ANADA 200–027, which provides for the use of a nicarbazin-containing Type A medicated article in making Type C medicated chicken feeds as an aid in preventing outbreaks of cecal and intestinal coccidiosis.

Planalquimica's ANADA 200–027 for a 113.5-gram-per-pound nicarbazin Type A medicated article (Nicarmix) is approved as a generic copy of Merck Research Laboratories' NADA 9–476 for Nicarb®. The ANADA is approved as of June 28, 1995, and the regulations are amended in 21 CFR 510.600(c) and 558.366(a) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for ''Planalquimica Industrial Ltda.'' and in the table in paragraph (c)(2) by numerically adding a new entry for ''060728'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil	060728
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
060728	Planalquimica Industrial Ltda., Rua das Magnolias nr. 2405, Jardim das Bandeiras, CEP 13053–120, Campinas, Sao Paulo, Brazil
* * * * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.366 [Amended]

4. Section 558.366 *Nicarbazin* is amended in paragraph (a) by removing the phrase ''000006 and 000986'' and adding in its place ''000006, 000986, and 060728''.

Dated: June 21, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–15768 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN: 1218–AB25

Occupational Exposure to Asbestos

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; extension of start-up dates for compliance.

SUMMARY: OSHA is extending the start-up dates for some provisions of the asbestos standards until October 1, 1995 to give the public more time to implement compliance.

DATES: These amendments take effect on June 28, 1995. For Part 1910—General Industry, for § 1910.1001, the start-up dates for compliance for paragraph (d)(2)—initial monitoring, for paragraph (e)—regulated area, for paragraph (f)—methods of compliance, for paragraph (g)—respiratory protection, for paragraph (i)—hygiene facilities, for paragraph (j)—communication of hazards, and for paragraph (l)—medical surveillance are extended to October 1, 1995. For Part 1915—Shipyards, for § 1915.1001, the start-up dates for compliance for paragraph (g)—methods of compliance, for paragraph (h)—respiratory protection, for paragraph (j)—hygiene facilities, for paragraph (k)—communication of hazards, for paragraph (l)—housekeeping, for paragraph (m)—medical surveillance and for paragraph (o)—qualified person are extended to October 1, 1995. For Part 1926—Construction, for § 1926.1101, the start-up dates for compliance for paragraph (g)—methods of compliance, for paragraph (h)—respiratory protection, for paragraph (j)—hygiene facilities, for paragraph (k)—communication of hazards, for paragraph (l)—housekeeping, for paragraph (m)—medical surveillance and for paragraph (o)—competent person are extended to October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA issued improved asbestos standards for general industry, construction and shipyards on August 10, 1994 at 59 FR 40964 to better protect workers from lung cancer, asbestosis and other diseases caused by asbestos exposure. The new standards took effect on October 11, 1994 and that date was the start-up date for some provisions such as the new lower exposure limit of 0.1 f/cc. However, various other provisions such as the new medical surveillance, respiratory protection and training provisions and the engineering control requirements had start-up dates from between January 9, 1995 and April 10, 1995.

Various members of the public have requested that OSHA grant more time for the public to comply with some provisions. OSHA is publishing a correction and clarification notice and various compliance and training materials to assist in the understanding of the new standard.

OSHA has concluded that it is appropriate to give the public additional time to implement some of the provisions of the new asbestos standards which may require more time for implementation. Other provisions such as the new exposure limit had a start-up date of October 11, 1994 and again, OSHA is not extending the start-up date of those provisions. In the interim, the provisions of the preexisting asbestos standards remain in effect for those provisions of the new standards whose start-up dates have been extended.

The provisions extended are listed above in the **DATES** section of this preamble. OSHA has concluded that October 1, 1995 is a reasonable time for employers to fully come into compliance with the provisions for

which the start-up dates have been extended.

All of the provisions whose start-up dates have been extended will be enforced on October 1, 1995.

OSHA is publishing this as an amendment to the new standards so that the new start-up dates will be codified in the Code of Federal Regulations. OSHA finds that there is good cause to issue this extension without notice and public procedure because such is impractical, unnecessary or contrary to the public interest. It is necessary to issue the extension to permit employers sufficient time to come into full compliance and notice and comment would delay the issuance of the extension until past the new start-up dates. For the same reasons OSHA finds good cause for the extension of the start-up date to take immediate effect.

List of Subjects in 29 CFR Parts 1910, 1915, and 1916

Asbestos, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 5. U.S.C. Sec. 553; and 29 CFR part 1911; 29 CFR parts 1910, 1915, and 1926 are amended as set forth below.

Signed at Washington, DC this 22nd day of June, 1995.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

OSHA hereby amends 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation of subpart Z of 29 CFR part 1910 is revised to read as follows:

Authority: Sections 6 and 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657: Secretary of Labor's Order 12071 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) [29 U.S.C. 655(a)].

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Table Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety and Standards Act, 40 U.S.C. 333 and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 CFR 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Secitons 1910.1200, 1910.1499, and 1910.1500 also issued under 5 U.S.C. 553.

Section 1910.1450 is also issued under sec. 6(b), 8(c) and 8(g)(2), Pub. L. 91–596, 84 Stat. 1593, 1599, 1600; U.S.C. 655, 657.

2. Section 1910.1001 is amended by revising paragraph (o) to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(o) *Dates.* (1) *Effective date.* This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Exposure monitoring.* Initial monitoring required by paragraph (d)(2) of this section shall be completed by October 1, 1995.

(ii) *Regulated areas.* Regulated areas required to be established by paragraph (e) of this section as a result of initial monitoring shall be set up by October 1, 1995.

(iii) *Respiratory protection.* Respiratory protection required by paragraph (g) of this section shall be provided by October 1, 1995.

(iv) *Hygiene and lunchroom facilities.* Construction plans for change rooms, showers, lavatories, and lunchroom facilities shall be completed by October 1, 1995.

(v) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (j) of this section shall be provided by October 1, 1995.

(vi) *Medical surveillance.* Medical surveillance not previously required by paragraph (1) of this section shall be provided by October 1, 1995.

(vii) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section shall be completed and available for inspection and copying by October 1, 1995.

(viii) *Methods of compliance.* The engineering and work practice controls as required by paragraph (f) shall be implemented by October 1, 1995.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

3. The authority citation of 29 CFR part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); sections 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 12–71 (36 FR 6754), 8–76 (41 FR 35736) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

4. Section 1915.1001 is amended by revising paragraph (q) to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 and 29 CFR 1910.1001 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by October 1, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by October 1, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygiene facilities and practices required by paragraph (j) of this section shall be provided by October 1, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by October 1, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (1) of this section shall be provided by October 1, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by October 1, 1995.

(vii) The designation and training of qualified persons required by paragraph

(o) of this section shall be completed by October 1, 1995.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation of subpart Z of 29 CFR Part 1926 is revised to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9003) as applicable; and 29 CFR part 1911.

Section 1926.1101 also issued under 5 U.S.C. 553.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

6. Section 1926.1101 is amended by revising paragraph (q) to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(q) *Dates.* (1) This standard shall become effective October 11, 1994.

(2) The provisions of 29 CFR 1926.58 remain in effect until the start-up dates of the equivalent provisions of this standard.

(3) *Start-up dates.* All obligations of this standard commence on the effective date except as follows:

(i) *Methods of compliance.* The engineering and work practice controls required by paragraph (g) of this section shall be implemented by October 1, 1995.

(ii) *Respiratory protection.* Respiratory protection required by paragraph (h) of this section shall be provided by October 1, 1995.

(iii) *Hygiene facilities and practices for employees.* Hygiene facilities and practices required by paragraph (j) of this section shall be provided by October 1, 1995.

(iv) *Communication of hazards.* Identification, notification, labeling and sign posting, and training required by paragraph (k) of this section shall be provided by October 1, 1995.

(v) *Housekeeping.* Housekeeping practices and controls required by paragraph (1) of this section shall be provided by October 1, 1995.

(vi) Medical surveillance required by paragraph (m) of this section shall be provided by October 1, 1995.

(vii) The designation and training of competent persons required by paragraph (o) of this section shall be completed by October 1, 1995.

* * * * *

[FR Doc. 95–15790 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC05

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the William D. Ford Federal Direct Loan Program to add the Office of Management and Budget (OMB) control number to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved, and therefore affected parties must comply with them.

EFFECTIVE DATE: Information collection requirements in the final regulations are effective on July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3053, ROB–3), Washington, DC, 20202–5400. Telephone (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Final regulations for the William D. Ford Federal Direct Loan Program were published on December 1, 1994 (59 FR 61664). Compliance with information collection requirements in these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980. OMB approved the information collection requirements on December 7, 1994. Those requirements will therefore become effective with the other provisions of the regulations on July 1, 1995.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B), that public comment on the regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

2. Sections 685.204, 685.206, 685.209, 685.213, 685.214, 685.215, 685.301, 685.302, 685.303, 685.309, and 685.401 are amended by adding the OMB control number following the section to read as follows:

(Approved by the Office of Management and Budget under control number 1840–0672)

[FR Doc. 95–15844 Filed 6–27–95; 8:45 am]

BILLING CODE 4000–01–P

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Chapter XIV

Guidance on Interpreting and Implementing the President John F. Kennedy Assassination Records Collection Act of 1992

AGENCY: Assassination Records Review Board.

ACTION: Final regulations.

SUMMARY: These final interpretive regulations provide guidance on the interpretation of certain terms included in the President John F. Kennedy Assassination Records Collection Act of 1992 and on implementation of certain of the statute's provisions. The final interpretive regulations make effective the proposed interpretive regulations previously published by the Assassination Records Review Board (Review Board). The Review Board revised the proposed interpretive

regulations after considering public comment received in writing and through testimony at public hearings convened by the Review Board.

EFFECTIVE DATE: These interpretative regulations are effective June 28, 1995.

FOR FURTHER INFORMATION CONTACT: T. Jeremy Gunn, Acting General Counsel, Assassination Records Review Board, 600 E Street, N.W., 2nd Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION:

Background and Statutory Authority

The President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107 (as amended) (JFK Act), established the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) at the National Archives and Records Administration (NARA). In establishing a process for public disclosure of all records relating to the assassination, Congress created an independent Federal agency, the Assassination Records Review Board, that consists of five citizens appointed by the President and confirmed by the Senate in 1994. Under the JFK Act, the Review Board is empowered to decide ''whether a record constitutes an assassination record.'' 44 U.S.C. 2107.7(i)(2)(A). Congress intended that the Review Board ''issue guidance to assist in articulating the scope or universe of assassination records.'' President John F. Kennedy Assassination Records Collection Act of 1992, S. Rep. 102–328, 102d Cong., 2d Sess. (1992) at 21. These final interpretive regulations, a proposed version of which were published at 60 FR 7506–7508 (Feb. 8, 1995), comply with that mandate.

The Review Board's goal in issuing this guidance is to implement congressional intent that the JFK Collection contain ''the most comprehensive disclosure of records related to the assassination of President Kennedy.'' S. Rep. 102–328, *supra* at 18. The Board is also mindful of Congress's instruction that the Board apply a ''broad and encompassing'' working definition of ''assassination record'' in order to achieve the goal of assembling the fullest historical record on this tragic event in American history and on the investigations that were undertaken in the assassination's aftermath. The Board recognizes that many agencies began to organize and review records responsive to the JFK Act even before the Board was appointed and began its work. Nevertheless, the Board's aim is that this guidance will aid in the ultimate assembly and public disclosure of the fullest possible historical record on this tragedy and on subsequent investigations and inquiries into it.

The final interpretive regulations are intended to identify comprehensively the range of records reasonably related to the assassination of President Kennedy and investigations undertaken in its aftermath. The final interpretive regulations are also intended to aid in the consistent, effective, and efficient implementation of the JFK Act and to establish procedures for including assassination records in the JFK Assassination Records Collection established by Congress and housed at NARA's facility in College Park, Maryland.

Notice and Comment Process

The Review Board sought public comment on its proposed interpretive regulations and set a thirty-day period, which ended on March 10, 1995, for the purpose of receiving written comments. The Review Board also heard testimony at public hearings on aspects of the proposed interpretive regulations. In addition, the Review Board sent copies of the proposed interpretive regulations to agencies known to have an interest in and to be affected by the Review Board's work, particularly those that either created or now hold assassination records, and to the appropriate oversight committees in Congress. The Review Board also sent notices of the proposed interpretive regulations and request for comments to many organizations and individuals who have demonstrated an interest in the release of materials under the JFK Act or who have engaged in research into the assassination of President Kennedy.

The Review Board received written comments on the proposed interpretive regulations from four Federal agencies, three state and local government entities, and twenty-one private individuals and organizations with an interest in the Review Board's work. Federal agencies providing written comments include the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), NARA, and the Department of State. State or local government entities providing written comments include the Dallas (Texas) County Commissioner's Court, the Dallas County Historical Foundation, and the City of Dallas Records Management Division of the Office of the City Secretary.

Prior to publication of the proposed interpretive regulations, the Review Board heard testimony at a public hearing held at the Review Board's offices on December 14, 1994, from representatives of NARA on the question of including artifacts in the scope of the term ''assassination record.'' After publication of the proposed interpretive regulations and before expiration of the comment period, the Review Board heard testimony at a public hearing on March 7, 1995, from the FBI and from several individuals and representatives of private organizations on their views regarding the text of the proposed interpretive regulations. Copies of all written comments received and transcripts of public testimony on the proposed interpretive regulations were placed in the public reading room at the Review Board's offices and made available for inspection and copying by the public upon request.

At a public meeting held on May 3, 1995, for which notice was timely published in the **Federal Register** pursuant to the provisions of the Government in the Sunshine Act, the Review Board considered a final draft of these interpretive regulations. That discussion draft incorporated many of the comments received by the Review Board on the proposed interpretive regulations. The Review Board unanimously voted to adopt the text of the discussion draft as its final interpretive regulations. The approved text is, with a few minor corrections that do not change the substance, published here.

Response to Comments

The Review Board found very helpful the thoughtful and, in many cases, very detailed comments submitted on the proposed interpretive regulations. Nearly all of the commentators expressed support for what they characterized as the proposed interpretive regulations' comprehensiveness and flexibility. All comments submitted were carefully studied and considered by the Review Board. Submitters made both substantive and technical suggestions, many of which were incorporated into the interpretive regulations as issued here in final form. The summary below includes the principal substantive comments received and the Review Board's responses thereto.

Comment: The proposed language of § 1400.1(a) is unduly restrictive because the phrase ''may have led to the assassination'' requires at least a potential causal link to the assassination. Moreover, determining whether there is a causal link would require the Review Board to evaluate the validity of competing accounts of what

led to the assassination of President Kennedy.

Response: A number of commentators put forward criticisms along these lines. Some of these commentators suggested that some form of a ''reasonably related'' standard be substituted for the ''may have led to'' language, while others suggested alternative formulations (*e.g.*, ''that may shed light on the assassination''). In adopting and eventually applying a ''reasonably related'' standard, the Review Board does not seek to endorse or reject any particular theory of the assassination of President Kennedy, although such theories may inform the Review Board's search for records reasonably related to the assassination and investigations into it. The Review Board believes that § 1400.1(a), as now worded, advances that effort and will promote a consistent broad interpretation and implementation of the JFK Act.

Comment: The proposed language of § 1400.1(a) is too broad and open-ended. A more specific nexus to the assassination of President Kennedy should be required.

Response: As its text and legislative history make clear, the JFK Act contemplates that the Review Board extend its search for relevant records beyond what has been compiled or reviewed by previous investigations. It is inevitable, therefore, that the Review Board must exercise judgment in determining whether such records constitute ''assassination records.'' The Review Board regards its ''reasonably related'' standard as sufficient to ensure that agencies are not overburdened with identifying and reviewing records that, if added to the JFK Assassination Records Collection, would not advance the purposes of the JFK Act.

Comment: Section 1400.1 should specifically include as assassination records any records pertaining to particularly identified individuals, organizations, events, etc.

Response: The Review Board determined that, in almost every case, the types of records commentators sought to add were already adequately covered by § 1400.1 as proposed. Accordingly, the Review Board declined to include records or record groups at the level of specificity urged by these commentators because doing so might limit the scope of the interpretive regulations as applied initially by other agencies, or otherwise might prove duplicative or confusing. However, the Review Board welcomes and encourages suggestions from the public as to specific records or record groups that may constitute assassination records, and intends to pursue such leads, including those provided in the written comments to the proposed interpretive regulations.

Comment: Section 1400.2(a) is vague and overly broad in describing the scope of additional records and information.

Response: The Review Board has added language to clarify that the purpose of requesting additional records and information under § 1400.2(a) is to identify, evaluate, or interpret assassination records, including assassination records that may not initially have been identified as such by an agency. The Review Board also has added language to indicate that it intends to implement this section through written requests signed by its Executive Director. The Review Board contemplates that, with regard to such requests, its staff will work closely with entities to which such requests are addressed to implement the JFK Act effectively and efficiently.

Comment: The scope of additional records and information should specifically include records and information that:

—describe agencies' methods of searching for records;
—describe reclassification, transfer, destruction, or other disposition of records; or
—do not constitute assassination records, but have the potential to enhance, enrich, and broaden the historical record of the assassination.

Response: To the extent that the inclusion of records and information of the types described would assist the Review Board in meeting its responsibilities under the JFK Act, the Review Board has adopted the suggested language.

Comment: The scope of ''assassination records'' under § 1400.1 and ''additional records and information'' under § 1400.2 should not extend to state and local government or to private records that are not in the possession of the Federal government.

Response: The Review Board considered such comments carefully, but concluded that the terms of the JFK Act preclude the narrower reading of the Review Board's responsibilities urged by such comments. Section 1400.6 allows the Review Board, in its discretion, to accept copies in lieu of originals. The Review Board believes that this flexibility addresses the concerns of some commentators about the removal of original records already housed, for example, in state or local archives.

Comment: Section 1400.3 should include as sources of assassination records and additional records and information individuals and corporations that possess such material even if not obtained from sources identified in paragraphs (a) through (e) thereof, and should specifically include individuals and corporations that contracted to provide goods or services to the government.

Response: The Review Board has added paragraph (f) to this section in response to these comments. The Review Board has concluded that, in view of paragraph (f), specifically identifying government contractors or other private persons would be unnecessary and redundant.

Comment: NARA contended that § 1400.4 should not include artifacts among the types of materials included in the term ''record.'' Treating artifacts as ''records'' would be contrary to NARA's accustomed practice and the usage of the term ''records'' in other areas of Federal records law and would result in substantial practical difficulties.

Response: The Review Board has carefully considered NARA's objections to the inclusion of artifacts as ''records,'' but decided that this inclusion is necessary to achieve the purposes of the JFK Act. The Review Board notes that artifacts that became exhibits to the proceedings of the Warren Commission have long been in the custody of NARA, and decided that these artifacts should remain in the JFK Assassination Records Collection. The Review Board further believes that the unique issues of public trust and credibility of government processes that prompted enactment of the JFK Act require that artifacts be included within the JFK Assassination Records Collection. The strong support that commenting members of the public gave to this position reinforces this conclusion. The Review Board included in its proposed regulations, and retained in § 1400.7(b)–(c) of the final interpretive regulations, language intended to address NARA's concerns about potential copying requirements and preservation issues unique to artifacts.

Comment: Section 1400.5 should be modified to allow agencies to withhold from the JFK Assassination Records Collection material that is not related to the assassination of President Kennedy, even though it appears in a record that contains other material that is related to the assassination of President Kennedy.

Response: It remains the intent of this section to make clear to agencies that, as a rule, entire records, and not parts thereof, are to become part of the JFK Assassination Records Collection. The purpose of requiring that records be produced in their entirety is to ensure

that the context and integrity of the records be preserved. Only in rare instances will the Review Board assent to withholding particular information within an assassination record on the ground that such information is not relevant to the assassination. Section 1400.5 has been modified to clarify that, although the Review Board may allow this practice in extraordinary circumstances, this determination is within the sole direction of the Review Board.

Comment: The discussion of originals and copies in § 1400.6 is, in various respects, unclear and confusing.

Response: The Review Board made extensive changes to this section to address these concerns and to achieve greater internal consistency. The Review Board's intent in this section is to express its strong preference for including original records in the JFK Assassination Records Collection, but also its understanding that, for a variety of reasons, there may be situations where a copy instead of the original of an assassination record may be more appropriate for inclusion in the Collection.

Comment: Section 1400.6 should be clarified as to whether ''record copies'' of Federal agency may be included in the JFK Assassination Records Collection.

Response: The Review Board has modified § 1400.6(a)(1) to clarify that the Review Board may determine that record copies may be included in the Collection.

Comment: The Catalog of Assassination Records (COAR) described in § 1400.8 should consist of, or be replaced by, the database and finding aids prepared by the Federal agencies in possession of assassination records.

Response: This and other comments received regarding the proposed § 1400.8 indicated some confusion as to the intent and operation of the mechanism established in this section. For this reason, the Review Board decided to replace the term ''Catalog of Assassination Records'' with the term ''Notice of Assassination Record Determination'' (NARD), and to redraft this section to clarify the Review Board's intent to use the NARD mechanism simply to document the Review Board's ongoing determinations that, in addition to records explicitly enumerated in the JFK Act as assassination records (*e.g.*, records reviewed by the HSCA) or identified by Federal agencies in their own searches, certain other records also are assassination records to be included in the JFK Assassination Records Collection.

Section by Section Analysis

Scope of Assassination Record

As discussed above with regard to the public comments, subparagraph (a) of § 1400.1 has been modified to adopt a ''reasonably related'' standard and the term ''Catalog of Assassination Records'' has been replaced with ''Notice of Assassination Record Determination'' in subparagraph (b)(3). The final interpretive regulations also incorporate suggested technical changes, including edits for clarification and revision of this section's title to make it more precise.

Scope of Additional Records and Information

The title of § 1400.2 was revised to conform to the new title of § 1400.1. Additional editing changes were made for clarity. A new subpart (6) was added to subparagraph (e) and a new subparagraph (f) was added after consideration of comments that noted the potential exclusion of certain categories from the scope of this section in the proposed interpretive regulations. The Review Board has added language in the final interpretive regulations to clarify that the purpose of this section is to aid in identifying, evaluating or interpreting assassination records, including assassination records that may not initially have been identified by an agency. The Review Board also has added language to suggest that it intends to implement this section through written requests signed by the Review Board's Executive Director.

Sources of Assassination Records and Additional Records and Information

A new subparagraph (g) was added to § 1400.3 after consideration of comments noting the potential exclusion of records created by individuals or corporations or obtained from sources other than those already identified in the previous subparagraphs.

Types of Materials Included in Scope of Assassination Record and Additional Records and Information

No substantive change has been made to § 1400.4 as it appeared in the proposed interpretive regulations.

Requirement That Assassination Records be Released in Their Entirety

Language has been added to § 1400.5 to permit the Review Board, in its sole discretion, to allow release of only part of an assassination record where such partial release is sufficient to comply with the intent and purposes of the JFK Act.

Originals and Copies

Extensive changes were made to § 1400.6 for reasons of clarify and internal consistency. The Review Board also incorporated in the final interpretive regulations language clarifying that ''record copies'' of Federal agency records may be included in the JFK Assassination Records Collection and addressing the important issue of preservation requirements. In this respect, the Review Board sought to treat records in various media in a means appropriate to the unique characteristics of each medium.

Additional Guidance

In the light of comments received, the Review Board extensively revised § 1400.7. Subparagraph (d), as it appeared in the proposed interpretive regulations, has been broken into three subparagraphs—new subparagraphs (d), (e), and (f)—to avoid potential confusion and to add clarity. The intent of these subparagraphs is to make clear that all files on an individual, event, organization or activity are to be made available to the Review Board regardless of the labels on the files, where the records may be found, or whether they reflect the true name or identifier of the individual, event organization, or activity.

Subparagraphs (b) and (c) § 1400.7 were included in the proposed interpretive regulations and retained in the final interpretive regulations in order to address concerns expressed by NARA regarding the inclusion of artifacts in the scope of the material deemed ''assassination records.'' By including these subparagraphs, the Review Board wishes to make it clear that it believes the JFK Act establishes unique standards as to the records to be included in the JFK Assassination Records Collection. By including artifacts as a type of ''assassination record,'' the Review Board seeks to fulfill its mandate from Congress to assemble all materials reasonably related to the assassination in the JFK Assassination Records Collection. It is not intended that the inclusion here of artifacts for purposes of implementing the JFK Act should be construed to affect the implementation of other records laws. Subparagraph (c) is intended to ensure that all artifacts in the collection are preserved for posterity and that public access be provided to those artifacts in a manner consistent with their preservation. The Review Board encourages NARA to set out in writing the terms and conditions under

which access to such materials shall be allowed.

Implementing the JFK Act—Notice of Assassination Records Determination

The Review Board has replaced the term ''Catalog of Assassination Records'' that appeared in the proposed interpretive regulations and redrafted § 1400.8 to clarify the Review Board's intent. In the final interpretive regulations, the Review Board substitutes the term NARD for prior references to a ''catalog.''

Paperwork Reduction Act Statement

The regulation is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) because it does to contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared, 5 U.S.C. 605(b). The proposed rule would not impose any obligations, including any obligations on ''small entities,'' as set forth in 5 U.S.C. 601(3) of the Regulatory Flexibility Act, or within the definition of ''small business,'' as found in 15 U.S.C. 632, or within the Small Business Size Standards in regulations issued by the Small Business Administration and codified in 13 CFR part 121.

Review by OMB

This regulation has been reviewed by OMB under Executive Order 12866.

List of Subjects in 36 CFR Part 1400

Administrative practice and procedure, Archives and records.

Accordingly, the review Board hereby establishes a new chapter XIV in title 36 of the Code of Federal Regulations to read as follows:

CHAPTER XIV—ASSASSINATION RECORDS REVIEW BOARD

PART 1400—GUIDANCE FOR INTERPRETATION AND IMPLEMENTATION OF THE PRESIDENT JOHN F. KENNEDY ASSASSINATION RECORDS COLLECTION ACT OF 1992 (JFK ACT)

Sec.

1400.1 Scope of assassination record.
1400.2 Scope of additional records and information.
1400.3 Sources of assassination records and additional records and information.
1400.4 Types of materials included in scope of assassination record and additional records and information.
1400.5 Requirement that assassination records be released in their entirety.
1400.6 Originals and copies.
1400.7 Additional guidance.
1400.8 Implementing the JFK Act—Notice of Assassination Record Designation.

Authority: 44 U.S.C. 2107.

§ 1400.1 Scope of assassination record.

(a) An *assassination record* includes, but is not limited to, all records, public and private, regardless of how labeled or identified, that document, describe, report on, analyze or interpret activities, persons, or events reasonably related to the assassination of President John F. Kennedy and investigations of or inquiries into the assassination.

(b) An *assassination record* further includes, without limitation:

(1) All records as defined in Section 3(2) of the JFK Act;

(2) All records collected by or segregated by all Federal, state, and local government agencies in conjunction with any investigation or analysis of or inquiry into the assassination of President Kennedy (for example, any intra-agency investigation or analysis of or inquiry into the assassination; any interagency communication regarding the assassination; any request by the House Select Committee on Assassinations to collect documents and other materials; or any inter- or intra-agency collection or segregation of documents and other materials);

(3) Other records or groups of records listed in the Notice of Assassination Record Designation, as described in § 1400.8 of this chapter.

§ 1400.2 Scope of additional records and information.

The term *additional records and information* includes:

(a) All documents used by government offices and agencies during their declassification review of assassination records as well as all other documents, indices, and other material (including but not limited to those that disclose cryptonyms, code names, or other identifiers that appear in assassination records) that the Assassination Records Review Board (Review Board) has a reasonable basis to believe may constitute an assassination record or would assist in the identification, evaluation or interpretation of an assassination record. The Review Board will identify in writing those records and other materials it intends to seek under this section.

(b) All training manuals, instructional materials, and guidelines created or used by the agencies in furtherance of their review of assassination records.

(c) All records, lists, and documents describing the procedure by which the agencies identified or selected assassination records for review.

(d) Organizational charts of government agencies.

(e) Records necessary and sufficient to describe the agency's:

(1) Records policies and schedules;

(2) Filing systems and organization;

(3) Storage facilities and locations;

(4) Indexing symbols, marks, codes, instructions, guidelines, methods, and procedures;

(5) Search methods and procedures used in the performance of the agencies' duties under the JFK Act; and

(6) Reclassification to a higher level, transfer, destruction, or other information (*e.g.*, theft) regarding the status of assassination records.

(f) Any other record that does not fall within the scope of assassination record as described in § 1400.1, but which has the potential to enhance, enrich, and broaden the historical record of the assassination.

§ 1400.3 Sources of assassination records and additional records and information.

Assassination records and additional records and information may be located at, or under the control of, without limitation:

(a) Agencies, offices, and entities of the executing, legislative, and judicial branches of the Federal Government;

(b) Agencies, offices, and entities of the executive, legislative, and judicial branches of state and local governments;

(c) Record repositories and archives of Federal, state, and local governments, including presidential libraries;

(d) Record repositories and archives of universities, libraries, historical societies, and other similar organizations;

(e) Individuals who possess such records by virtue of service with a government agency, office, or entity;

(f) Persons, including individuals and corporations, who have obtained such

records from sources identified in paragraphs (a) through (e) of this section;

(g) Persons, including individuals and corporations, who have themselves created or have obtained such records from sources other than those identified in paragraphs (a) through (e) of this section;

(h) Federal, state, and local courts where such records are being held under seal; or

(i) Foreign governments.

§ 1400.4 Types of materials included in scope of assassination record and additional records and information.

The term *record* in *assassination record* and *additional records and information* includes, for purposes of interpreting and implementing the JFK Act:

(a) papers, maps, and other documentary material;

(b) photographs;

(c) motion pictures;

(d) sound and video recordings;

(e) machine readable information in any form; and

(f) artifacts.

§ 1440.5 Requirement that assassination records be released in their entirety.

An assassination record shall be released in its entirety except for portions specifically postponed pursuant to the grounds for postponement of public disclosure of records established in § 2107.6 of the JFK Act, and no portion of any assassination record shall be withheld from public disclosure solely on grounds of non-relevance unless, in the Review Board's sole discretion, release of part of a record is sufficient to comply with the intent and purposes of the JFK Act.

§ 1400.6 Originals and copies.

(a) For purposes of determining whether originals or copies of assassination records will be made part of the President John F. Kennedy Assassination Records Collection (JFK Assassination Records Collection) established under the JFK Act, the following shall apply:

(1) In the case of papers, maps, and other documentary materials, the Review Board may determine that record copies of government records, either the signed original, original production or a reproduction that has been treated as the official record maintained to chronicle government functions or activities, may be placed in the JFK Assassination Records Collection;

(2) In the case of other papers, maps, and other documentary material, the Review Board may determine that a true and accurate copy of a record in lieu of the original may be placed in the JFK Assassination Records Collection;

(3) In the case of photographs, the original negative, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(4) In the case of motion pictures, the camera original, whenever available (otherwise, the earliest generation print that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(5) In the case of sound and video recordings, the original recording, whenever available (otherwise, the earliest generation copy that is a true and accurate copy), may be placed in the JFK Assassination Records Collection;

(6) In the case of machine-readable information, a true and accurate copy of the original (duplicating all information contained in the original and in a format that permits retrieval of the information), may be placed in the JFK Assassination Records Collection; and

(7) In the case of artifacts, the original objects themselves may be placed in the JFK Assassination Records Collection.

(b) To the extent records from foreign governments are included in the JFK Assassination Records Collection, copies of the original records shall be sufficient for inclusion in the collection.

(c) In cases where a copy, as defined in paragraph (a) of this section, is authorized by the Review Board to be included in the JFK Assassination Records Collection, the Review Board may require that a copy be certified if, in its discretion, it determines a certification to be necessary to ensure the integrity of the JFK Assassination Records Collection. In cases where an original, as defined in paragraph (a) of this section, is required for inclusion in the JFK Assassination Records Collection, the Review Board may, at its discretion, accept the best available copy. In such cases that records included in the JFK Assassination Records Collection, whether originals or copies, contain illegible portions, such records shall have attached thereto a certified transcription of the illegible language to the extent practicable.

(d) For purposes of implementing the JFK Act, the term *copy* means a true and accurate photocopy duplication by a means appropriate to the medium of the original record that preserves and displays the integrity of the record and the information contained in it.

(e) Nothing in this section shall be interpreted to suggest that additional copies of any assassination records contained in the JFK Assassination Records Collection are not also assassination records that, at the Review Board's discretion, may also be placed in the JFK Assassination Records Collection.

(f) Nothing in this section shall be interpreted to prevent or to preclude copies of any electronic assassination records from being reformatted electronically in order to conform to different hardward and/or software requirements of audiovisual or machine readable formats if such is the professional judgment of the National Archives and Records Administration.

§ 1400.7 Additional guidance.

(a) A government agency, office, or entity includes, for purposes of interpreting and implementing the JFK Act, all current, past, and former departments, agencies, offices, divisions, foreign offices, bureaus, and deliberative bodies of any Federal, state, or local government and includes all inter- or intra-agency working groups, committees, and meetings that possess or created records relating to the assassination of President John F. Kennedy.

(b) The inclusion of artifacts in the scope of the term assassination record is understood to apply solely to the JFK Assassination Records Collection and to implement fully the terms of the JFK Act and has no direct or indirect bearing on the interpretation or implementation of any other statute or regulation.

(c) Whenever artifacts are included in the JFK Assassination Records Collection, it shall be sufficient to comply with the JFK Act if the public is provided access to photographs, drawings, or similar materials depicting the artifacts. Additional display of or examination by the public of artifacts in the JFK Assassination Records Collection shall occur under the terms and conditions established by the National Archives and Records Administration to ensure their preservation and protection for posterity.

(d) The terms and, or, any, all, and the plural and singular forms of nouns shall be understood in their broadest and most inclusive sense and shall not be understood to be terms of limitation.

(e) Unless the Review Board in its sole discretion directs otherwise, records that are identified with respect to a particular person shall include all records ralating to that person that use or reflect the true name or any other name, pseudonym, codeword, symbol number, cryptonym, or alias used to identify that person.

(f) Unless the Review Board in its sole discretion directs otherwise, records that are identified by the Review Board with respect to a particular operation or program shall include all records, pertaining to that program by any other name, pseudonym, codeword, symbol, number, or cryptonym.

§ 1400.8 Implementing the JFK Act—Notice of Assassination Record Designation.

(a) A Notice of Assassination Record Designation (NARD) shall be the mechanism for the Review Board to announce publicly its determination that a record or group of records meets the definition of assassination records.

(b) Notice of all NARDs will be published in the **Federal Register** within 30 days of the decision to designate such records as assassination records.

(c) In determining to designate such records as assassination records, the Review Board must determine that the record or group of record will more likely than not enhance, enrich, and broaden the historical record of the assassination.

Dated: June 22, 1995.

David G. Maxwell,

Executive Director Assassination Records Review Board.

[FR Doc. 95–15819 Filed 6–27–95; 8:45 am]

BILLING CODE 6820–TD–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC14

National Capital Region Parks; Special Regulations; Correction

AGENCY: National Park Service, Interior.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published Friday, April 7, 1995 (60 FR 17639). The regulations limit the sales on Federal park land to books, newspapers, leaflets, pamphlets, buttons and bumper stickers and set standards for sites, stands and structures used in such sales within National Capital Region Parks.

EFFECTIVE DATE: May 8, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs and Tourism, National Capital Region, National Park Service, 1100 Ohio Drive SW., Washington, D.C. (202) 619–7223.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contains one error which may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the publication on Friday, April 7, 1995 (60 FR 17639) of the final regulation, FR Doc. 95–8599, for National Capital Region, is corrected as follows:

In the FR Doc. 95–8599, appearing on page 17649 in the issue of Friday, April 7, 1995, the words ''the introductory text of'' need to be added after the word ''revising'' that appears in the first column, beginning on the ninth line, which now reads ''2. Section 7.96 is amended by revising paragraph (k)(2) to read as follows:'' is corrected to read ''2. Section 7.96 is amended by revising the introductory text of paragraph (k)(2) to read as follows:''

Dated: June 22, 1995.

Rick Gale,

Acting Chief, Ranger Activities Division.

[FR Doc. 95–15741 Filed 6–21–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A–1–FRL–5249–5]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is extending the attainment date for the Hancock and Waldo Counties, a marginal ozone nonattainment area in Maine to November 15, 1994. This extension is based in part on monitored air quality readings for the national ambient air quality standard for ozone during 1993. This notice also updates tables in 40 CFR 52.1024 and 40 CFR 81.320 concerning attainment dates in the State of Maine.

EFFECTIVE DATE: This extension becomes effective July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION: On Feb. 22, 1995 (60 FR 9813), EPA published a notice of proposed rulemaking (NPR) for the State of Maine. The NPR proposed extending the attainment deadline for ozone for Hancock and Waldo Counties, and asked for public comment. No comments were received.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act as amended in 1990 (CAA) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** notices, EPA completed this process by designating and classifying all areas of the country for ozone. See, *e.g.*, 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified marginal through extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

The Hancock and Waldo Counties, Maine area was designated nonattainment and classified marginal for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1993.

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone marginal nonattainment areas, the three-year period is 1991–93. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump

up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following, minimum, conditions: (i) The State requests a one-year extension, (ii) all requirements and commitments in the EPA-approved SIP for the area have been complied with, and (iii) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

EPA Action

On February 22, 1994 (60 FR 9813) EPA proposed to grant a one-year extension of the attainment date for the Hancock and Waldo Counties, Maine nonattainment area. Air quality monitors for this area revealed two exceedances of the ozone National Ambient Air quality Standard during the three year period from 1991 to 1993. Both exceedances occurred in 1991, at a monitor located in Hancock County at a site operated by the National Park Service. The site had data capture problems in both 1991 and 1992. In 1993 the Maine Department of Environmental Protection took over maintenance of the site and data capture improved greatly. Since 1991 the site has not had any exceedances of the NAAQS. EPA received no comments on this proposal.

Today EPA is granting the request for extension. Accordingly, EPA is proposing to establish a new attainment date for the Hancock and Waldo Counties, Maine area as November 15, 1994.

Regulatory Process

Under E.O. 12866, this action has been exempted from the Office of Management and Budget's review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Attainment date extensions under section 181(a)(5) of the CAA do not create any new requirements; therefore, I certify that this action will not have a significant impact on small entities.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: May 22, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1024 is revised to read as follows:

§ 52.1024 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained.

ATTAINMENT DATES ESTABLISHED BY CLEAN AIR ACT OF 1990

Air quality control region and nonattainment area	Pollutant					
	SO_2		PM–10	NO_2	CO	O_3
	Primary	Secondary				
AQCR 107:						
Androscoggin County	(a)	(b)	(a)	(a)	(a)	(g)
Kennebec County	(a)	(b)	(a)	(a)	(a)	(g)
Knox County	(a)	(b)	(a)	(a)	(a)	(g)
Lincoln County	(a)	(b)	(a)	(a)	(a)	(g)
Waldo County	(a)	(b)	(a)	(a)	(a)	(d)
Oxford Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(e)
Franklin Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(e)
Somerset Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(e)
AQCR 108:						
Aroostook Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(c)	(a)	(a)	(a)
Remainder of AQCR	(a)	(b)	(a)	(a)	(a)	(a)
AQCR 109:						
Hancock County	(a)	(b)	(a)	(a)	(a)	(d)
Millinocket	(e)	(e)	(a)	(a)	(a)	(a)
Remainder of AQCR	(a)	(b)	(a)	(a)	(a)	(a)
AQCR 110:						
York County	(a)	(b)	(a)	(a)	(a)	(g)
Cumberland County	(a)	(b)	(a)	(a)	(a)	(g)
Sagadahoc County	(a)	(b)	(a)	(a)	(a)	(g)
Oxford Cnty. (Part) See 40 CFR 81.320	(a)	(b)	(a)	(a)	(a)	(e)
AQCR 111	(a)	(b)	(a)	(a)	(a)	(a)

[a] Air quality levels presently below primary standards or area is unclassifiable.

[b] Air quality levels presently below secondary standards or area is unclassifiable.
[c] 12/31/94.
[d] 11/15/94 (one-year extension granted).
[e] 11/15/95.
[g] 11/15/96.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.320 the ozone table is amended by revising the entry for ''Hancock County and Waldo County Area'' to read as follows:

§ 81.320 Maine.

* * * * *

MAINE—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*		*
Hancock County and Waldo County Area:				
Hancock County		Nonattainment ..		Marginal 2.
Waldo County		Nonattainment ..		Marginal 2.
* * * *	*	*		*

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to 11/15/94.

* * * * *

[FR Doc. 95–15871 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 3E4249/R2141; FRL–4958–4]

RIN 2070–AB78

Fenarimol; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the fungicide fenarimol in or on the imported raw agricultural commodity bananas at 0.5 part per million (ppm). Not more than 0.25 ppm shall be present in the pulp after the peel is removed. DowElanco petitioned for this regulation to establish a maximum permissible level for combined residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective June 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3E4249/R2141], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 3E4249/R2141]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 29, 1995 (60 FR 20471), EPA issued a proposed rule that gave notice that DowElanco, 9002 Purdue Rd., Indianapolis, IN 46268-1189, had submitted a pesticide petition, (PP) 3E4249, to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), amend 40 CFR 180.421 to establish an import tolerance for the combined residues of the fungicide fenarimol, [*alpha*-(2-chlorophenyl)-*alpha*-(4-chlorophenyl)-5-pyrimidinemethanol] and its metabolites [*alpha*-(2-chlorophenyl)-*alpha*-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-(2-chlorophenyl)-(4-chlorophenyl)methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol and 5-[(2-chlorophenyl)-(4-chlorophenyl)methyl]pyrimidine (calculated as fenarimol)], in or on the

raw agricultural commodity bananas at 0.5 part per million (ppm). Not more than 0.25 ppm shall be present in the pulp after the peel is removed.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(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). 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3E4249/R2141] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3E4249/R2141], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.421(b), by revising the table therein to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Bananas[1]	0.5 (Not more than 0.25 ppm shall be present in the pulp after peel is removed)
Cherries	1.0
Grapes	0.2

* * * * *

[1]There are no United States registrations for bananas as of April 26, 1995.

[FR Doc. 95–15441 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 3F4204 and FAP 3H5670/R2145; FRL–4960–8]

RIN 2070–AB78

Cyfluthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes time-limited tolerances with an expiration date of November 15, 1997, for residues of the synthetic pyrethroid cyfluthrin in or on the raw agricultural commodity (RAC) sugarcane at 0.05 ppm and in or on the processed feed sugarcane molasses at 0.2 ppm. Bayer Corp., Animal Products (formerly Miles Corp.), requested the regulations to establish maximum permissible levels for residues of the insecticide.

EFFECTIVE DATE: This regulation becomes effective June 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 3F4204 and FAP 3H5670/R2145], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number, [PP 3F4024 and FAP 3H5670/R2145]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54353), which announced that the Bayer Corp. had submitted pesticide petition (PP) 3F4204 and feed additive petition (FAP) 3H5670 to EPA requesting that the Administrator, pursuant to sections 408(d) and 409(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) and 348(b), establish tolerances for residues of the insecticide cyfluthrin, cyano(4-fluoro-3-phenoxyphenyl)-methyl-3-(2,2-dicloroethenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the raw agricultural commodities sugarcane at 0.05 ppm and the feed commodities sugarcane bagasse (0.2 ppm) and sugarcane molasses (0.2 ppm). The proposed tolerance for sugarcane bagasse was subsequently withdrawn since bagasse in not considered a feed item.

No comments were received in response to the notice of filing.

The data base for cyfluthrin is essentially complete. Data lacking but desirable are a new 21-day subchronic dermal study, an acute neurotoxicity study in rats, and a 90-day neurotoxicity study in rats. Although these data are lacking, the Agency believes it has sufficient toxicity data to support the proposed tolerance, and these missing data will not significantly change its risk assessment. In a letter dated April 20, 1995, Bayer Corp. has committed to submit the 21-day subchronic dermal study by June 1996, the acute neurotoxicity study by December 1996, and the 90-day neurotoxicity study by May 1997.

In addition, the Agency is requiring submission of a processing study for blackstrap molasses. The submitted sugarcane processing studies show that only molasses was produced. No residue data were submitted for blackstrap molasses. In commercial processing, as molasses is further concentrated to recover more sugar, blackstrap is produced. Although blackstrap is an animal feed commodity (about 10% of diet), minor amounts can enter the human diet. In a letter dated January 25, 1995, Bayer Corp. submitted additional information confirming that residues of cyfluthrin do not concentrate in molasses. Thus it is unlikely residues will be concentrated in blackstrap. However, Bayer Corp has initiated an additional sugarcane processing study to obtain residue data for blackstrap which will be submitted by December 31, 1996. In the interim, Bayer Corp. proposes that the 0.2 ppm tolerance in molasses should cover any potential for the concentration of residues in blackstrap.

Based upon the submitted data in molasses, the Agency does not believe that residues will concentrate in blackstrap; however, since there is a potential for concentration, the Agency will establish a time-limited tolerance in molasses. After submission and evaluation of the blackstrap processing study, the Agency will determine the need for a permanent feed additive tolerance.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicology data submitted in support of the tolerance include:

1. A 12-month chronic feeding study in dogs with a no-observed-effect level (NOEL) of 4 mg/kg/day. The lowest-effect level (LEL) for this study is established at 16 mg/kg/day, based on slight ataxia, increased vomiting, diarrhea, and decreased body weight.

2. A 24-month chronic feeding/carcinogenicity study in rats with a NOEL of 2.5 mg/kg/day and LEL of 6.2 mg/kg/day, based on decreased body weights in males and females, decreased food consumption in males, and inflammatory foci in the kidneys in females. There were no carcinogenic effects observed under the conditions of the study.

3. A 24-month carcinogenicity study in mice. There were no carcinogenic effects observed under the conditions of the study.

4. An oral developmental toxicity study in rats with a maternal and fetal NOEL of 10 mg/kg/day (highest dose tested). An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg/day and a maternal LEL of 60 mg/kg/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg/day and a fetal LEL of 60 mg/kg/day were also observed in this study. The LEL was

based on increased resorption and increased postimplantation loss.

5. A developmental toxicity study in rats by the inhalation route of administration with a maternal NOEL of 0.0011 mg/L and an LEL of 0.0047 mg/L, based on reduced mobility, dyspnea, piloerection, ungroomed coats, and eye irritation. The fetal NOEL is 0.00059 mg/L, and the fetal LEL is 0.0011 mg/L, based on sternal anomalies and increased incidence of runts. A second developmental toxicity study in rats by the inhalation route of administration is currently under review. The issue of whether cyfluthrin directly induces fetotoxicity under these conditions is unresolved at this time.

6. A three-generation reproduction study in rats with a systemic NOEL of 2.5 mg/kg/day and a systemic LEL of 7.5 mg/kg/day due to decreased parent and pup body weights. The reproductive NOEL and LEL are 7.5 mg/kg/day and 22.5 mg/kg/day, respectively.

7. Mutagenicity tests, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary(CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

8. A metabolism study in rats showing that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

A chronic dietary exposure/risk assessment was performed for cyfluthrin using a Reference Dose (RfD) of 0.025 mg/kg bwt/day, based on a no-observed-effect level (NOEL) of 50 ppm (2.5 mg/kg bwt/day) and an uncertainty factor of 100. The NOEL was determined in a 2-year rat feeding study. The endpoint effects of concern were decreased body weights in males and inflammation of the kidneys in females at the LEL of 150 ppm (6.2 mg/kg/day). The current estimated dietary exposure for the overall U.S. population resulting from established tolerances is 0.002730 mg/kg/bwt day, which represents 11% of the RfD. Established tolerances utilize 32% of the RfD in the subgroup population with the highest exposure levels, nonnursing infants less than 1-year old. The proposed use on sugarcane would not significantly contribute to the dietary exposure of the overall U.S. population or nonnursing infants. Generally speaking, EPA has no cause for concern if total residue contribution for published and proposed tolerances is less than the RfD. EPA concludes that the chronic dietary risk of cyfluthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

Because there was a sign of developmental effects seen in animal studies, the Agency used the rabbit developmental toxicity study with a maternal NOEL of 20 mg/kg/day to assess acute dietary exposure and determine a margin of exposure (MOE) for the overall U.S. population and certain subgroups. Since the toxicological end-point pertains to developmental toxicity, the population group of concern for this analysis is women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. For this analysis the Agency calculated the MOE for women ages 13 and above to be 1,250. Generally speaking, MOE's greater than 100 for data derived from animal studies are acceptable to the Agency.

The established tolerances of 0.40 ppm for residues of cyfluthrin in/on fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep and 0.01 ppm in/on fat, meat, and meat byproducts of poultry and eggs are adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2).

The metabolism of cyfluthrin in plants and livestock for this use is adequately understood. The residue of concern is cyfluthrin per se. An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

On August 5, 1988, EPA issued a conditional registration and time-limited tolerance for cyfluthrin for use on cottonseed with an expiration date of October 31, 1991 (see the **Federal Register** of August 15, 1988 (53 FR 30676)). On November 12, 1992, the conditional registration was amended and extended to November 15, 1993, and the tolerance on cottonseed extended to November 15, 1994 (see the **Federal Registers** of October 20, 1993 (58 FR 54094) and February 22, 1994 (54 FR 9411)). On November 15, 1993, EPA amended the conditional registration on cottonseed by extending the expiration date to November 15, 1996, and extending the timelimited tolerance to November 15, 1997. The conditional registration was amended and extended to allow time for submission and evaluation of additional environmental effects data. In order to evaluate the effects of cyfluthrin on fish and aquatic organisms and its fate in the environment, additional data were required to be collected and submitted during the period of conditional registration. Such requirements included a sediment bioavailability and toxicity study and a small-plot runoff study that must be submitted to the Agency by July 1, 1996. To be consistent with the conditional registration and extension on cottonseed, the Agency is proposing to issue a conditional registration with an expiration date of November 15, 1996, and establish a time-limited tolerance on sugarcane and sugarcane molasses with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

Residues remaining in or on the above commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with provisions of the conditional registration.

There are currently no actions pending against the continued registration of this chemical.

The pesticide is considered useful for the purposes for which it is sought and capable of achieving its intended physical or technical effect. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health and that use of the pesticide in accordance with the tolerance established by amending 40 CFR part 186 would be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing

requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(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). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 3F4204 and FAP 3H5670/R2145] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 3F4204 and FAP 3H5670/R2145], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements, or establishing or raising food additive regulations do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

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

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation of part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By amending § 180.436 in the table therein, by adding and alphabetically inserting an entry for the commodity sugarcane, to read as follows:

§ 180.436 Cyfluthrin; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
* * * * *		
Sugarcane	0.05	Do.
* * * * *		

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by amending paragraph (a) in the table therein by adding and alphabetically inserting an entry for the commodity sugarcane molasses as follows:

§ 186.1250 Cyfluthrin.

(a) * * *

Commodity	Parts per million	Expiration date
* * * * *		
Sugarcane, molasses	0.2	Do.
* * * * *		

* * * * *

[FR Doc. 95–15578 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 4F4340 and FAP 5H5722/R2146; FRL–4961–7]

RIN 2070–AB78

Clethodim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These regulations establish tolerances for the residues of the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)-cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on the raw agricultural commodities sugar beet roots at 0.20 ppm; sugar beet tops at 0.50 ppm; and onions (dry bulb) at 0.20 ppm; and in or on the food additive commodity sugar beet molasses at 2.0 ppm. Valent U.S.A. Corp. submitted petitions for these regulations that establish maximum permissible levels for residues of the herbicide in or on the commodities.

EFFECTIVE DATE: These regulations become effective June 28, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 4F4340 and FAP 5H5722/R2146], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 4F4370 and FAP 5H5722/R2146]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1994 (59 FR 54906), EPA issued a notice announcing that Valent U.S.A. Corp., 1333 North California Blvd., Walnut Creek, CA, had submitted a pesticide petition (PP 4F4340) to EPA under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), proposing to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on sugar beet, roots, at 0.2 ppm, sugar beet, tops, 0.2 ppm, and onion (dry bulb) at 0.5 ppm. On March 13, 1995, Valent subsequently submitted a revision to PP 4F4340 to amend the proposed tolerances on sugar beet, tops from 0.20 to 0.50 ppm and onions (dry bulb) from 0.50 to 0.20 ppm. In addition, EPA issued a notice, published in the **Federal Register** of May 3, 1995 (60 FR 21816), which announced that Valent had submitted a food additive petition (FAP 5H5722) to EPA under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 348), proposing to amend 40 CFR part 186 by establishing a regulation to permit the residues of the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on sugar beet molasses at 2.0 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data described below were considered in support of these tolerances and food additive regulations.

1. Several acute toxicology studies placing the technical-grade herbicide in Toxicity Category III.

2. A 2-year rat chronic toxicity/carcinogenicity study found the compound to be noncarcinogenic to rats under the conditions of the study. The systemic no-observed-effect level (NOEL) was 500 ppm (approximately 19 mg/kg/day), and the systemic lowest-observed-effect level (LOEL) was 2,500 ppm (approximately 100 mg/kg/day) based on the observed body wight gain, the increases in liver weights, and the presence of centrilobular hepatic hypertrophy.

3. An 18-month mouse carcinogenicity study which showed the compound to be noncarcinogenic to mice under the conditions of the study. The systemic NOEL was 200 ppm (8 mg/kg/day), and the systemic LOEL was 1,000 ppm (50 mg/kg/day) based on treatment-related effects on survival, red cell mass, absolute and relative liver weights, and microscopic findings in liver and lung.

4. A 1-year feeding study in dogs with a systemic NOEL of 1 mg/kg/day in both sexes and an LOEL of 75 mg/kg/day based on increased absolute and relative liver weights, and alteration and clinical chemistry.

5. A developmental toxicity study in rats with a developmental and maternal NOEL and LOEL of 100 and 350 mg/kg/day, respectively. The NOEL and LOEL for developmental toxicity were based on reductions in fetal body weight and increases in skeletal anomalies.

6. A developmental toxicity study in rabbits with a maternal toxicity NOEL and LOEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore the developmental toxicity NOEL was 300 mg/kg/day (HDT).

7. A two-generation reproduction study in the rat with parental toxicity NOEL and LOEL of 500 and 2,500 ppm (51 and 263 mg/kg/day), respectively, based on reductions in body weight in males, and decreased food consumption

in both generations. The NOEL for reproductive toxicity was 2,500 ppm (263 mg/kg/day, HDT).

8. A mutagenicity test with *Salmonella* Ames assay showed nonmutagenicity in three strains. Clethodim imine sulfone was negative for reverse gene mutation in *Salmonella* and *E. coli* exposed up to 10,000 *ug*/plate with or without activation. Clethodim was negative for chromosomal damage in bone marrow cells of rats treated orally up to toxic dose (1,500 mg/kg).

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified clethodim in Group E carcinogen (no evidence of carcinogenicity) under the Agency's ''Guidelines for Carcinogen Risk Assessment,'' published in the **Federal Register** of September 24, 1986 (51 FR 33992). In its evaluation, CPRC gave consideration to the weight change in the 2-year feeding study in rats and the 18-month feeding study in mice.

The Reference dose (RfD) is established at 0.01 mg/kg body weight/day based on a NOEL of 1.0 mg/kg/body weight/day from the 1-year feeding study in dogs and an uncertainty factor of 100. Using anticipated residues and 100 percent crop treated, the Anticipated Residue Contribution (ARC) from the current action is estimated at 0.00087 mg/kg/body weight/day for the general population, or 8.7 percent of the RfD for the general U.S. population. The ARC for the most exposed subgroups is 0.002527 mg/kg body weight/day for nonnursing infants (less than 1 year old) and 0.001776 mg/kg body weight/day for children (1 to 6 years old), or 25.27 and 17.76 percent of the RfD, respectively. Therefore, no appreciable risk is expected from chronic dietary intake since the RfD is not exceeded for either the general population or any subgroup.

The nature of the residue is adequately understood for the purposes of the tolerance.

An adequate analytical method is available for enforcement purposes. A common moiety analytical method for tolerance enforcement (gas chromatography with a flame photometric detector in the sulfur mode) was satisfactorily tested and is available. This method, however, cannot distinguish between clethodim and sethoxydim, a closely related herbicide with tolerances established under 40 CFR 180.412. A compound-specific confirmatory method (HPLC with a UV detector) that can distinguish between derivatives of clethodim and sethoxydim was confirmed.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol.II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested for: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances are sought, and the tolerances are capable of achieving the intended physical or technical effect. There are currently no actions pending against the registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 186 will protect the public health and that use of the pesticide in accordance with the terms of the proposed food additive tolerance will be safe. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(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). A request for a hearing will be granted if the Administrator determines that the material submitted show the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4340 and FAP 5H5722/R2146] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4340 and FAP 5H5722/R2146], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect

of the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined the regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of subjects in 40 CFR Parts 180 and 186

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

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 346a and 371.

b. In § 180.458, by designating the existing text as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

(a) * * *

(b) Tolerances are established for the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim tolerance residues for the following raw agricultural commodities:

Commodity	Parts per million
Onions (dry bulb)	0.20
Sugar beet, roots	0.20
Sugar beet, tops	0.50

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1075, by revising the section heading, designating the existing text as paragraph (a), and adding new paragraph (b), to read as follows:

§ 186.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one).

(a) * * *

(b) Tolerances are established for the herbicide clethodim [(E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one] and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexen-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexen-3-one moieties and their sulphoxides and sulphones, expressed as clethodim tolerance residues for the following feeds:

Commodity	Parts per million
Sugar beet, molasses	2.0

[FR Doc. 95–15579 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 185 and 186

[PP 5H5712/R2140; FRL–4957–1]

RIN 2070–AB78

Cyfluthrin; Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends a regulation for residues of the synthetic pyrethroid cyfluthrin in food/feed areas of food/feed-handling establishments. Miles Corp., Agricultural Division, petitioned EPA to amend the food/feed additive regulations to allow the use of a dust formulation in crack and crevice treatment. This rule was requested pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA).

EFFECTIVE DATE: This regulation becomes effective June 28, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [FAP 5H5712/R2140], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [FAP 5H5712/R2140]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: George T. Larocca, Product Manager (PM 13), Registration Division (7505C), Office of Pesticide Programs,

Enviromental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice in the **Federal Register** of February 8, 1995 (60 FR 7541), which announced that Miles, Corp., Agricultural Division, had submitted a food/feed additive petition, (FAP) 5H5712, to EPA requesting that the Administrator, pursuant to section 409(e) of the FFDCA (21 U.S.C. 348), amend 40 CFR 185.1250 and 186.1250 by amending the food/feed additive regulation for residues of the synthetic pyrethroid cyfluthrin by adding conditions for use of a dust formulation in crack or crevice treatment in areas of food/feed-handling establishments. The petition was subsequently amended to include spot treatment also.

No new data were submitted in support of this amendment. Food and feed additive regulations are established under 40 CFR 185.1250(c) and 186.1250(c), respectively, permitting residues of cyfluthrin at up to 0.05 ppm in food/feed commodities exposed to the insecticide during treatment of food/feed handling establishments. Residue data submitted in support of general surface treatment with cyfluthrin in food/feed-handling establishments under pesticide petition (PP) 6H5515 (51 FR 43663, Dec. 3, 1986) are adequate to demonstrate that residues resulting from use of a dust formulation will not exceed the established tolerance of 0.05 ppm. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of this amended regulation are discussed in detail in related documents published in the **Federal Register** of April 12, 1995 (60 FR 18563).

The reference dose (RfD) for cyfluthrin is 0.025 mg/kg bwt/day and is based on the no-observeable-effect level (NOEL) of 2.5 mg/kg/day in the 2-year rat feeding study. An uncertainty factor (UF) of 100 was used to calculate the RfD. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes 11% of the RfD for the U.S. population and 32% of the RfD for nonnursing infants less than 1-year old, the subgroup with the highest estimated exposure to cyfluthrin residues. The use of a dust formulation in food/feed handling establishments does not contribute any more to the dietary exposure for the general population or nonnursing infants than general surface treatment.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the amending of 40 CFR 185.1250 and 186.1250 will be safe. Therefore, the regulation is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(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). 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 issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [FAP 5H5712/R2140] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [FAP 5H5712/R2140], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance

requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

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

Dated: June 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, paragraph (c)(2) is revised to read as follows:

§ 185.1250 Cyfluthrin.

* * * * *

(c) * * *

(2) Crack and crevice or spot treatments shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied with a low-pressure system with a pinpoint or variable-pattern nozzle. Dust formulation shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied using a hand duster, power duster, or other equipment capable of applying dust insecticide directly into voids and cracks and crevices. Dust applications should be made in a manner to avoid deposits on exposed surfaces or introducing the material into the air. Cover exposed food or remove food from premises. Do not apply directly to food. Reapplications may be made at 10-day intervals.

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, paragraph (c)(2) is revised to read as follows:

§ 186.1250 Cyfluthrin.

* * * * *

(c) * * *

(2) Crack and crevice or spot treatments shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied with a low-pressure system with a pinpoint or variable-pattern nozzle. Dust formulation shall be limited to a maximum of 0.1 percent of the active ingredient by weight, applied using a hand duster, power duster, or other equipment capable of applying dust insecticide directly into voids and cracks and crevices. Dust applications should be made in a manner to avoid deposits on exposed surfaces or introducing the material into the air. Cover exposed feed or remove feed from premises. Do not apply directly to feed. Reapplications may be made at 10-day intervals.

* * * * *

[FR Doc. 95–15439 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 300

[FRL–5249–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Alpha Chemical Corporation Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Alpha Chemical Corporation Site in Lakeland, Florida, from the National Priorities List (NPL). The NPL is codified as appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, no further response pursuant to CERCLA is appropriate.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Joe Franzmathes, Director, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404)347–3454. Comprehensive information on this Site is available at two information repositories located at: Lakeland Public Library, 100 Lake Morton Drive, Lakeland, Florida 33801, (813) 499–8242 and U.S EPA Record Center, 345 Courtland Street, N.E. Atlanta, Georgia 30365 (404)347–0506.

SUPPLEMENTARY INFORMATION: The Alpha Chemical Corporation Site in Lakeland, Florida, is being deleted from the NPL.

A Notice of Intent to Delete for this site was published on May 3, 1995 (60 FR 21786). The closing date for comments on the Notice of Intent to Delete was June 2, 1995. EPA received no comments and therefore did not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 301.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 15, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the Site ''Alpha Chemical Corporation, Lakeland, Florida''.

[FR Doc. 95–15874 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–16]

Radio Broadcasting Services; Leone, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, substitutes Channel 230C1 for Channel 266C1 at Leone, American Samoa, in order to avoid a short-spacing to a recently authorized station on Channel 266A in Western Samoa. *See* 60 FR 9001, February 16, 1995. Channel 230C1 can be allotted to Leone in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates –14–20–38 South Latitude and 170–47–06 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 7, 1995. The window period for filing applications will open on August 7, 1995, and close on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–16, adopted June 12, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under American Samoa, is amended by removing Channel 266C1 and adding Channel 230C1 at Leone.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15829 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 88–540, RM–6546]

Radio Broadcasting Services; Rapid City, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: This document denies the application for review filed by Spitzer Communications, Inc. and affirms the staff's action allotting Channel 254C1 to Rapid City, downgrading Channel 282C to Channel 281C1 at Rapid City, and modifying the construction permit of Tom-Tom Communications to specify operation on Channel 281C1. See *Report and Order,* 55 FR 07496 (March 2, 1990). With this action, this proceeding is terminated.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 776–1660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 88–540, adopted June 8, 1995 and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–15830 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–23; RM–8578]

Radio Broadcasting Services; Madisonville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Leon Hunt, d/b/a Hunt Broadcasting allots Channel 263A to Madisonville, Texas. *See* 60 FR 10534, February 27, 1995. Channel 263A can be allotted to Madisonville, Texas, in compliance with the Commission' minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) northwest to avoid a short-spacing conflict with the licensed site of Station KILT(FM), Channel 262C, Houston, Texas. The coordinates for Channel 263A at Madisonville are 31–00–50 and 95–57–06. With this action, this proceeding is terminated.

DATES: Effective August 7, 1995. The window period for filing applications will open on August 7, 1995, and close on September 7, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–23, adopted June 14, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 263A, at Madisonville.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15831 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 062195C]

Pacific Halibut Fisheries; North Washington Coast Sport Fishery

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

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 0800, July 1, 1995, through 1800, July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 6

North Washington Coast Sport Fishery Reopens for 1 Day

The north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut harvest that closed May 27, 1995, fell 11,020 lb (4.99 metric tons (mt)) short of the 71,410 lb (32.39 mt) catch limit. Private boat effort during the last week of fishing was less than expected, possibly because of the May 25 opening date for halibut fishing in the Strait of Juan de Fuca and Puget Sound (waters east of the Bonilla-Tatoosh line). The average weight of halibut landed was also lower than anticipated. Therefore, this area will reopen for 1 day, Saturday July 1. The daily bag limit will be one halibut per person, with no size limit. If enough catch limit remains after July 1, an additional opening may be announced.

Dated: June 23, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15867 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 062195B]

Pacific Halibut Fisheries; Close Southern Oregon Sport Season

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

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 11:59 p.m. June 1, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 5

Southern Oregon Sport Season to Close June 1

The preliminary catch estimate for the 1995 sport halibut fishery between the Florence North Jetty (Siuslaw River, 4°01′08″ N. lat.) and the California border (42°00′00″ N. lat.) indicates the 5,999 lb (2.72 metric tons (mt)) catch limit for the early fishery will be reached on June 1. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on June 1. Additional effort due to excellent weather significantly increased the harvest during May 25 through 27, 1995, allowing only a short notice before the closure.

Sport fishing for Pacific halibut will reopen on June 2, 7 days a week, only in the area inside the 30–fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from the Florence North Jetty (Siuslaw River) to the California border. The fishery will close August 2 or when 1,500 lb (.68 mt) are estimated to have been taken, whichever occurs first. Any poundage remaining unharvested after the earlier season will be added to this season. The daily bag limit remains two Pacific halibut per person, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0 cm).

Dated: June 22, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15868 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 950106003; I.D. 062195E]

Pacific Halibut Fisheries; North Washington Sport Fishery

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

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 11:59 p.m. May 27, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 4

North Washington Coast Sport Fishery to Close

The north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut harvest through May 21, 1995, is 43,041 lb (19.52 metric tons (mt)). Preliminary indications suggest that three factors will contribute to higher than average catches in the week of May 22 through 28, 1995: (1) Larger fish recruiting to the fishery, (2) increased effort from a holiday weekend, and (3) continued good weather. Allowing additional fishing days after May 27 could result in exceeding the catch limit of 71,410 lb (32.39 mt). Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 27, 1995. Sport fishing opportunities on the south Washington coast (waters south of the Queets River) and on the Strait of Juan de Fuca and Puget Sound (waters east of the Bonilla-Tatoosh line) are unaffected by this closure.

Fishing remains open in Canadian waters with a two-fish daily bag limit and no size restriction. Anglers desiring to fish in Canadian waters are urged to contact Canada Department of Fisheries and Oceans at (604) 666–0383/0583 for sport fishing information concerning licensing and the nautical description of closed areas.

Dated: June 22, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15869 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 062195D]

Pacific Halibut Fisheries; Oregon Sport Season Closure

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

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: 11:59 p.m. May 27, 1995, through December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1995 Halibut Landing Report Number 3

First Oregon Sport Season to Close May 27

The preliminary catch estimate for the 1995 sport halibut fishery between Cape Falcon (45°46′00″ N. lat.) and the Florence North Jetty (Siuslaw River, 44°01′08″ N. lat.) indicates the 67,706 lb (30.71 metric tons (mt)) catch limit will be reached on May 27, 1995. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 27.

Sport fishing for Pacific halibut will reopen on May 28, 1995, and remain open through August 2, 1995, 7 days a week, only in the area inside the 30–fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the Florence North Jetty (Siuslaw River), or until 3,314 lb (1.50 mt) are estimated to have been taken and the season is closed by the IPHC, whichever occurs first. Any poundage remaining unharvested after the earlier season will be added to this season. The daily bag limit remains two halibut per person, one with a minimum overall size limit of 32 inches (81.3 cm) and the second with a minimum overall size limit of 50 inches (127.0).

Dated: June 22, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–15870 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 124
Wednesday, June 28, 1995

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–112; Notice No. SC–95–5–NM]

Special Condition: Gulfstream Aerospace Corporation, Model Gulfstream V, High Altitude Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: The document proposes special conditions for the Gulfstream Model Gulfstream V airplane. This new airplane will be capable of operating at a maximum altitude of 51,000 feet. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the fuselage structure or passengers and crew from the effects of high altitude operations. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before August 14, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–112, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–112. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Robert L. Salas, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–112.'' The postcard will be date stamped and returned to the commenter.

Background

On February 26, 1992, Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, GA 31402–2206, applied for an amended type certificate in the transport airplane category for the Model Gulfstream V airplane. The Gulfstream V is a T-tail, low swept wing, business jet airplane powered by two Rolls-Royce BR710–48 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 14,750 pounds thrust. The flight controls will be powered and capable of manual reversion. The airplane has a seating capacity of up to nineteen passengers, and a maximum takeoff weight of 89,000 pounds. Gulfstream has requested certification for operations up to 51,000 feet.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Gulfstream must show, except as provided in § 25.2, that the Model Gulfstream V meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–75. In addition, the proposed certification basis for the Model Gulfstream V includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification, and part 36 effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream V because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Gulfstream V will be certificated for operations at a maximum altitude of 51,000 feet. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness

regulations do not contain adequate or appropriate safety standards.

There are no specific regulations that address protection requirements for the airplane fuselage pressure vessel or passengers and crew, in the event of a rapid decompression, during high altitude operations. The potential adverse impact from rapid decompression at high altitudes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Gulfstream V which would require compliance with additional requirements to provide protection from the direct and indirect effects of high altitude operations.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes. Crack growth data are used to prescribe an inspection program which will detect cracks before an opening in the pressure vessel would allow rapid decompression. Initial crack sizes for detection are determined under § 25.571, Amendment 25–72. The cabin altitude after failure may not exceed the limits specified in Figures 3 and 4.

In order to ensure that there is adequate fresh air to crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions would require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 24,000 feet, reverse diffusion leads to low oxygen partial pressure in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than two minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above 27,000 feet can result in cabin altitudes that approach the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The proposed special condition therefore requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the proposed special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, the proposed special conditions would be applicable initially to the Model Gulfstream V. Should Gulfstream apply at a later date for a change to the type of certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects certain design features only on the Gulfstream V airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Gulfstream Model Gulfstream V series airplanes.

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25,365(d), using a factor of 1.67 instead of the 1.33 factor described.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure to any system which could adversely affect the cabin ventilating air. For normal operations, crew members must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In lieu of the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL).

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of FAR 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions, or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs d.1. and d.2. of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

5. *Oxygen equipment and supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick donnning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

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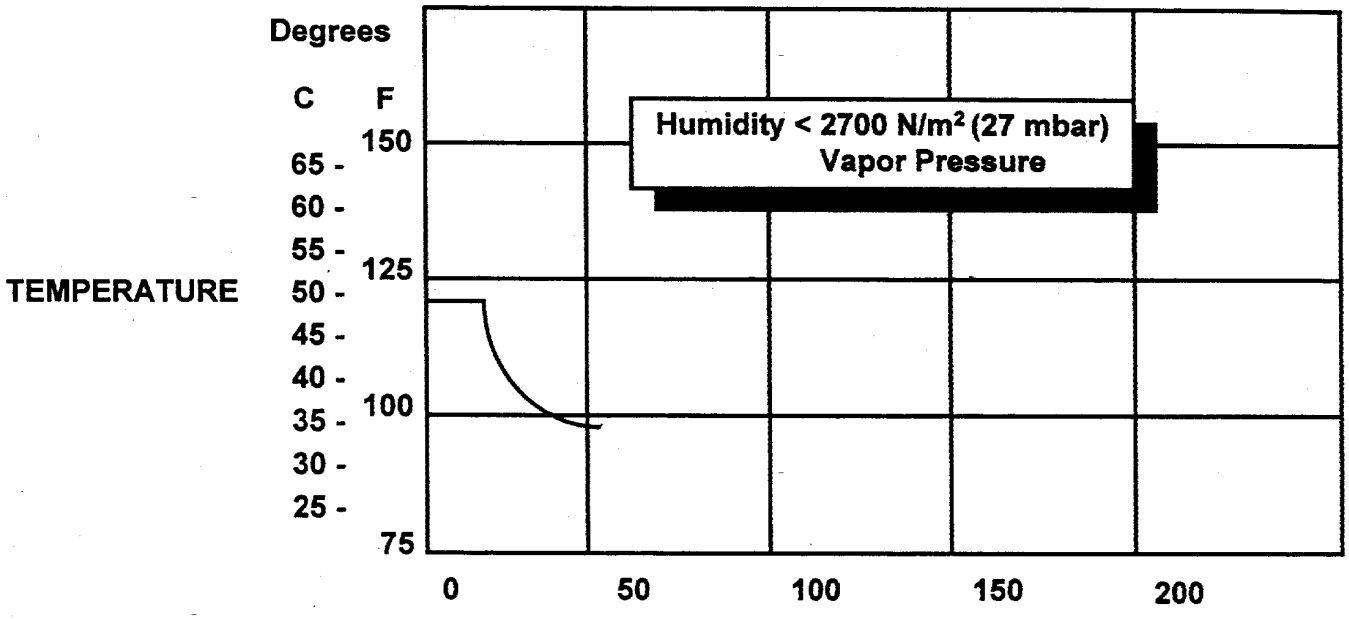
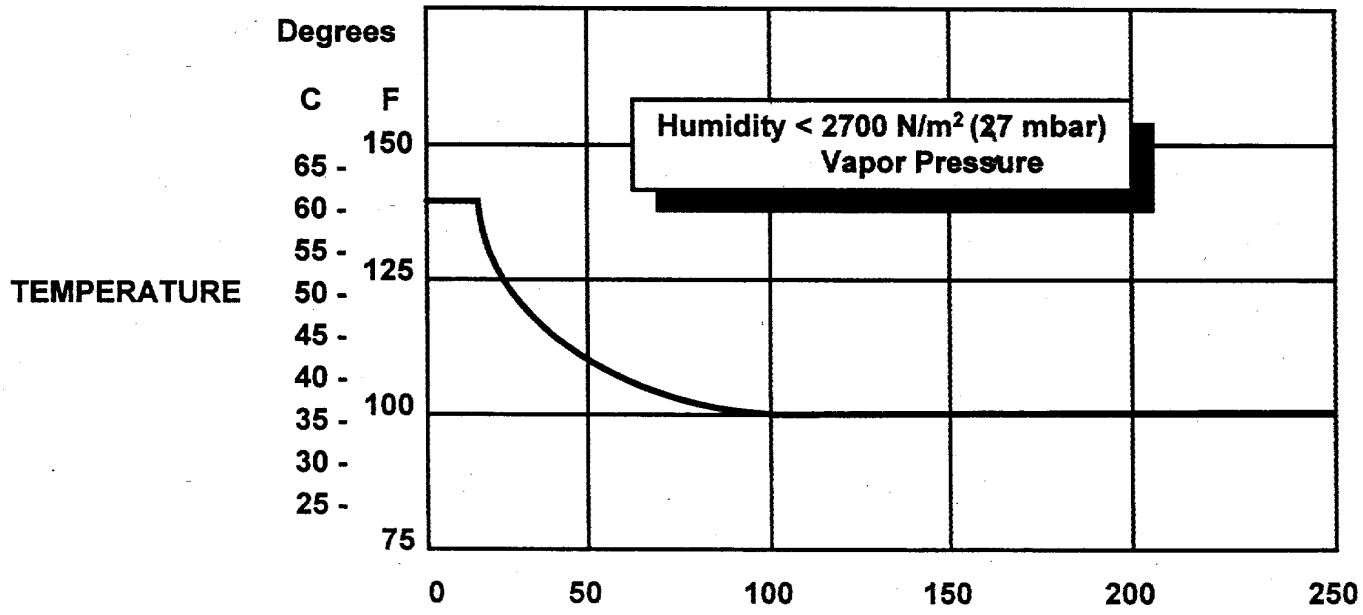
Figure 1



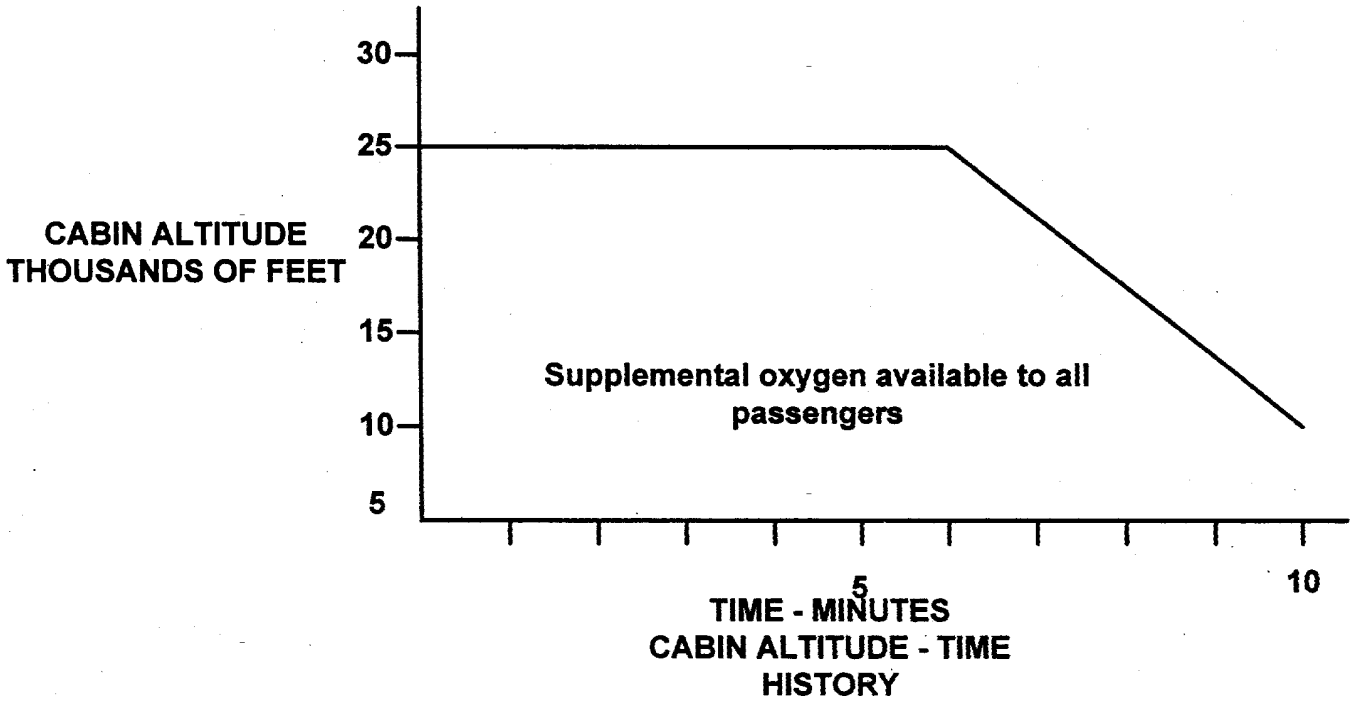
TIME - TEMPERATURE RELATIONSHIP

Figure 2



TIME - TEMPERATURE RELATIONSHIP

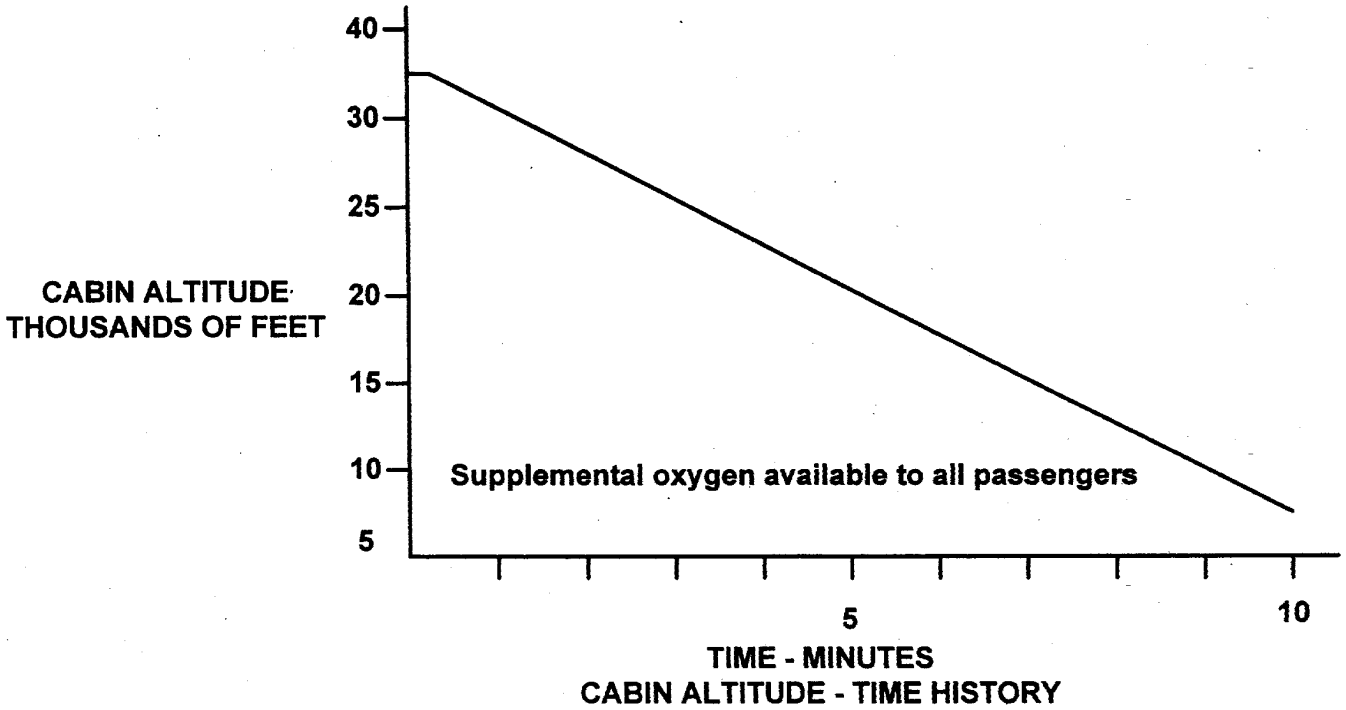
Figure 3



CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4



NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

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Issued in Renton, Washington, on June 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–15890 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–22–AD]

Airworthiness Directives; Boeing Model 747–100, –200, –300, and SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200, –300, and SP series airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to prohibit the use of the autoland function. This proposed AD would also require installation of a diode and a marker on shelves, making wiring changes to the flight mode annunciator (FMA) of the autopilot/flight director system, which would terminate the requirements for the AFM revision; and follow-on operational tests. This proposal is prompted by a report indicating that, during a triple channel approach, the autoland system failed to flare a Model 747–200 series airplane for landing, which resulted in a hard landing. The actions specified by the proposed AD are intended to prevent failure of the autoland system to flare the airplane for landing, which could subsequently result in a hard landing.

DATES: Comments must be received by August 22, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Hania Younis, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2764; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–22–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a triple channel approach, the autoland system failed to flare a Boeing Model 747–200 series airplane for landing, which resulted in a hard landing. Investigation revealed that the approach was initiated with an inoperative number 3 NAV receiver (thereby making the channel ''C'' autopilot inoperative). Investigation also revealed that a separate failure caused the channel ''B'' autopilot to automatically disengage at the start of the flare. This resulted in loss of the autopilot function due to the disagreement between channel ''A'' and channel ''C.''

The integrity of the autoland system depends on a fault annunciator system. An invalid discrete signal from the number 3 NAV receiver should cause the glideslope (G/S) flag located on the P2 panel to illuminate. Along with this G/S flag on the P2 panel, the channel ''C'' autopilot system should have annunciated a steady amber autopilot warning light on the captain's and first officer's flight mode annunciator (FMA). This warning light would alert the flightcrew that the autopilot had changed from fail-operational to fail-passive mode. The subsequent dual channel autopilot failure should have been annunciated by a steady red warning light, warning the flightcrew that the autopilot had changed from fail-passive mode to complete autopilot disconnect.

Further investigation revealed that the autopilot warning light on the captain's and first officer's FMA did not illuminate during this dual channel fault incident. The cause of this lack of annunciation has been attributed to the faulty logic of the autopilot/flight director system.

This condition, if not corrected, could result in failure of the autoland system to flare the airplane for landing, which may result in a hard landing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, and Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995, which describe procedures for installing a diode and a marker on the E1–4, E1–5, and E1–6 shelves, and making wiring changes to the FMA of the autopilot/flight director system. These service bulletins also describe procedures for performing operational tests of the newly installed diodes. This installation and wiring change will ensure the illumination of a steady amber autopilot warning light on the captain's and the first officer's FMA's when a sensor fails after commencement of a triple autopilot approach.

The autopilot/flight director system installed on Boeing Model 747–200 series airplanes is similar in design to the autopilot/flight director system installed on Model 747–100, –300, and SP series airplanes; therefore, the FAA finds that Model 747–100, –300, and SP series airplanes are subject to the same unsafe condition identified in this proposal.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of the LAND mode, if there is a flag on any channel. This proposed AD would also require installing a diode and a marker on certain shelves, and making wiring

changes to the FMA of the autopilot/flight director system, which would terminate the requirement for an AFM revision. Additionally, this proposed AD requires operational tests of the newly installed diodes. The installation, wiring changes, and operational tests would be required to be accomplished in accordance with the alert service bulletins described previously.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

There are approximately 172 Model 747–100, –200, –300, and SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $613 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,003, or $1,273 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Docket 95–NM–22–AD.

Applicability: Model 747–100, –200, –300, and SP series airplanes, equipped with triple channel autoland autopilots; as listed in Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, and Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995; 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 use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the autoland system to flare the airplane for landing, which may result in a hard landing, accomplish the following:

(a) Within 3 months after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Pay close attention to all 3 NAV receiver flags after FLARE ARM is annunciated on the FMA's. If there is a flag on ANY channel, the approach must be down-graded to dual channel, CAT II configuration, and the autopilot must be disconnected prior to landing.''

(b) Within 18 months after the effective date of this AD, install a diode and a marker on the E1–4, E1–5, and E1–6 shelves, and make wiring changes to the flight mode annunciator of the autopilot/flight director system, in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, or Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995; as applicable. After this installation and wiring change is accomplished, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(c) Prior to further flight after accomplishment of paragraph (b) of this AD, perform an operational test of the newly installed diodes, in accordance with Boeing Alert Service Bulletin 747–22A2212, Revision 1, dated April 27, 1995, or Boeing Alert Service Bulletin 747–22A2213, Revision 1, dated April 27, 1995; as applicable. Thereafter, repeat the operational test at intervals not to exceed 20,000 flight hours.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 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. Issued in Renton, Washington, on June 22, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15851 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, and 274

[Release Nos. 33–7181; 34–35881; IC–21157; File No. S7–10–95]

RIN 3235–AG43

Improving Descriptions of Risk by Mutual Funds and Other Investment Companies—Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Concept release and request for comments; extension of comment period.

SUMMARY: The Commission is extending from July 7, 1995, to July 28, 1995, the comment period for Investment Company Act Release No. 20974, which sought comments and suggestions on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies.

DATES: The SEC requests comments on or before July 28, 1995.

ADDRESSES: Three copies of your comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comment letters should refer to File No. S7–10–95. All comments received will be available for public inspection and copying in the SEC's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549. If you are an individual investor and do not have access to a copier machine, you may send in one copy of your comments.

FOR FURTHER INFORMATION CONTACT: Roseanne Harford, Senior Counsel, (202) 942–0689, Division of Investment Management.

SUPPLEMENTARY INFORMATION: On March 29, 1995, the Commission issued Investment Company Act Release No. 20974 [60 FR 17172 (Apr. 4, 1995)] (''Release No. 20974''), which sought comments and suggestions on how to improve the descriptions of risk provided to investors by mutual funds and other management investment companies. In order to encourage individual investor comments and suggestions, the SEC included in Release No. 20974 an appendix directed to investors (''Investor Summary''), to be reprinted separately and distributed to investors.

Recently, the Commission was notified by an investment adviser that the adviser proposed to distribute the Investor Summary to shareholders of its funds in late June. In order to permit these investors a reasonable period to submit their comments, and in light of the importance of investment company risk disclosure and of investor comments on this subject, the Commission believes a 21-day extension is appropriate.

The comment period for responding to Release No. 20974 is extended to July 28, 1995.

Dated: June 22, 1995.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15797 Filed 6–27–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 388

[Docket No. RM95–9–000]

Real-Time Information Networks; Notice of Informal Technical Conference

June 22, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of technical conference.

SUMMARY: The Federal Energy Regulatory Commission previously issued a Notice of Technical Conference and Request for Comments, published at 60 FR 17726 (April 7, 1995). That earlier notice stated that the date, place, and time of the technical conference would be announced later. Today's notice announces that a technical conference will be held on Thursday and Friday, July 27 and 28, 1995, starting both days at 10:00 A.M., in Hearing Room 1, 810 First Street NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1283

William Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0666

Gary D. Cohen (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104 at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASCII and Wordperfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Notice of Technical Conference

June 22, 1995.

Take notice that on Thursday, July 27, 1995 and Friday, July 28, 1995, the Commission's Staff will hold a technical conference to discuss the process for developing Real-time Information Networks (RINs) requirements. The conference will begin on both days at 10:00 A.M., and is scheduled for Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

This conference is being held pursuant to the Notice of Technical Conference and Request for Comments, which was issued by the Commission in this docket on March 29, 1995, and published at 60 FR 17726 (April 7, 1995). The conference is being convened to enlist the participation of all segments of the electric industry (including wholesale sellers, buyers, transmission owners, etc.) in the development of RINs requirements, and particularly to hear views on how to proceed in this process. Staff expects that there will be subsequent conferences with industry and other interested persons to reach consensus on RINs-related issues.

Persons who wish to attend the conference should, no later than July 6, 1995, notify Marvin Rosenberg by telephone at (202) 208–1283 (or by facsimile at (202) 208–1010) or William

Booth by telephone at (202) 208–0849 (or by facsimile at (202) 208–0180). Persons who wish to speak at the conference should, no later than July 6, 1995, notify Mr. Rosenberg or Mr. Booth, by a facsimile (at either of the facsimile numbers listed above) that provides a *concise* (not to exceed one page) description of the topics/issues they wish to discuss.

Additionally, Staff has received several requests by persons wishing to demonstrate information systems of possible interest to the RINs development process. Staff will provide an opportunity to those wishing to demonstrate such systems to participants in the Technical Conference on July 28, 1995. Persons wishing to demonstrate an information system should, no later than July 6, 1995, notify Mr. Rosenberg or Mr. Booth, by a facsimile (at either of the facsimile numbers listed above) that provides a *concise* (not to exceed one page) description of their information system.

After reviewing the preliminary comments that are due on July 6, 1995, as well as the requests to speak and to demonstrate information systems, Staff will publish a notice of the agenda for the conference.

If there is sufficient interest, the Commission will attempt to arrange for local or national broadcast of the Technical Conference. Persons interested in a local or national broadcast should contact Julia Morelli or Shirley Al-Jarani at The Capitol Connection (703–993–3100) no later than July 10, 1995.

For additional information, interested persons may call Mr. Rosenberg at (202) 208–1283 or Mr. Booth at (202) 208–0849.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15796 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159a

Information Security Program Regulation

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to issue this amendment to accommodate Congressional language incorporated into the Fiscal Year 1994 Appropriations Act which specifies that new purchases of combination locks for GSA-approved security containers, vault doors, and secure rooms shall conform to Federal Specifications FF–L–2740 as well as the findings and recommendations of a senior panel established by the Deputy Secretary of Defense regarding physical security measures required to adequately safeguard classified information in the possession of DoD activities.

DATES: Comments must be received by August 28, 1995.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, 6000 Defense Pentagon, Washington, DC 20301–6000.

FOR FURTHER INFORMATION CONTACT: Mr. W. Bell, OUSD(P), 703–695–2289.

SUPPLEMENTARY INFORMATION: It has been determined that this amendment is not a significant regulatory action. It has also been determined that this amendment is not subject to the Regulatory Flexibility Act and does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

List of Subjects in 32 CFR Part 159a

Classified information.

Accordingly, 32 CFR part 159a is proposed to be amended to read as follows:

PART 159a—INFORMATION SECURITY PROGRAM REGULATION

1. The authority citation for part 159a continues to read as follows:

Authority: E.O. 12356, 5 U.S.C. 301.

§ 159a.9 [Amended]

2. In § 159a.9, paragraph(s), *DoD Component*, is amended by removing ''Organization'' and adding in its place ''Chairman'', by removing ''(OJCS)'' and by removing ''and Specified'' and adding in its place ''Combatant''.

§ 159a.12 [Amended]

3. Section 159a.12 is amended in paragraph (c)(1)(i)(A) by removing ''Office of the Deputy Under Secretary of Defense (Policy), (ODUSD(P)),'' and adding in its place ''Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, (OASD(C3I))'', paragraph (c)(1)(i)(B) and (c)(1)(ii)(B) by removing ''including Specified Commands'', paragraph (c)(1)(i)(B) by removing ''wo'' and adding in its place ''who'', and paragraphs (c)(1)(ii)(C) by removing ''OJCS'' and adding in its place ''Chairman of the Joint Chiefs of Staff''.

§ 159a.26 [Amended]

4. Section 159a.26(e)(7) is amended by removing ''ASD(PA)'' and adding in its place ''ATSD(PA)'' and removing ''OJCS'' and adding in its place ''the Chairman of the Joint Chiefs of Staff''.

§ 159a.33 [Amended]

5. Section 159a.33(e)(2) is amended by removing ''7920.1'' and adding in its place ''8120.1''.

§ 159a.35 [Amended]

6. Section 159a.35(g) is amended by adding ''O-'' before ''5230.22''.

7. Subpart F is revised to read as follows:

Subpart F—Safekeeping and Storage

Sec.
159a.37 Storage and storage equipment.
159a.38 Custodial precautions.
159a.39 Installation entry and exit inspection program.

Subpart F—Safekeeping and Storage

§ 159a.37 Storage and storage equipment.

(a) *General policy.* Classified information shall be secured under conditions adequate to prevent access by unauthorized persons. The requirements specified in this part represent acceptable security standards. Exceptions to these requirements should be approved by the responsible DoD Component Senior Information Security Authority. This approval authority may be delegated to major commanders. Supplemental or compensatory security measures must be implemented to compensate for the inability to meet the baseline standard. DoD policy concerning the use of force for the protection of classified information is specified in DoD Directive 5210.56.[17] Weapons or sensitive items such as funds, jewels, precious metals or drugs shall not be stored in the same container used to safeguard classified information. Security requirements for Sensitive Compartmented Information Facilities (SCIFs) are established by the Director of Central Intelligence. Current holdings of classified material shall be reduced to the minimum required for mission accomplishment.

(b) *Standards for storage equipment.* The GSA establishes and publishes minimum standards, specifications, and supply schedules for containers, vault doors, alarm systems, and associated security devices suitable for the storage and protection of classified information. DoD Directive 3224.3 [18] describes acquisition requirements for physical

[17] See footnote 2 to § 159a.3.

[18] See footnote 2 to § 159a.3.

security equipment used within the Department of Defense.

(c) *Storage of classified information.* Classified information is to be guarded or stored in a locked security container, vault, room, or area, as follows:

(1) *Top Secret.* Top Secret information shall be stored in the following:

(i) A GSA-approved security container or modular vault, in a vault; or in the U.S., in a secure room if under U.S. Government control (see appendix F to this part). Other rooms that were approved for the storage of Top Secret in the U.S. may continue to be used. When located in areas not under U.S. Government control, the storage container, vault, or secure room must be protected by an intrusion detection system or guarded when unoccupied. U.S. Government control means access to the classified material is controlled by an appropriately cleared U.S. Government civilian, military, or contractor employee. An intrusion detection system (IDS) used for this purpose shall meet the requirements of appendix G to this part. Security forces shall respond to the alarmed location within 15 minutes from time of notification.

(ii) New purchases of combination locks for GSA-approved security containers, vault doors and secure rooms shall conform to Federal Specification FF–L–2740. Existing mechanical combination locks will not be repaired. If they should fail, they will be replaced with locks meeting FF–L–2740.

(iii) Under field conditions during military operations, the commander may prescribe the measures deemed adequate to meet the storage standard contained in paragraphs (a) and (b) of this section.

(iv) Protection of Top Secret outside the United States requires application of one or more supplementary controls, i.e., continuous guard or duty personnel, inspections of locked containers/vaults or an alarm system.

(2) *Secret and Confidential.* Secret and Confidential information shall be stored in the manner prescribed for Top Secret; or in secure rooms that were approved for the storage of Secret or Confidential material by the DoD Components prior to October 1, 1995. Until October 1, 2002, Secret and Confidential information may also be stored in unapproved or obsolete steel filing cabinets having a built-in combination lock or secured with a lockbar and approved combination padlock in areas under U.S. Government control, or in areas not under U.S. Government control provided the area is protected by an IDS or is guarded when unoccupied. Where IDS is used to protect such information it should meet the requirements of appendix G to this part. Security forces shall respond to the alarmed location within 45 minutes from time of notification.

(3) *Specialized security equipment*—(i) *Military platforms or classified munition items.* The Heads of the DoD Components shall, consistent with this part, delineate the appropriate security measures required to protect classified information stored in containers on military platforms or for classified minution items.

(ii) *Special purpose containers.* GSA-approved field safes and special purpose one and two drawer light-weight security containers approved by the GSA are used primarily for storage of classified information in the field and in military platforms. Such containers shall be securely fastened to the structure or under constant surveillance to prevent their theft. Use of these containers in ordinary office environmentas, or their procurement for this purpose, must be approved by major commands or equivalents.

(iii) *Map and plan files.* GSA-approved map and plan files are available for storage of odd-sized items such as computer media, maps, charts, and classified equipment.

(iv) *Modular vaults.* GSA-approved modular vaults meeting Federal Specification AA–V–2737 may be used to store classified information as an alternative to vault requirements described in Appendix F to this part.

(4) *Replacement of combination locks.* The mission and location of the activity, the classification level and sensitivity of the information, and the overall security posture of the activity determines the priority for replacement of existing combination locks. All system components and supplemental security measures including electronic security systems (e.g., intrusion detection systems, automated entry control subsystems, and video assessment subsystems), and level of operations must be evaluated by the commander when determining the priority for replacement of security equipemnt. Appendix H to this part provides a matrix illustrating a prioritization scheme for the replacement of existing combination locks on GSA-approved security containers and vault doors. Priority 1 requires immediate replacement.

(5) *Storage of bulky material.* Storage areas for bulky material containing classified information may have access openings secured by GSA-approved changeable combination padlocks (Federal Specification FF–P–110 series) or high security key-operated padlocks (Military Specification MIL–P–43607). Other security measures are required, in accordance with paragraph (c)(1) of this section.

(i) The Heads of the DoD Components shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected by the padlock.

(ii) 10 U.S.C. 1386 makes unauthorized possession of keys, key-blanks, keyways or locks adopted by any part of the Department of Defense for use in the protection of conventional arms, ammunition, or explosives, special weapons, and classified equipment, a criminal offense punishable by fine or imprisonment for up to 10 years, or both.

(d) *Procurement of new storage equipment.*—(1) New security storage equipment shall be procured from those items listed on the GSA Federal Supply Schedule. Exceptions may be made by the heads of the DoD Components, with notification to the ASD(C31). Components should retain and apply serviceable storage equipment made available as consequence of draw downs, contractor turn-in of government furnished equipment, or other events; promptly report excess containers to property disposal; and fulfill requirements for added equipment through property disposal when that is cost beneficial.

(2) Current holdings of classified material shall be reduced to the minimum required for mission accomplishment.

(3) Nothing in this subpart shall be construed to modify existing Federal supply class management assignments made under DoD Directive 5030.47 [19]

(e) *Equipment designations and combinations*—(1) *Numbering and designating storage facilities.* There will be no external mark revealing the level of classified information authorized to be or actually stored in a given contianer or vault. Priorities for emergency evacuation and destruction will not be marked or posted on the exterior of storage containers or vaults.

(2) *Combinations to containers and vaults.* (i) *Changing.* Combinations to security containers, vaults and secure rooms shall be changed only by individuals having that responsibility and an appropriate security clearance. Combinations shall be changed:

[19] See footnote 2 to § 159a.3.

(A) When placed in use;

(B) Whenever an individual knowing the combination no longer requires access;

(C) When the combination has been subject to possible compromise;

(D) At least once every two years; or

(E) When taken out of service. Built-in combination locks shall be reset to the standard combination 50–25–50; combination padlocks shall be reset to the standard combination 10–20–30.

(ii) *Selecting combinations.* Combinations for each lock shall be unique to that lock and shall have no systematic relationship to other combinations used within a specific office. Combination numbers shall not be derived from numbers otherwise associated with the specific office or its personnel. The number within a combination shall be selected on a random basis without deliberate relationship of one to the other except to provide appropriate variance to operate the lock properly.

(iii) *Classifying combinations.* The combination of a container, vault or secure room used for the storage of classified information shall be assigned a security classification equal to the highest category of the classified information stored therein. Any written record of the combination shall be marked with the classification. Declassification of combinations occurs at the time they are changed.

(iv) *Recording storage facility data.* A record shall be maintained for each vault or secure room door, or container used for storage of classified information, showing location of the door or container, and the names, home addresses, and home telephone numbers of the individuals having knowledge of the combination. Standard Form 700, ''Security Container Information,'' shall be used for this purpose.

(A) Part 1 of the SF 700, when completed, shall be placed in an interior location in security cabinets and on vault or secure room doors. To the extent practical, Part 1 shall be on the inside face of the locking drawer of file cabinets, and on the inside surface of map and plan cabinet and vault doors.

(B) SF 700, Parts 2 and 2A, shall be marked conspicuously on their front with the highest level of classification and any special access notice applicable to the information authorized for storage in the container and will be stored in a security container other than the one to which they apply.

(C) Internal security procedures shall provide for prompt notification to the official responsible for the area if a container is found unsecured and unattended or show evidence of unauthorized entry attempt or SF 700 is inaccessible or not available.

(D) Listings of persons having knowledge of the combination shall be continued as necessary on an attachment to Part 2.

(E) *Dissemination.* Access to the combination of a vault or container used for the storage of classified information shall be granted only to those individuals who are authorized access to the classified information to be stored therein.

(3) *Access controls.* Entrances to secure rooms or areas should be under visual control at all times during duty hours to preclude entry by unauthorized personnel or equipped with electric, mechanical or electromechanical access control devices to limit access during duty hours. Appendix I to this part provides standards for these access control devices; the use of automated systems described therein is encouraged.

(f) *Repair of damaged security containers.* Neutralization of lock-outs or repair of any damage that affects the integrity of a security container approved for storage of classified information shall be accomplished only by authorized persons who have been the subject of a trustworthiness determination in accordance with 32 CFR part 154 and are continuously escorted while so engaged.

(1) With the exception of frames bent through application of extraordinary stress, a GSA-approved security container manufactured prior to October 1991 (identified by a silver GSA label with black lettering affixed to the exterior of the container) is considered to have been restored to its original state of security integrity as follows:

(i) All damaged or altered parts, for example, the locking drawer, drawer head, or lock, are replaced; or

(ii) Has been drilled immediately adjacent to or through the dial ring to neutralize a lockout, a replacement lock meeting FF–L–2740 is used, and the drilled hole is repaired with a tapered, hardened tool-steel pin, or a steel dowel, drill bit, or bearing with a diameter slightly larger than the hole and of such length that when driven into the hole there shall remain at each end of the rod a shallow recess not less than ⅛ inch nor more than 3⁄16 inch deep to permit the acceptance of substantial welds, and the rod is welded both on the inside and outside surfaces. The outside of the drawer head must then be puttied, sanded, and repainted in such a way that no visible evidence of the hole or its repair remains on the outer surface.

(2) In the interests of cost efficiency, the procedures identified in paragraph (f)(2)(1)(i) of this section should not be used for GSA-approved security containers purchased after October 1991 (distinguished by a silver GSA label with red lettering affixed to the outside of the container control drawer) until it is first determined whether warranty protection still applies. To make this determination, it will be necessary to contact the manufacturer and provide the serial number and date of manufacture of the container. If the container is under warranty, a lock-out will be neutralized using the procedures described in the Naval Facilities Engineering Service Center (NFESC) Technical Data Sheet (TDS) 2000-SHR.

(3) Unapproved modification or repair of security containers and vault doors is considered a violation of the container's or door's integrity and the GSA label shall be removed. Thereafter, they may not be used to protect classified information except as otherwise authorized in this part.

(g) *Maintenance and operating inspections*—(1) *Maintenance.* The Heads of the DoD Components shall establish procedures concerning maintenance of classified material security containers and vaults to accomplish the following:

(i) Permit only those persons who have been the subject of a trustworthiness determination in accordance with 32 CFR part 154 to perform maintenance which affects the protective features of the container or vault.

(ii) Require a record of all maintenance performed on a container or vault be maintained by the using activity and retained with the container or vault. The record shall reflect the operating problem requiring maintenance, the date maintenance was performed, the name and organization of the maintenance technician, the work accomplished, and the activity official certifying the subsequent proper operation of the container or vault. These records shall be retained for the service life of the container or vault.

(iii) Refer any discovery of unauthorized tampering or modification of a container or vault to the supporting counterintelligence organization for investigation.

(iv) Provide a preventive maintenance program for containers and vaults to detect and correct operating problems affecting their security.

(2) *Operating inspections.* Containers and vaults shall be inspected before being used, and periodically thereafter, and whoever discovered open and unattended or evidence of actual or

attempted unauthorized forced or covert entry is present to assure the presence and proper operation of their protective security features before they may continue in use to store classified material.

§ 159a.38 Custodial precautions.

(a) *Responsibilities of custodians.* Anyone who has been duly authorized/appointed to maintain classified information is responsible for its safekeeping, to include storing the material in approved storage containers or facilities when it is not in use or under the supervision of an authorized person.

(b) *Residential storage arrangements.* Only the Head of a DoD Component, or single designee at the Component headquarters and major command levels, may authorize removal of classified material from designated working areas in off-duty hours, for work at home or otherwise, provided that a GSA-approved security container is furnished and appropriate regulations otherwise provide for the maximum protection possible under the circumstances. Any such arrangements approved before the effective date of this part shall be reevaluated and, if continued approval is warranted, compliance with this paragraph is necessary.

(c) *Care during working hours.* (1) Classified material removed from storage shall be kept under constant surveillance by persons authorized access and having a need to know thereto and, when not in use, protected from unauthorized view of its classified contents until returned to storage. Such protection shall be provided, as applicable, by the material's unclassified cover or by an appropriate cover sheet. Cover sheets shall be Standard Forms 703, 704 and 705 for, respectively, Top Secret, Secret, and Confidential documents.

(2) Preliminary drafts, carbon sheets, plates, stencils, stenographic notes, worksheets, computer and typewriter ribbons, transfer medium and other items containing classified information shall be safeguarded according to the level of classified information they contain and shall be accordingly destroyed after they have served their purpose. Transfer medium include drums, cartridges, belts, sheets, memory, and other material in copiers, printers, facsimile and other devices of items which receive or come in contact with classified information.

(3) Destruction of personal computer printer or typewriter ribbons from which classified information can be obtained shall be accomplished in the manner prescribed for classified working papers of the same classification. After the upper and lower sections have been cycled through and overprinted five times in all ribbon or impact or typing positions, fabric ribbons may be treated as unclassified regardless of their previous classified use. Carbon and plastic ribbons and carbon paper that have been used in the production of classified information shall be destroyed in the manner prescribed for working papers of the same classification after initial usage. However, any typewriter ribbon that uses technology which enables the ribbon to be struck several times in the same area before it moves to the next position may be treated as unclassified.

(d) *End-of-day security checks.* The Heads of activities that process or store classified information shall establish a system of security checks at the close of each working day to ensure that the area is secure. Standard Form 701, ''Activity Security Checklist,'' shall be used to record such checks. Standard Form 702. ''Security Container Check Sheet,'' shall be used to record the use of all vaults, secure rooms and containers used for the storage of classified material.

(e) *Emergency planning.* (1) Plans shall be developed for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. Such plans shall establish detailed procedures and responsibilities for the protection of classified material to ensure that the material does not come into the possession of unauthorized persons. These plans shall include the treatment of classified information located in foreign countries. Emergency destruction procedures are not needed for activities located inside the 50 states.

(2) These emergency planning procedures do not apply to material related to COMSEC Planning for the emergency protection including emergency destruction under no-notice conditions of classified COMSEC material shall be developed in accordance with requirements of NACSI 4006.

(3) Emergency plans shall provide for the protection of classified material in a manner that will minimize the risk of injury or loss of life to personnel. In the case of fire or natural disaster, the immediate placement of authorized personnel around the affected area, preinstructed and trained to prevent the removal of classified material by unauthorized personnel, is an acceptable means of protecting classified material and reducing casualty risk. Such plans shall provide for emergency destruction to preclude capture of classified material when determined to be required in overseas locations.

(f) *Telecommunications conversations.* (1) Classifed information shall not be discussed in telephone conversations except over approved secure communications circuits, that is, cryptographically protected circuits or protected distributions systems installed in accordance with National COMSEC Instruction 4009.

(2) The Secure Telephone Unit–III (STU–III) is approved for classified discussions within the limitations displayed by the STU–III. The need-to-know must be established before discussing classified information.

(3) Users of secure telephones shall assure that only persons with appropriate clearance and need-to-know are within hearing range of their conversation.

(g) *Removal of classified storage and information processing equipment.* All classified storage containers and information processing equipment shall be inspected by properly cleared personnel before removal from protected areas or unauthorized persons are allowed access to them. The inspection shall be accomplished to assure no classified information remains within the equipment. Some examples of equipment which shall be inspected are:

(1) Reproduction or facsimile machines and AIS components and other office equipment used to process classified information.

(2) GSA-approved security containers, filing cabinets, or other storage containers used for safeguarding classified information; and

(3) Other items of equipment that may inadvertently contain classified information.

(h) *Classified discussions, meetings and conferences.* Security requirements and procedures governing disclosure of classified information at conferences, symposia, conventions, and similar meetings, and those governing the sponsorship and attendance of U.S. and foreign personnel at such meetings, are set forth in DoD Directive 5200.12,[20] DoD Instruction 5230.20,[21] DoD 5220.22–R,[22] and DoD 5220.22–M.[23]

(i) *Safeguarding of U.S. classified information located in foreign countries.* Except for classified information that has been authorized for release to a foreign government or international

[20] See footnote 2 to § 159a.3.

[21] See footnote 2 to § 159a.3.

[22] See footnote 2 to § 159a.3.

[23] See footnote 3 to § 159a.3.

organization pursuant to DoD Directive 5230.11[24] and is under the security control of such government or organization, the retention of U.S. classified material in foreign countries may be authorized only when that material is necessary to satisfy specific U.S. Government requirements. This includes classified material temporarily transferred into a foreign country through U.S. Government personnel authorized to escort or handcarry such material pursuant to § 159a.59, as applicable. Whether permanently or temporarily retained, the classified materials shall be stored under U.S. Government control, as follows. See § 159a.37(c) additional guidance on Top Secret information.

(1) At a U.S. military installation, or a location where the United States enjoys extraterritorial status, such as an embassy or consulate.

(2) At a U.S. Government activity located in a building used exclusively by U.S. Government tenants, if the building is under 24-hour control by U.S. Government personnel.

(3) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants nor under host-government control, provided the classified material is stored in security containers approved by the GSA and is placed under 24-hour control by U.S. Government personnel.

(4) At a U.S. Government activity located in a building not used exclusively by U.S. Government tenants, but which is under host-government control, provided the classified material is stored in GSA-approved security containers that are further secured in a locked room or area to which only U.S. personnel have access.

(5) When host government and U.S. personnel are collocated, U.S. classified material that has not been authorized for release to the host government under DoD Directive 5230.11, shall, be segregated from releasable classified material to facilitate physical control and prevent inadvertent compromise. U.S. classified material that is releasable to the host country need not be subject to the 24-hour U.S. control requirement provided the host government exercises its own control measures over the pertinent areas or containers during nonduty hours.

(6) Foreign nationals shall be escorted while in areas where nonreleasable U.S. classified material is handled or stored. When required by operational necessity, foreign nationals may be permitted, during duty hours unescorted entry to such areas provided the nonreleasable information is properly stored or is under the direct personal supervision and control of cleared U.S. personnel who can prevent unauthorized access.

(7) Under field conditions during military operations, the commander may prescribe the measures deemed adequate to protect classified material.

(j) *Non-COMSEC classified information processing equipment.* The Department of Defense has a variety of non-COMSEC approved equipment to process classified information. This includes copiers, fascimile machines, printers, scanners, cameras, printers for AISs, AISs, electronic typewriters, and other word processing systems among others. Because much of this equipment has known security vulnerabilities, its use can cause unauthorized disclosure.

(1) Activities must identify those features, parts, or functions of equipment used to process classified information which may retain all or part of the information. Activity security procedures must prescribe safeguards to:

(i) Prevent unauthorized access to that information.

(ii) Replace and destroy equipment parts as classified material when the information cannot be removed from them. Alternatively, the equipment may be designated as ''classified'' and protected at least at the retained information's classification level.

(2) Activities will select equipment that performs the needed function and presents the lowest acceptable risk to the classified information the equipment processes.

(3) Activities will comply with guidance on security vulnerabilities issued by appropriate authority and must report equipment problems and failures.

(k) *Reporting equipment problems and vulnerabilities.* (1) The equipment that the Department of Defense uses to safeguard, destroy or process classified information can fail to function properly or otherwise perform in a way that threatens that information. When that occurs, responsible individuals within the using activities must promptly:

(i) Restore the protection to the information.

(ii) Report the incident to their Component security office. Such report shall:

(A) Be classified or transmitted by secure means, as warranted by the nature of the problem.

(B) Describe the problem; the equipment's type, manufacturer, and any serial number; the number of equipment units involved; and any means found to overcome the problem.

(C) Be in addition to those made to logistics, supply, or contracting offices, or those made in reporting security violations.

(2) Component security offices receiving such reports shall assess the impact on other Component activities and advise them accordingly. They shall also promptly send a copy of the initial and any subsequent reports to the Director, Counterintelligence and Security Programs, ODASD(I&S), OASD(C3I). They shall include their assessment of the impact and a summery of the related Component actions.

(3) Problems or vulnerabilities with COMSEC equipment and controlled Cryptographic Items shall be reported as prescribed by the controlling COMSEC authorities rather than under this paragraph. The COMSEC authority shall promptly coordinate these reports and correcting actions with the Director, Counterintelligence and Security Programs, OASD(C3I), when the problems or vulnerabilities are common to all such equipment.

§ 159a.39 Installation entry and exit inspection program.

(a) *Policy.* Commanders shall prescribe procedures for inspecting persons, their property and vehicles at entry and exit points of installations or at designated secure areas within an installation and for search of persons and their possessions while on an installation.

(1) This shall include determination of whether inspections are randomly conducted or mandatory for all, and shall prescribe procedures to ensure the safeguarding of classified information.

(2) Examinations of individuals and their possessions while on the installation for the primary purpose of obtaining evidence is classified as a ''search'' under the fourth amendment and separate guidance regarding the conduct of these searches shall be issued.

(3) All procedures shall be reviewed for legal sufficiency by the general counsel or legal advisor before issuance. These procedures shall require Commanders to consult with their servicing Judge Advocate or other legal advisor before authorizing gate inspections.

(b) [Reserved]

Appendix C to Part 159a [Amended]

7. Appendix C to Part 159a, paragraphs 1.a. and 2.a., paragraphs 2.b.(d)(4), introductory text, and 2.b.(d)(5)(b) paragraph c.(4)(b), and paragraphs 4.a. and 4.c. are amended by

[24] See footnote 2 to § 159a.3.

adding ''Chairman of the'' before ''Joint Chiefs of Staff''

8. Appendices F through I to part 159a are added as follows:

Appendix F to Part 159a—Vault and Secure Room Construction Standards

1. *Vault*

a. *Floor and Walls.* Eight inches of concrete reinforced to meet current structural standards. Walls are to extend to the underside of the roof slab above.

b. *Roof.* Monolithic reinforced concrete slab of thickness to be determined by structural requirements, but not less than the floor and walls.

c. *Ceiling.* The roof or ceiling must be reinforced concrete of a thickness to be determined by structural requirements, but not less than the floors and walls.

d. Vault door and frame unit should conform to Federal Specification AA–D–2757 Class 8 vault door, or Federal Specification AA–D–600 Class 5 vault door.

2. *Secure Room*

a. The walls, floor, and roof construction of secure rooms must be of permanent construction materials; i.e., plaster, gypsum wallboard, metal panels, hardboard, wood, plywood, or other materials offering resistance to, and evidence of unauthorized entry into the area. Walls shall be extended to the true ceiling and attached with permanent construction materials, wire mesh or 18 gauge expanded steel screen.

b. *Ceiling.* The ceilings shall be constructed of plaster, gypsum, wallboard material, hardwood, or any other acceptable material.

c. *Doors.* The access door to the room shall be substantially constructed of wood or metal. The hinge pins of outswing doors shall be peened, brazed, or spot welded to prevent removal. Door should be equipped with a built-in GSA-approved combination lock meeting Federal Specification FF–L–2740.

d. *Windows.* Windows which are less than 18 feet above the ground measured from the bottom of the window, or are easily accessible by means of objects directly beneath the windows, shall be constructed from or covered with materials which will provide protection from forced entry. The protection provided to the windows need be no stronger than the strength of the contiguous walls.

e. *Openings.* Utility openings such as ducts and vents should be kept at less than man-passable (96 square inches) opening. Openings larger than 96 square inches will be hardened in accordance with Military Handbook 1013/1A.

Appendix G to Part 159a—IDS Standards

1. An IDS must detect an unauthorized penetration in the secured area. An IDS complements other physical security measures and consists of the following:

a. *Intrusion Detection Equipment (IDE).*

b. *Security forces.*

c. *Operating procedures.*

2. *System functions.*

a. *IDS components operate as a system with the following four distinct phases:*

(1) *Detection.*

(2) *Communications.*

(3) *Assessment.*

(4) *Response.*

b. These elements are equally important, and none can be eliminated if an IDS is to provide an acceptable degree of protection.

(1) *Detection:* The detection phase begins as soon as a detector or sensor reacts to stimuli it is designed to detect. The sensor alarm condition is then transmitted over cabling located within the protected area to the Premise Control Unit (PCU). The PCU may service many sensors. The PCU and the sensors it serves comprise a ''zone'' at the monitor station. This shall be used as the definition of an alarmed zone for purposes of this part.

(2) *Reporting:* The PCU receives signals from all sensors in a protected area and incorporates these signals into a communication scheme. Another signal is added to the communication for supervision to prevent compromise of the communication scheme. This supervised signal is intended to disguise the information and protect the IDS against tampering or injection of false information by an intruder. The supervised signal is sent by the PCU through the transmission link to the monitor station. Inside the monitor station either a dedicated panel or central processor monitors information from the PCU signals. When an alarm occurs, an annunciator generates an audible and visible alert to security personnel. Alarms result normally from intrusion, tampering, component failure, or system power failure.

(3) *Assessment:* The assessment period is the first phrase that requires human interaction. When alarm conditions occur, the operator assesses the situation and dispatches the response force.

(4) *Response:* The response phase begins as soon as the operator assesses an alarm condition. A response force must immediately respond to all alarms. The response phase must also determine the precise nature of the alarm and take all measures necessary to safeguard the secure area.

3. *Use of IDS*

a. As determined by the commander all areas that reasonably afford access to the container, or where classified data is stored should be protected by IDS unless continually occupied. Prior to the installation of an IDS, commanders shall consider the threat, vulnerabilities, in-depth security measures and shall perform a risk analysis.

b. Acceptability of Equipment: All IDE must be UL-listed (or equivalent) and approved by the DoD Component or government contractor. Government installed, maintained, or furnished systems are acceptable.

4. *Equipment*

a. *Transmission Line Security:* When the transmission line leaves the facility and traverses an uncontrolled area, Class I or Class II line supervision shall be used.

(1) Class I: Class I line security is achieved through the use of DES or an algorithm based on the cypher feedback or cypher block chaining mode of encryption. Certification by NIST or another independent testing laboratory is required.

(2) Class II: Class II line supervision refers to systems in which the transmission is based on pseudo random generated tones or digital encoding using an interrogation and response scheme throughout the entire communication, or UL Class AA line supervision. The signal shall not repeat itself within a minimum 6 month period. Class II security shall be impervious to compromise using resistance, voltage, current, or signal substitution techniques.

b. *Internal Cabling:* The cabling between the sensors and the PCU should be dedicated to IDE and must comply with national and local code standards.

c. *Entry Control Systems:* If an entry control system is integrated into an IDS, reports from the automated entry control system should be subordinate in priority to reports from intrusion alarms.

d. *Maintenance Mode:* When an alarm zone is placed in the maintenance mode, this condition shall be signaled to the monitor station. This signal must appear as an alarm or maintenance message at the monitor station and the IDS shall not be securable while in the maintenance mode. The alarm or message must be continually visible at the monitor station throughout the period of maintenance. A standard operating procedure must be established to address appropriate actions when maintenance access is indicated at the panel. All maintenance periods shall be archived in the system. A self-test feature shall be limited to one second per occurrence.

e. *Annunciation of Shunting or Masking Condition:* Shunting or masking of any internal zone or sensor must be appropriately logged or recorded in archive. A shunted or masked internal zone or sensor must be displayed as such at the monitor station throughout the period the condition exists whenever there is a survey of zones or sensors.

f. Indications of alarm status shall be revealed at the monitoring station and optionally within the confines of the secure area.

g. *Power Supplies:* Primary power of all IDE shall be commercial AC or DC power. In the event of commercial power failure at the protected area or monitor station, the equipment shall change power sources without causing an alarm indication.

(1). *Emergency Power.* Emergency power shall consist of a protected independent backup power source that provides a minimum of 4 hours operating power battery and/or generator power. When batteries are used for emergency power, they shall be maintained at full charge by automatic charging circuits. The manufacturer's periodic maintenance schedule shall be followed and results documented.

(2) *Power Source and Failure Indication:* An illuminated indication shall exist at the PCU of the power source in use (AC or DC). Equipment at the monitor station shall indicate a failure in power source, a change in power source, and the location of the failure or change.

h. *Component Tamper Protection:* IDE components located inside or outside the secure area should be evaluated for a tamper protection requirement. If access to a

junction box or controller will enable an unauthorized modification, tamper protection should be provided.

5. *System Requirements*

a. *Independent Equipment.* When many alarmed areas are protected by one monitor station, secure room zones must be clearly distinguishable from the other zones to facilitate a priority response. All sensors shall be installed within the protected area.

b. *Access and/or Secure Switch and PCU:* No capability should exist to allow changing the access status of the IDS from a location outside the protected area. All PCUs must be located inside the secure area and should be located near the entrance. Assigned personnel should initiate all changes in access and secure status. Operation of the PCU may be restricted by use of a device or procedure that verifies authorized use. In the secure mode, any unauthorized entry into the space shall cause an alarm to be transmitted to the monitor station.

c. *Motion Detection Protection:* Secure areas that reasonably afford access to the container or where classified data is stored should be protected with motion detection sensors; e.g., ultrasonic and passive infrared. Use of dual technology is authorized when one technology transmits an alarm condition independent from the other technology. A failed detector shall cause an immediate and continuous alarm condition.

d. *Protection of Perimeter Doors:* Each perimeter door shall be protected by a balanced magnetic switch (BMS) that meets the standards of UL 634.

e. *Windows:* All readily accessible windows (within 18 feet of ground level) shall be protected by an IDS, either independently or by the motion detection sensors in the space.

f. *IDS Requirements for Continuous Operations Facilities:* A continuous operations facility may not require an IDS. This type of secure area should be equipped with an alerting system if the occupants cannot observe all potential entrances into the room. Duress devices may also be required.

g. *False and/or Nuisance Alarm:* Any alarm signal transmitted in the absence of detected intrusion or identified as a nuisance alarm is a false alarm. A nuisance alarm is the activation of an alarm sensor by some influence for which the sensor was designed but which is not related to an intrusion attempt. All alarms shall be investigated and the results documented. The maintenance program for the IDS should ensure that incidents of false alarms should not exceed 1 in a period of 30 days per zone.

6. *Personnel*

a. *IDS Installation and Maintenance Personnel:* Alarm installation and maintenance should be accomplished by U.S. citizens who have been subjected to a trustworthiness determination in accordance with 32 CFR part 154.

b. *Monitor Station Staffing:* The monitor station should be supervised continuously by U.S. citizens who have been subjected to a trustworthiness determination in accordance with 32 CFR part 154.

Appendix H to Part 159a—Priority for Replacement

Priorities range from 1 to 4, with 1 being the highest and 4 the lowest.

LOCK REPLACEMENT PRIORITIES IN THE UNITED STATES AND ITS TERRITORIES

Item	TS/SAP	TS	S/SAP	S–C
Vault Doors	1	1	3	4
Containers (A) [1]	3	4	4	4
Containers (B) [2]	1	1	1	2
Crypto	1	1	2	2

LOCK REPLACEMENT PRIORITIES OUTSIDE THE UNITED STATES AND ITS TERRITORIES

Item	TS/SAP	TS	S/SAP	S–C
Vault Doors	1	1	2	2
Containers (A) [1]	2	2	3	3
Containers (B) [2]	1	1	1	2
Crypto	1	1	2	2
High Risk Areas	1	1	1	1

[1] A—Located in a controlled environment where the Department of Defense has the authority to prevent unauthorized disclosure of classified information. The Government may control or deny access to the space, post guards, require identification, challenge presence, inspect packages, program elevators, or take other reasonable measures necessary to deny unauthorized access.

[2] B—Located in an uncontrolled area without perimeter security measures.

Appendix I to Part 159a—Access Controls

1. *Access Controls:* The perimeter entrance should be under visual control at all times during working hours to preclude entry by unauthorized personnel. This may be accomplished by several methods (e.g., employee work station, guard, and CCTV). Regardless of the method utilized, an access control system shall be used on the entrance. Uncleared persons are to be escorted within the facility by a cleared person who is familiar with the security procedures at the facility.

a. *Automated Entry Control Systems:* An automated entry control system may be used to control admittance during working hours instead of visual control, if it meets the criteria stated below.

The automated entry control system must identify an individual authenticate that person's authority to enter the area through the use of an identification (ID) badge or card, and number or by personal identity verification. Exist should also be recorded.

(1) *ID Badges or Key Cards.* The ID badge or key card must use embedded sensors, integrated circuits, magnetic stripes or other means of encoding data that identifies the facility and the individual to whom the card is issued.

(2) *Personal Identity Verification.* Personel identity verification (biometrics device) identifies the individual requesting access by some unique personal characteristic, such as:

(a) *Fingerprinting*

(b) *Hand Geometry*

(c) *Handwriting*

(d) *Retina*

(e) *Voice recognition.* A biometrics device may be required for access to most sensitive information.

2. In conjunction with subparagraph 1.a(2)(a), above, a personal identification number (PIN) may be required. The PIN must be separately entered into the system by each individual using a keypad device and shall consist of four or more digits, randomly selected, with no known or logical association with the individual. The PIN must be changed when it is believed to have been compromised or subjected to compromise.

3. Authentication of the individual's authorization to enter the area must be accomplished within the system by the inputs from the ID badge and/or card or the personal identity verification device or the keypad with an electronic data base of individuals authorized into the area. A procedure must be established for removal of the individual's authorization to enter the area upon reassignment, transfer or termination, or when the individual's access is suspended, revoked, or downgraded to a level lower than required.

4. Protection must be established and continuously maintained for all devices and/

or equipment that constitute the system. The level of protection may vary depending on the type of devices and/or equipment being protected with the basic intent of utilizing the security controls already in effect within the facility.

a. Location where authorization data, card encoded data, and personal identification or verification data is input, stored, or recorded must be protected.

b. Card readers, keypads, communication, or interface devices located outside the entrance to a controlled area shall have tamper resistant enclosures, and be securely fastened to a wall or other structure. Control panels located within a controlled area shall require only a minimal degree of physical security protection sufficient to preclude unauthorized access to the mechanism.

c. Keypad devices shall be designed or installed in such a manner that an unauthorized person in the immediate vicinity cannot observe the selection of input numbers.

d. Systems that utilize transmission lines to carry access authorizations, personal identification, or verification data between devices/equipment located outside the controlled area shall have line supervision.

e. Electric strikes used in access control systems shall be heavy duty industrial grade.

5. Access to records and information concerning encoded ID data and PINs shall be restricted. Access to identification or authorization data, operating system software or any identifying data associated with the access control system shall be limited to the fewest number personnel as possible. Such data or software shall be kept secure when unattended.

6. Records shall be maintained reflecting active assignment of ID badge and/or card, PIN, level of access, access, and similar system-related records. Records concerning personnel removed form the system shall be retained for 90 days. Records of entries shall be retained for at least 90 days or until investigations of system violations and incidents have been successfully resolved and recorded.

7. Personnel entering or leaving an area shall be require to immediately secure the entrance or exit point. Authorized personnel who permit another individual to enter the area are responsible for confirming the individual's access and need-to-know. The Heads of the DOD components may approve the use of standardized AECS, which meet the following criteria:

a. For a Level 1 key card system, the AECS must provide a 0.95 probability of granting access to an authorized user providing the proper identifying information within three attempts. Additionally, the system must ensure an unauthorized user is granted access with less than 0.05 probability after three attempts to gain entry have been made.

b. For a Level 2 key card and PIN system, the AECS must provide a 0.97 probability of granting access to an authorized user providing the proper identifying information within three attempts. Additionally, the system must ensure an unauthorized user is granted access with less than 0.010 probability after three attempts to gain entry have bee made.

c. For a Level 3 key card and PIN and biometrics identifier system, the AECS must provide a 0.99 probability of granting access to an authorized user providing the proper identifying information within three attempts. Additionally, the system must ensure an unauthorized user is granted access with less than 0.005 probability after three attempts to gain entry have been made.

1. *Electric, Mechanical, or Electromechanical Access Control Devices.* Electric, mechanical, or electromechanical devices which meet the criteria stated in subparagraphs 7.c.2. and 3, below, may be used to control admittance to secure areas during duty hours if the entrance is under visual control. These devices are also acceptable to control access to compartmented areas within a secure area. Access control devices must be installed in the following manner:

2. The electronic control panel containing the mechanical mechanism by which the combination is set is to be located inside the area. The control (located within the area) shall require only minimal degree of physical security designated to preclude unauthorized access to the mechanism.

3. The control panel shall be installed in such a manner, or have a shielding device mounted, so that an unauthorized person in the immediate vicinity cannot observe the setting or changing of the combination.

4. The selection and setting of the combination shall be accomplished by an individual cleared at the same level as the highest classified information controlled within.

5. Electrical components, wiring included, or mechanical links (cables, rods, etc.) should be accessible only from inside the area, or if they traverse an uncontrolled area they should be secured within protecting covering to preclude surreptitious manipulation of components.

Dated: June 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–15707 Filed 6–27–95; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300389; FRL–4960–5]

Sodium Propionate, Methoprene, and Heliothis zea Npv; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA or ''the Agency'')

ACTION: Proposed rule.

SUMMARY: For each of the pesticides subject to the actions listed in this proposed rule, EPA has completed the reregistration process and issued a Reregistration Eligibility Document (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals subject to this proposed rule, EPA is proposing the following tolerance actions: to amend the exemptions from the requirement of a tolerance for methoprene; to revoke exemptions for sodium propionate; and make wording changes to the exemption from the requirement of a tolerance for *Heliothis zea* NPV. With this proposal to amend the exemptions from the requirement of tolerances for methoprene, the Agency is correcting its position in the RED, which stated that the exemptions should be revoked. The Agency believes that exemptions from the requirement of tolerances for these uses are appropriate.

DATES: Written comments, identified by the OPP document control number [OPP–300389], must be received on or before July 28, 1995.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–300389.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III of this document.

Information submitted as a comment concerning this document 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 comment 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. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Poli, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8038, poli.philip@epamail.epa.gov.

I. Legal Authorization

The Federal Food, Drug, and Cosmetic Act (FFDCA) [21 U.S.C. 301 et seq.] authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered to be ''adulterated'' under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would ''protect the public health'' [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA, 7 U.S.C. 136 et seq.].

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration and if any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or repealing tolerances or exemptions from the requirement of tolerances is set forth in the Code of Federal Regulations 40 CFR parts 177 through 180. The Administrator of EPA or any person may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. The proposal must explain the grounds for such a proposed action and will be published as a public notice. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee or a request for a waiver of such fee. Current Agency policy on tolerance actions identified during the reregistration process is to administratively process without requiring payment of a fee tolerance actions for revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

II. Chemical-Specific Information and Proposed Actions

A. Methoprene: Amendment to 40 CFR 180.1033 and Revocation of Exemption under 40 CFR 185.4150

1. *Regulatory background*. Methoprene was first registered under FIFRA in 1975; a Registration Standard was issued in February 1982. Subsequent to the issuance of the Registration Standard, methoprene was reclassified by EPA from a conventional to a biochemical pesticide based on its mode of action and chemical structure. The Reregistration Eligibility Document (RED) for methoprene was issued in March 1991. At the time of the RED, a number of sites were registered for mosquito control. For these sites, which included both food and non-food, exemptions from the requirement of tolerances had been established. In the RED, the Agency recommended that these exemptions be revoked based on the following rationale:

> The mosquito vector control uses that were exempt from the requirement of a tolerance under 40 CFR 180.1033 and 185.4150 are now considered non-food uses. Thus, the exemptions are no longer applicable and will be revoked.

Subsequent to the issuance of the RED, other mosquito vector control uses were added to the methoprene label; these included vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards. No tolerances or exemptions from the requirement of tolerances were established.

2. *Proposed action*. Amendment to 40 CFR 180.1033. The 1991 RED document erroneously reclassifies many of the mosquito vector control uses for food sites as non-food, and recommends that the exemptions from the requirements of a tolerance be revoked because they are unnecessary. The Agency has reviewed its position and determined that the exemptions for all food sites should remain or be established. Because methoprene exhibited low toxicity and showed no oncogenic potential in chronic feeding studies (Ref. 1), and because methoprene has low potential for exposure when used as a mosquito larvae control, the Agency is proposing that methoprene be exempt from the requirement of a tolerance in or on all raw agricultural commodities, including pastures, rice fields, vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards, when used to control mosquito larvae.

With this proposal, the Agency is acknowledging its error in the RED and is also amending the RED determination that the mosquito vector control uses are non-food. The Agency believes that these uses are indeed food uses, and as such, should have the appropriate clearances for residues on food under the Federal Food, Drug, and Cosmetic Act.

Revocation of exemption under 40 CFR 185.4150(a). Revoke this exemption, deleting paragraph (a), because the Agency no longer requires tolerances for potable water.

B. Sodium Propionate: Revocation of Exemptions under 40 CFR Sections 180.2(a) and 180.1015

1. *Regulatory background*. EPA first registered propionic acid-containing products in the early 1970's. The currently registered products are used as fungicides and bactericides, and have been used for both human food and animal feed. In 1975, EPA exempted sodium propionate from tolerances for residues following post-harvest application in grains or hays (40 CFR 180.1023). Sodium propionate is also exempt from the requirement of a tolerance when applied (as an inert ingredient) to growing crops or to raw agricultural commodities after harvest as described in 40 CFR 180.1001(c). Sodium propionate is Generally Recognized As Safe (GRAS) (21 CFR part 1081), by the Food and Drug Admininstration (FDA) for use in food.

The Reregistration Eligibility Document (RED) was issued for propionic acid and its salts in 1991. The

RED document recommended revoking the exemption from the requirement of tolerances for all active ingredients containing sodium and calcium propionate since no pesticide products contain these pesticides. There are no exemptions from the requirement of tolerances for calcium propionate listed in the 40 CFR.

2. *Proposed action*. The Agency is proposing to revoke the exemptions for sodium propionate under 40 CFR 180.1015 and 180.1027 since there are no registrations for pesticide products containing this active ingredient.

C. Heliothis zea NPV: Changes to the Existing Language Under 40 CFR 180.1027

1. *Regulatory background*. *Heliothis zea* NPV was first registered by the Agency in 1975 as a microbial pesticide for use on cotton and tobacco to control the cotton bollworm and the tobacco budworm. In June 1984, the Registration Standard entitled ''Guidance for the Reregistration of Pesticide Products Containing Nuclear Polyhedrosis Virus of Heliothis Zea as the Active Ingredient'' (NTIS No. PB85134393) was issued for *Heliothis zea* NPV, which summarized the available data supporting its registration and concluded that additional scientific data were needed to evaluate this microbial pesticide. The Reregistration Eligibility Document (RED) was issued for *Heliothis zea* NPV in December 1990. In this document, the Agency conducted a thorough review of the scientific data base and all relevant information supporting the reregistration of *Heliothis zea* NPV, including the data submitted in response to the Registration Standard. The Agency concluded as a result of the reregistration review that the exemption from the requirement for a tolerance on all agricultural commodities continues to be appropriate.

2. *Proposed action*. To better reflect the current viral identification and testing technology, the Agency is at this time proposing to amend the existing language of 40 CFR 180.1027. As specified in the Pesticide Assessment Guideline, Subdivision O, Residue Chemistry, the use of a pesticide on tobacco does not require a tolerance or an exemption from the requirement of a tolerance, so the commodity tobacco will no longer be listed under § 180.1027(c).

III. Public Comment Procedures

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by [insert date 30 days after date of publication in the **Federal Register**]. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under **ADDRESSES.**

Information submitted as a comment concerning this document may be claimed confidential by marking any 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 a comment 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.

A record has been established for this proposal under docket number ''OPP–300389'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this proposal, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this proposed rule in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1132 at the Virginia address given above.

IV. References

U.S. Environmental Protection Agency. Reregistration Eligibility Document for Isopropyl (2E,4E)-11-Methoxy-3,7,11-Trimethyl-2,4 Dodecadienoate (Referred to as Methoprene). Case 0030. March 1991.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not a ''significant regulatory action,'' because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 [Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.] and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

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

Dated: June 15, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR, chapter I, is proposed to be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.2 is revised to read as follows:

§ 180.2 Pesticide chemicals considered safe.

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellent in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium carbonate, potassium polysulfide, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sodium polysulfide, sodium sesquicarbonate, sorbic acid, sulfur, and when used as plant desiccants, sodium metasilicate (not to exceed 4 percent by weight in aqueous solution) and when used as post-harvest fungicides, citric acid, fumaric acid, oil of lemon, oil of orange, and sodium benzoate are not for the purposes of section 408(a) of the Act generally recognized as safe.

(b) Upon written request, the Registration Division will advise interested persons whether a pesticide chemical should be considered as poisonous or deleterious, or one not generally recognized by qualified experts as safe.

(c) The training and experience necessary to qualify experts to evaluate the safety of pesticide chemicals for the purposes of section 408(a) are essentially the same as training and experience necessary to qualify experts to serve on advisory committees prescribed by section 408(g). (See § 180.11.)

§ 180.1015 [Removed]

c. Section 180.1015 is removed.

d. Section 180.1027 is revised to read as follows:

§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.

(a) For the purposes of this section, the viral insecticide must be produced with an unaltered and unadulterated inoculum of the single-embedded *Heliothis zea* nuclear polyhedrosis virus (HzSNPV). The identity of the seed virus must be assured by periodic checks.

(b) Each lot of active ingredient of the viral insecticide shall have the following specifications:

(1) The level of extraneous bacterial contamination of the final unformulated viral insecticide should not exceed 10^7 colonies per gram as determined by an aerobic plate on trypticase soy agar.

(2) Human pathogens, e.g., Salmonella, Shigella, or Vibrio, must be absent.

(3) Safety to mice as determined by an intraperitoneal injection study must be demonstrated.

(4) Identity of the viral product, as determined by the most sensitive and standardized analytical technique, e.g., restriction endonuclease and/or SDS-PAGE analysis, must be demonstrated.

(c) Exemptions from the requirement of a tolerance are established for the residue of the microbial insecticide *Heliothis zea* NPV, as specified in paragraphs (a) and (b) of this section, in or on all agricultural commodities including: corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, and tomatoes.

e. Section 180.1033 is revised to read as follows:

§ 180.1033 Methoprene; exemption from the requirement of a tolerance.

Methoprene is exempt from the requirement of a tolerance in or on all raw agricultural commodities when used to control mosquito larvae including pastures, rice fields, vineyards, date palm orchards, nut orchards, berry orchards, and fruit orchards.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 348.

b. Section 185.4150 is revised to read as follows:

§ 185.4150 Methoprene.

A tolerance of 10 parts per million is established for residues of isopropyl (E,E)-11-methoxy-3,7,11-trimethyl-2,4-dodecadienoate) in or on the food additive commodity cereal grain milled fractions (except flour and rice hulls).

[FR Doc. 95–15438 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 185 and 186

[FAP 4H5683/P616; FRL–4959–1]

RIN 2070–AC18

Hexazinone; Food/Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes food and feed additive regulations for residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in sugarcane molasses. Owing to a transmission error, a previous proposal and final rule stipulated a tolerance of 0.5 part per million (ppm), but the tolerance should have been stipulated as 5.0 ppm. EPA is proposing the food/feed additive regulations to establish the tolerance that E.I. du Pont de Nemours & Co., Inc., petitioned for under the Federal Food, Drug and Cosmetic Act

DATES: Comments, identified by the document control number [PP 4H5683/P616], must be received on or before July 28, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment 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. All written comments will be available for public

inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [FAP 4H5683/P616]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-7830; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 22, 1995 (60 FR 15113), EPA issued a proposed rule that gave notice that E.I. du Pont de Nemours & Co., Inc., had petitioned EPA under sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a and 348), to amend 40 CFR parts 180, 185, and 186 to establish tolerances with regional registration for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the raw agricultural commodity sugarcane at 0.2 part per million (ppm), the food additive commodity sugarcane molasses at 0.5 ppm, and the feed additive commodity sugarcane molasses at 0.5 ppm. The tolerance and food/feed additive regulations were published as a final rule in the **Federal Register** of May 17, 1995 (60 FR 26361). Because of a tranmission error in the preparation of the prior **Federal Register** notices, EPA established tolerances of 0.5 ppm for hexazinone in 40 CFR 185.3575 and 186.3575, but the correct tolerance petitioned for by DuPont is 5.0 ppm. (The tolerance of 0.2 ppm for sugarcane in 40 CFR 180.396 is correct.)

EPA is proposing amendments to 40 CFR 185.3575 and 186.3575 to establish the 5.0 ppm tolerances petitioned for by DuPont. The data and other relevant material submitted with the petition (FAP 4H5683) and discussed in the proposed rule of March 22, 1995 (60 FR 15113) remain applicable to this proposal. EPA's prior risk assessment assumed the sugarcane molasses tolerance would be set at 5.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered capable of achieving its intended physical or technical effect. The toxicological data considered in support of the proposed tolerance are discussed in the proposal of March 22, 1995 (60 FR 15113).

Based on the above information considered by the Agency, the Agency believes that use of the pesticide in accordance with tolerances established by amending 40 CFR 185.3575 and 186.3575 would be safe. Therefore, it is proposed that the food/feed additive regulations be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 6H5683/P616]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [FAP 4H5683/P616] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Food additives, Feed additives, Reporting and recordkeeping requirements.

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 185 and 186 be amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By revising § 185.3575, to read as follows:

§ 185.3575 Hexazinone; tolerances for residues.

A food additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following food commodity:

Commodity	Parts per million
Sugarcane, molasses	5.0

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.3575, to read as follows:

§ 186.3575 Hexazinone; tolerances for residues.

A feed additive tolerance with regional registration, as defined in § 180.1(n) and which excludes use of hexazinone on sugarcane in Florida, is established for combined residues of the herbicide hexazinone (3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione) and its metabolites (calculated as hexazinone) in or on the following feed commodity:

Commodity	Parts per million
Sugarcane, molasses	5.0

[FR Doc. 95–15440 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–99, RM–8612]

Radio Broadcasting Services; Buffalo Gap, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by D.J. Broadcasting, Inc., licensee of Station WKDE(FM), Channel 288A, Altavista, Virginia, and Ridle Radio, Inc., licensee of Station WSKO(FM), Channel 288A, Buffalo Gap, Virginia, seeking the substitution of Channel 238A for Channel 288A at Buffalo Gap, Virginia, and modification of Station WSKO(FM)'s license to reflect the alternate Class A channel. Channel 238A can be allotted to Buffalo Gap in compliance with the Commission's minimum distance separation requirements and be used at the transmitter site specified in Station WKSO(FM)'s authorization. The coordinates for Channel 238A at Buffalo Gap are 38–10–55 and 79–13–34.

DATES: Comments must be filed on or before August 14, 1995, and reply comments on or before August 29, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: York David Anthony, Lambert & Anthony, Consulting Engineers, 2613 Craig Avenue, Concord, North Carolina, 28027–4107 (consulting engineer for petitioners).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–99, adopted June 15, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15832 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–100, RM–8635]

Radio Broadcasting Services; Blackstone and Dillwyn, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Denbar Communications, Inc., licensee of Station WBBC(FM), Channel 228A, Blackstone, Virginia, proposing the substitution of Channel 228C3 for Channel 228A at Blackstone and modification of Denbar's authorization to specify operation on the higher powered channel. In order to accommodate the upgrade at Blackstone, we also propose to substitute Channel 287A for vacant Channel 229A at Dillwyn, Virginia. Channel 228C3 and Channel 287A can be allotted to Blackstone and Dillwyn, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 228C3 can be allotted to Blackstone at the licensed site of Station WBBC(FM). Channel 287A can be allotted to Dillwyn with a site restriction of 15.0 kilometers (9.3 miles) northwest. The coordinates for Channel 228C3 at Blackstone are 37–03–14 and 78–01–15. The coordinates for Channel 287A at Dillwyn are 37–35–18 and 78–37–01.

DATES: Comments must be filed on or before August 14, 1995, and reply comments on or before August 29, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson and Lauren Drake, Esq., Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900E, Washington, DC 20005 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–100, adopted June 7, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–

3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15833 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 94–137; RM–8532]

Radio Broadcasting Services; Romney, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition of The West Virginia Schools for the Deaf and the Blind, proposing the substitution if Channel *281A for Channel 201A at Romney, West Virginia, its reservation for noncommercial educational use, and the modification of Station WJGF(FM)'s license accordingly. *See* 59 FR 62390, December 5, 1994. We find that the proposed substitution does not meet the Commission's criteria for the reservation of a commercial channel for noncommercial educational use. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–137, adopted June 15, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15834 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–98; RM–8603]

Radio Broadcasting Services; Cheyenne and Saratoga, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Rule Communications and KRAE, Inc., proposing the allotment of Channel 260A at Cheyenne, Wyoming, as the community's fifth local FM transmission service. To accommodate the allotment, petitioners propose the deletion of vacant Channel 260C at Saratoga, Wyoming, or in the alternative, the substitution of Channel 277C for Channel 260C at Saratoga. Petitioners also request, if the channel is allotted, that Rule Communications be allow to amend its pending application for Channel 285A at Cheyenne to reflect the new channel, retaining its cut-off protection. Channel 260A can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, provided Channel 260C at Saratoga is deleted. The coordinates for Channel 260A at Cheyenne are North Latitude 41–08–18 and West Longitude 104–48–48. *See* Supplementary Comments, *infra.*

DATES: Comments must be filed on or before August 14, 1995 and reply comments on or before August 29, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for Rule Communications); and Tom Bauman, President, KRAE, Inc., 2109 East Tenth Street, Cheyenne, Wyoming 82003 (Petitioner for KRAE, Inc.).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–98, adopted June 12, 1995, and released June 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Alternatively, Channel 277C can be allotted at Saratoga in compliance with the Commission's minimum distance separation requirements at petitioners' requested site with a site restriction of 9.3 kilometers (5.8 miles) northwest to avoid a short-spacing to Station KOAQ(FM), Channel 278C, Denver, Colorado. The coordinates for Channel 277C at Saratoga are North Latitude 41–30–12 and West Longitude 106–53–50.

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.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–15835 Filed 6–27–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 124
Wednesday, June 28, 1995

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

Forms Under Review by Office of Management and Budget

June 23, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

New

- Food and Consumer Service
- WIC/Head Start Coordination Study
- State, Local or Tribal Government; Individuals or households; 297 responses; 123 hours
- Tamra Kinkner, (703) 305–2550
- Foreign Agricultural Service
- Supplier Credit Guarantee Program (7 CFR 1493, Subpart D)
- Business or other for-profit; 7,822 responses; 2,086 hours
- L.T. McElvain, (202) 720–6225

Revision

- Food and Consumer Service
- Food Distribution Regulations and Forms
- FCS–7, 52, 53, 57, 152, 153, 155, 155A, 513, 513A, 516, 519A, 519B, 586A, 586B, 663
- Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government; 1,099,490 responses; 1,173,797 hours
- Robert DeLorenzo, (703) 305–2661
- Federal Crop Insurance Corporation
- Nursery Frost, Freeze and Cold Damage Exclusion Option
- FCI–577
- Farms; Individuals or households; 3,000 responses; 1,500 hours
- Bonnie L. Hart, (202) 254–8393

Extension

- Agricultural Research Service
- Patent License Application
- Form AD–761
- Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government; 150 responses; 450 hours
- D. June Blalock, (301) 504–5989
- Forest Service
- Collection and Analysis of Timber Purchasers' Cost and Sales Data
- Business or other for-profit; 60 responses; 100 hours
- Rex Baumback, (202) 205–0855

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 95–15857 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Union Camp Corporation of Wayne, New Jersey, an exclusive license for all uses in the field of adhesives to U.S. Patent Application Serial No. 08/233,173 filed April 26, 1994, ''Non-Separable Starch-Oil Compositions.'' Notice of Availability was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before August 27, 1995.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Union Camp Corporation has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–15860 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 95–043–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not

have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
95–031–01	Oregon State University	5–25–95	Poplar trees genetically engineered to express reproductive sterility and herbicide tolerance.	Oregon
95–065–01	University of Chicago	5–30–95	*Atropa belladonna* plants genetically engineered to express an altered alkaloid profile for insect resistance.	Illinois

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995).

Done in Washington, DC, this 21st day of June, 1995.

Alfred S. Elder,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15861 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 95–045–1]

National Animal Damage Control Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Animal Damage Control Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in Ballrooms C and D of the Holiday Inn, 10000 Baltimore Boulevard, College Park, MD 20740, (301) 345–6700. The Committee will meet on September 27–29, 1995. Sessions will be held from 8 a.m. to 5 p.m. on September 27 and 28, and from 8 a.m. to noon on September 29.

FOR FURTHER INFORMATION CONTACT: Mr. William Clay, Director, Operational Support Staff, ADC, APHIS, Suite 6B02, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Animal Damage Control Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Tentative topics for discussion at the upcoming meeting will include, among other things, research at the Denver Wildlife Research Center (DWRC), status of DWRC's move to Fort Collins, CO, compliance with the National Environmental Policy Act, and follow-up of previous Committee recommendations.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mr. William Clay at the address listed under **FOR FURTHER INFORMATION CONTACT,** or may be filed at the meeting. Please refer to Docket No. 95–045–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 20th day of June 1995.

Dale F. Schwindaman,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–15763 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on July 18, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Discussion of projects subject to watershed analysis and opportunities for exemption of some projects from analysis; (2) discussion of criteria to be used to identify and select watersheds for analysis by the Mt. Baker-Snoqualmie National Forest in fiscal year 1996; (3) additional discussion of the recommendation that the Forest Service pursue the opportunity for watershed analysis in the Cascade watershed in fiscal year 1995; (4) other topics as appropriate; and (5) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Bob Dunblazier, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3270.

Dated: June 20, 1995.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 95–15847 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee will be held on July 20, 1995, from 6 to 8 p.m., at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, LA 70130. The purpose of the meeting is to provide orientation for new members and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–15771 Filed 6–27–95; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare an Environmental Impact Statement/Environmental Impact Report for the Disposal and Reuse of the Former Naval Shipyard Hunters Point, San Francisco, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) and the California Environmental Quality Act (CEQA), the Department of the Navy in coordination with the City and County of San Francisco is preparing a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the disposal and potential reuse of the former Naval Shipyard, Hunters Point property and structures located in San Francisco, California. The Navy shall be the EIS lead agency and the City of San Francisco shall be the EIR lead agency. The Defense Base Closure and Realignment Act (Pub. L. 101–510) of 1990, as implemented by the 1993 base closure process, directed the U.S. Navy to close Naval Station Treasure Island and its off-station property, Hunters Point Annex (the former Naval Shipyard, Hunters Point). This EIS/EIR shall be prepared for the disposal and reuse of former Naval Shipyard Hunters Point. A separate EIS/EIR shall be prepared for the disposal and reuse of Naval Station, Treasure Island.

The former Naval Shipyard is within the jurisdiction of the City of San Francisco. It covers approximately 500 acres of the southeast San Francisco waterfront. The property is developed with industrial ship repair facilities and associated buildings, including limited support facilities (residential, recreational). The EIS/EIR will address disposal of the property and the potential impacts associated with potential reuses of the property.

The EIS/EIR will address the potential significant impacts to the environment that may result from the implementation of two reuse alternatives and a ''no action'' alternative. The Hunters Point Shipyard Reuse Plan (based on a Hunters Point Land Use Draft Plan dated March 1995 developed by the City and County of San Francisco Planning Department with the San Francisco Redevelopment Agency in conjunction with the Mayor's Citizens Advisory Committee) will constitute the preferred alternative. The preferred alternative has been endorsed by the San Francisco Planning & Redevelopment Commissions and the Citizens Advisory Committee. The preferred reuse alternative would provide approximately 6,500 jobs, 1,300 residential units, 1.1 million square feet of industrial use (such as ship repair, ship maintenance, trucking and courier services, equipment leasing, printing and publishing, motion picture production, etc.), 300,000 square feet of research & development use (such as data processing, telecommunication, etc.) 555,000 square feet of cultural/institutional use (such as large education and training facilities, museums, theaters, galleries, restaurants, etc.), 1.1 million square feet of mixed use (such as artist studios, live/work space, recording studios, research and development, hotel/conference facilities, retail, etc.), and 6.1 million square feet of open space. The second alternative would be a reduced development of approximately 5,000 jobs, 600 residential units, 900,000 square feet of industrial use, 250,000 square feet of research & development use, 425,000 square feet of cultural/institutional use, 850,000 square feet of mixed use, and 6.1 million square feet of open space. The ''no action'' alternative would have the former Naval Shipyard remain federal government property, in a continuing caretaker status.

Federal, state, and local agencies, and interested individuals are encouraged to participate in the scoping process for the EIS/EIR to determine the range of issues and alternatives to be addressed. A public scoping meeting to receive oral

and written comments will be held at 5:00 p.m. on Wednesday, July 12, 1995, at the Southeast Community Facility, 1800 Oakdale Avenue, San Francisco, California. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement. All written comments should be submitted within 30 days of the published date of this notice to Ms. Mary Doyle (Code 185), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3024, fax (415) 244–3737. For information concerning the EIR, please contact Ms. Barbara Sahm, of the San Francisco Planning Department, Office of Environmental Review, telephone (514) 558–6381. For further information regarding the Hunters Point Shipyard Land Use Plan, please contact Mr. Byron Rhett, Hunters Point Project Manager of the San Francisco Redevelopment Agency, telephone (415) 749–2576 or Mr. Paul Lord, Hunters Point Planning Manager of the San Francisco Planning Department, telephone (415) 538–6311.

Dated: June 23, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–15846 Filed 6–27–95; 8:45 am]

BILLING CODE 3810–FF–M

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Manning will meet on June 27, 28, and 29, 1995. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Room 915, Arlington, Virginia, on June 27 and 28; and will be held aboard the USNS SAN DIEGO and the USS ESTOCIN at the Naval Shipyard, Norfolk, Virginia, on June 29, 1995. The first session will commence at 10:00 a.m. and terminate at 5:30 p.m. on June 27; the second session will commence at 8:00 a.m. and terminate at 5:00 p.m. on June 28; and the third session will commence at 8:00 a.m. and terminate at 2:30 p.m. on June 29, 1995. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Navy with an assessment on reduced manning concepts and associated technologies which will enable Navy ship manning reductions of 30% or more.

The meeting will include briefings and discussions relating to advanced training, manpower planning, ship systems automation, shipboard manning, ship coatings, and damage control.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Ms. Diane Mason-Muir, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–4870.

Dated: June 23, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–15931 Filed 6–27–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Federal Work-Study Programs

AGENCY: Department of Education.

ACTION: Notice of closing dates for institutions that participate in the Federal Work-Study (FWS) Program to submit the Campus-Based Reallocation Form (ED Form E40–4P).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadlines for an institution that participated in the FWS Program for the 1994–95 award year (July 1, 1994 through June 30, 1995) to submit its Campus-Based Reallocation Form. An institution that participated in the FWS Program for the 1994–95 award year must complete and submit the Campus-Based Reallocation Form. The Campus-Based Reallocation Form collects FWS community service information for the 1994–95 award year. The information collected is used to determine whether an institution is eligible to receive supplemental FWS funds for the 1995–96 award year (July 1, 1995 through June 30, 1996) and whether an institution met the minimum 5 percent community service expenditure requirement for the 1994–95 award year.

DATES: *Closing Dates for Submitting a Campus-Based Reallocation Form.* If an institution that participated in the FWS Program for the 1994–95 award year wants to ensure that it will be considered for supplemental FWS funds for the 1995–96 award year, the institution must submit the Campus-Based Reallocation Form by July 28, 1995. If an institution that participated in the FWS Program for the 1994–95 award year does not want to be considered for supplemental FWS funds for the 1995–96 award year, the institution must submit the Campus-Based Reallocation Form by November 3, 1995. The institution must return the ED Form E40–4P containing an original signature. The Department will not accept a form submitted by facsimile transmission.

ADDRESSES: *Campus-Based Reallocation Form Delivered by Mail.* The Campus-Based Reallocation Form delivered by mail must be addressed to the U.S. Department of Education, SFAP, AFMS, Institutional Financial Management Division, (Room 4714, ROB–3), 600 Independence Avenue, SW., Washington, D.C. 20202–5458. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of the mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Campus-Based Reallocation Form Delivered by Hand. A Campus-Based Reallocation Form delivered by hand must be taken to Ms. Carolyn Short, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered reallocation forms will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A Campus-Based Reallocation form that is delivered by hand will not be accepted after 4:30 p.m. on the appropriate closing date.

SUPPLEMENTARY INFORMATION: The Department will reallocate unexpended FWS Federal funds from the 1994–95 award year as supplemental allocations for the 1995–96 award year under the FWS program. Supplemental allocations will be issued this fall in accordance with the reallocation procedures contained in the Higher Education Act of 1965, as amended (HEA). Under section 442(e) of the HEA, unexpended FWS funds returned to the Secretary must be reallocated to eligible institutions that used at least 10 percent of the total FWS Federal funds granted to the institution to compensate students employed in community services. Because reallocated FWS funds will be distributed on the basis of fair share shortfall criteria, institutions must also have a fair share shortfall to receive these funds. Institutions must use all the reallocated FWS Federal funds to compensate students employed in community services. To ensure consideration for supplemental FWS Federal funds for the 1995–96 award year, an institution must submit the Campus-Based Reallocation Form by July 28, 1995.

The Department will determine if an institution participating in the FWS program met the statutory requirement of expending at least 5 percent of its total 1994–95 FWS Federal funds to pay students employed in community service jobs. Under section 443(b)(2)(A) of the HEA, for the 1994–95 award year and succeeding award years, an institution must use at least 5 percent of the total amount of FWS Federal funds granted to such institution to compensate students employed in community service, unless the Secretary approves a waiver. A participating FWS institution that does not want to be considered for supplemental FWS Federal funds for the 1995–96 award year must submit the Campus-Based Reallocation Form by November 3, 1995.

Applicable Regulations

The following regulations apply to the Federal Work-Study program:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Work-Study Programs, 34 CFR Part 675.

(3) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(4) New Restrictions on Lobbying, 34 CFR Part 82.

(5) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(6) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the Campus-Based Reallocation Form or other operational procedures of the campus-based programs, contact Ms. Carolyn Short, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 4714, ROB–3), Washington, D.C. 20202–5458, Telephone (202) 708–9756. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Authority: 42 U.S.C. 2756(b))

(Catalog of Federal Domestic Assistance Number: 84.033 Federal Work-Study Program)

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15845 Filed 6–28–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Industry Coupled Geothermal Exploration Drilling

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Solicitation for financial assistance: Industry Coupled Geothermal Exploration Drilling.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of locating, drilling and testing of new geothermal exploration wells in the United States. A minimum 50 percent non-federal cost share for the project is required. This notice is the complete solicitation document DE-PS07–95ID13348.

DATES: The deadline for receipt of applications is 3:00 p.m. MST, August 11, 1995. Late applications will be handled in accordance with 10 CFR 600.13.

Prospective applicants should request an application package by July 7, 1995, (which includes necessary forms, assurances and certifications), by writing to the DOE Contract Specialist. Facsimile requests are acceptable. Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than July 14, 1995. Questions and answers will be issued in writing as an amendment to this solicitation. Preproposal conferences may be available if a sufficient number of applicants request one. Preproposal conference requests should be made no later than July 14, 1995.

DOE anticipates that this solicitation will result in the award of one or more cooperative agreements. Substantial involvement by DOE is anticipated. All awards are expected to be made by September 30, 1995.

ADDRESSES: Applications shall be submitted to: Procurement Services Division; Attention: SOL DE-PS07–95ID13348 (Huggins/Bauer); U.S. DOE, Idaho Operations Office; PO Box 52280; Idaho Falls, Idaho 83405–2280.

FOR FURTHER INFORMATION CONTACT: Wendy L. Huggins, Contract Specialist, telephone (208) 526–2808, facsimile (208) 526–5548. The Contracting Officer is Brad Bauer, (208) 526–0090.

SUPPLEMENTARY INFORMATION:

Introduction

This solicitation is issued pursuant to Pubic Law 93–410, Geothermal Energy Research, Development, and Demonstration Act of 1974; and Section 2306 of the Energy Policy Act of 1992 (EPACT). The Catalog of Federal Domestic Assistance Number for this program is 81.087.

Energy efficiency and renewable energy projects entered into by both the public and private sectors are the cornerstone of DOE's Energy Partnerships for a Strong Economy. The purpose of various Energy Partnerships programs is to strengthen the economy and reduce greenhouse gas emissions. In support of this objective, DOE in collaboration with the geothermal industry and the electric utilities, has developed an initiative for furthering the commercialization of geothermal power. A primary strategy of the initiative is the acceleration of geothermal development through cost-shared projects.

This solicitation requests applications from industry for one or more collaborative efforts to support the development of new geothermal resources. These efforts are aimed towards the commercialization of this energy source, and an increase in the amount of electrical power generated from geothermal energy. The U.S. Department of Energy, Office of Utility Technologies, will provide at least $1,000,000 in funding for one or more projects.

Objectives

The objectives of this solicitation are to promote the commercialization of geothermal energy for the production of electrical power, and to reduce the emission of greenhouse gases in the United States. By accomplishing these objectives, it is anticipated that jobs will be created and that the nation's geothermal industry will be better positioned to compete and win in the global marketplace. The potential sale of the new power generated by the cost-shared project(s) and further growth of the geothermal industry will off-set the use of fossil fuels to generate electrical power, thereby reducing the nation's emissions of greenhouse gases.

Priorities

To promote the commercialization of geothermal energy, DOE's geothermal exploration initiative identified the exploration of previously undiscovered geothermal resources as specific areas for emphasis in the solicitation of applications for new geothermal power capacity.

DOE Funding and Cost-Sharing

The project(s) will be cost-shared, with participant(s) providing a minimum of 50 percent of the costs. Total DOE funding is currently $1,000,000. DOE will cost share 50 percent of well drilling and drill site data acquisition costs up to the amount available at the time of award.

It is intended that the federal funds should be used to help mitigate a portion of the initial risk associated with the development of geothermal energy. It is not intended that the project success be based upon a continuing subsidy of federal dollars. The funds for this solicitation shall be used for activities directly related to drilling new geothermal wells and characterizing the geothermal resource.

Qualified Applicants

For profit and not for profit organizations, state and local governments, Indian tribes and institutions of higher learning. Applications may include national laboratories, but only as lower tier participants with funding for their expected costs provided through their existing arrangements with the Government.

Preparation of Applications

Each application shall be submitted in two volumes. One original and eight copies of each application are to be submitted. It is recommended that the total number of pages for the two volumes not exceed 200 pages. Each Volume should be a ''stand alone'' document. Volumes one and two of the proposal should be organized with headings and sub headings that match those in the Evaluation Criteria section of the Statement of Work.

Applications submitted in response to this solicitation must provide detailed program management, personnel, drilling and drill hole data collection, site selection, environmental and budget information as further specified in this solicitation. The applications should contain the following information as completely and concisely as possible consistent with being complete.

1. Cover Page: The cover page is to include the signature, title, address, telephone number, and fax number of the applicant's authorized representative. The cover page also is to contain the copy number of the volume, with the original volume identified as ''Original: Copy No. 1,'' and subsequent copies identified as ''Copy No. 2,'' ''Copy No. 3,'' etc.

2. Table of Contents: The application is to include a table of contents and page numbers corresponding to the elements outlined in these preparation guidelines.

3. Technical Summary: The application is to provide a one page summary that furnishes a concise and informative description of the proposed project. This summary should contain information which is releasable to the public.

4. Environmental: The application is to include relevant information on leasing, permitting, and/or other legal, environmental, and commercial issues which may effect resource testing and development.

5. Management Discussion:

a. Program and Management Plan, Organization, and Key Personnel. A program management plan is to be provided that includes a statement of work detailing the activities necessary to complete the project. This plan is to include a project schedule identifying major milestones associated with the proposed cost-shared portion of the project, and how these milestones are incorporated into the remaining overall project work scope.

The management plan is to include the name and roles of the applicant and each of the participants involved in the project, including the contractual arrangements between the applicant and participants. The capabilities and responsibilities of the applicant and each participant; experience, qualifications, expected time commitment, and responsibilities of key personnel; and any unique facilities and/or capabilities which would assure the success of the project are to be provided, along with information regarding the applicant's (or appropriate participant's) experience in geothermal exploration and drilling.

The application is to discuss the composition of the organization of the applicant and participants from the standpoint of being involved in, and/or representative of the geothermal industry.

b. Financial Information. The application is to provide a description of the applicant and all other participants in the project, including the type of business, history, size, and discussion of the ownership and/or controlling interest, along with a listing of current or recent (within the past two years) government contracts, grants, cooperative agreements, and/or other work by the applicant in this or related fields. This listing is to include the names of the sponsoring agency or firm, instrument number, amount of the instrument, subject area of the instrument, and the name and telephone number of the contracting officer, or contract specialist. DOE reserves the right to solicit from available sources relevant information concerning a proposer's past performance and may consider such information in its evaluation.

Financial data on the applicant and participants, identifying the source of cost sharing and the available financial resources, are to be provided. These data are to include annual financial statements (balance sheet and income and expense statement) for the past 3 years for the applicant, as well as for the participants providing cost sharing and/or performing work.

An estimated cost to perform the tasks as identified in the proposed statement of work for the overall project is to be provided along with the basis or rationale supporting these costs. It will be used to evaluate the reasonableness of the project cost, the probable cost to the government, as well as to provide an understanding of the magnitude of the effort required.

6. Cost Sharing: The requested amount of DOE funds to be cost-shared is to be identified, along with how these funds will be used and the year in which they will be utilized. The percentage level of the DOE funds to the total project cost is to be defined. The impact of DOE's cost share to the viability of the project is to be addressed.

The application is to provide an estimate of the monetary value of all labor and cash contributions to the project by year and by party (DOE, applicant, and participants). If cost

share is provided by someone other than the applicant, the application must include a statement by the providing entity which specifically commits the labor and cash cost share for use on the project. Note that non-federal ''cost sharing'' is limited to monetary and labor investment. Payment of actual costs in the final agreement will only include those costs that are allocable to the program and allowable as determined in accordance with the applicable cost principles prescribed in 10 CFR 600.127 for the respective participants and in the cost share ratios to be defined in the negotiations.

7. Budget: A budget period is an interval of time into which the project period is divided for funding and reporting purposes. Project period means the total approved period of time that DOE will provide support, contingent upon satisfactory progress and availability of funds. The project periods may be divided into one or more budget periods. Project periods are not expected to exceed two years. Each application must contain Standard Forms 424 and 424A. The budget summary page must be completed for each of the proposed budget periods. The application should contain full details of the costs regarding the labor, overhead, material, travel, subcontracts, consultants, and other support costs broken down by task and by year. Every cost item should be justified. Further details of the costs may be required if the application is selected for the award. Items of necessary equipment should be individually listed by description and estimated cost, inclusive of tax. The destination and purpose of budgeted travel and its relevance to the research should be specified. Anticipated consultant services should be justified and information furnished on each individual's expertise, primary organizational affiliation, daily compensation rate and number of days of expected service. Consultant's travel costs should be listed separately under travel in the budget.

8. Cost Application: In the event there are multiple projects proposed in a submittal, a separate cost application should be included for each project proposed for funding. The cost application should have sufficient detail that an independent evaluation of the labor, materials, equipment and other costs as well as verification of the proposed cost share can be performed.

Proprietary Application Information

Applications submitted in response to this solicitation may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted provided the applicant marks the cover sheet of the application with the following legend, specifying the pages of the application which are to be restricted in accordance with the conditions of the legend:

''The data contained in pages _____ of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data herein to the extent provided in the award. This restriction does not limit the government's right to use or disclose data obtained without restriction from any source, including the applicant.''

Further, to protect such data, each page containing such data shall be specifically identified and marked, including each line or paragraph containing the data to be protected with a legend similar to the following:

''Use or disclosure of the data set forth above is subject to the restriction on the cover page of this application.''

It should be noted, however, that data bearing the aforementioned legend may be subject to release under the provisions of the Freedom of Information Act (FOIA), if DOE or a court determines that the material so marked is not exempt under the FOIA. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. Applicants are hereby notified that DOE intends to make all applications submitted available to non-Government personnel for the sole purpose of assisting the DOE in its evaluation of the applications. These individuals are required to protect the confidentiality of any specifically identified information obtained as a result of their participation in the evaluation.

Statement of Work

1.0 Introduction

DOE hopes to encourage the exploration for, and the development of, new geothermal resources within the United States by supporting research determining the nature and location of hydrothermal resources. By obtaining and providing this information publicly, DOE hopes to stimulate additional geothermal exploration. In order to attain these goals, DOE seeks to obtain data from exploration drilling in new geothermal areas.

2.0 Scope

DOE will pay the Awardee in this solicitation for the data package associated with locating, drilling and testing of new geothermal exploration wells in the United States. Total DOE funding is currently $1,000,000. DOE will cost share 50 percent, up to the amount available at the time of award, of the cost of drilling a well and acquiring the minimum required data package as listed below. Highest evaluation will be given to proposed wells that are truly exploration wells and are wells in locations that will add the most to the exploration knowledge base of geothermal resources, rather than step-out wells. The wells must be at least 3,000 feet in depth and have a bottom hole temperature of at least 250 degrees celsius. Wells may be either ''slim holes'' or production-diameter wells.

Data will be collected from the top of the well to the total depth of the well. In order to participate in this program the well must be drilled after July 1, 1995, and the data collected must be transferred to DOE within one year after award.

The Awardee will collect and provide DOE with the following minimum data package:

- Daily drilling reports, drilling and casing program, well survey plat.
- Drill cuttings from the entire drilled interval at a minimum of each 5 meters (15 feet) in four splits of 500 grams each and an accompanying lithologic drilling log, and daily drilling report. Cuttings should not be washed. If the well is cored, a split of any core recovered is to be delivered to DOE.
- Lost circulation amounts, times and depths.
- In the case of artesian flow, or if a pumped or otherwise stimulated flow test is performed, representative samples of formation water should be collected for chemical analysis. At least 2 liters of clear, filtered water should be collected in plastic bottles and sealed to prevent evaporative loss. A 2-liter sample of the drilling fluids in use prior to sampling should accompany each sample. Chemical analyses of the samples will be provided to DOE.
- Pressure and temperature logs of the hole from approximately 500 feet to total depth are required, prior to setting casing at all depths below 500 feet.

Proposers are encouraged to provide results from any initial well tests in the data set, including flowrate, pressures from surface metering instrumentation,

and raw pressure transient data. Such tests are to be witnessed by an experienced geothermal engineer.

Additional data to be collected by the proposer (such as borehole televiewer logs, sonic logs, electrical logs, etc.) may also be offered to DOE. The identification of additional data to be collected and provided to DOE will be used to evaluate the value of the data package to DOE during the proposal evaluation.

If the Awardee(s) determines and justifies that the completed hole(s) are of no economic value, the Awardee(s) shall plug and abandon the hole(s) and restore the site(s) in accordance with governing regulations. If for any reason the hole is not plugged and abandoned within 6 months after well completion, the hole shall become the legal and financial responsibility solely of the Awardee(s).

The Awardee will identify all reports, plans, permits, licenses and other items required by governmental regulatory agencies for the performance of this work, the agency whose requirement the item fulfills, and the actual or projected submittal and agency approval dates. Any costs incurred prior to award will not be considered project costs, even though the effort was in fulfillment of this task.

The Proposer shall confirm that all financial arrangements for implementation of the project and provide DOE with evidence that project financing is sufficient to complete the project prior to performance of any work under this Agreement. Details may be negotiated.

Qualification Criteria

To qualify for consideration under this financial assistance, the proposer must meet the following qualification criteria. Prior to the detailed evaluation, each proposal will undergo a preliminary review to assure the qualification criteria are satisfied. Proposals which do not meet the qualification criteria will not receive a comprehensive evaluation and will be eliminated from further consideration. Proposers of eliminated proposals will be notified in writing.

a. The proposed site must be within the United States.

b. The data must come from a well at least 3,000 feet deep.

c. The proposer must agree to minimum data collection requirements (see Statement of Work, Part 2.0).

d. The well must be drilled after July 1, 1995.

e. The proposer must provide assurance that the well will be drilled and data submitted to DOE within two years after award.

f. The proposer must provide documentation in the form of a lease, agreement or ownership providing a legal right of access to drill the hole at the proposed location.

g. The proposer must demonstrate the ability to successfully meet National Environmental Policy Act and other local, State, and Federal requirements for similar projects.

Evaluation Criteria

Proposals that meet the Qualification Criteria will undergo a comprehensive evaluation in accordance with the Evaluation Criteria listed below and considering any relevant public information. The Evaluation Criteria parallel the information required in Volume I and Volume II of the submitted proposals as outlined below. This information forms the basis for evaluation. The criteria are listed in descending order of importance within each volume.

Criterion 1 comprises half the weight while Criterion 2 and 4 are equal in weight and twice as much as Criterion 3.

Volume I—Evaluation Criteria

Criterion 1: Resource Potential—The potential of the location to add to the inventory of developable geothermal sites will be evaluated based on submitted exploration data, technical analysis and rationale provided in the proposal considering the following factors:

a. Locations in previously undrilled areas will be given priority over locations considered to be step-outs or in-fill locations. The greatest weight will be given to locations that have a high potential of being a new ''field discovery.''

b. The potential that the well and its proposed location will provide data that will expand or enhance the present knowledge of the resource potential and exploration methods within the United States.

c. The potential that the proposed depth of the hole will provide for evaluation of a deep subsurface geothermal system.

d. The amount of surface and subsurface data contained in the proposal that is of high quality and relevant to evaluating geothermal potential exploration methods, including geophysical, hydrological, and geological reconnaissance data and results.

e. The quantity and quality of previously unreleased data contained in the proposal that can be made available to the public domain.

Criterion 2: Technical approach to the project—

a. The quality, type and quantity of data to be gathered during the project in addition to the minimum data requirements of the Statement of Work, Part 2.0.

b. The content, adequacy and completeness of data collection plans.

c. The suitability of planned hole completion and maintenance for the data collection proposed, plugging and abandonment and site maintenance (including drilling fluid disposal, health, safety and environmental considerations) and restoration plans.

d. The lack of any restrictions on release of data collected during and subsequent to the drilling of the well and included in the proposed data package.

e. The lack of restriction on release and publishing by DOE of interpretation or integration of the data collected.

Criterion 3: Business approach to the project—

a. Qualifications of the proposer, subcontractors and key personnel including the extent of experience in geothermal well drilling, data collection, business related area and capabilities to carry out the data collection proposed.

b. The completeness and adequacy of the proposed management plan, including institutional concerns, proposed solutions and impact on the project.

Volume II—Evaluation Criteria

Criterion 4: Financial Considerations—

a. Cost-share plan—The plan for cost-sharing will be evaluated on the percentage in excess of 50 percent of the drilling and data acquisition costs to be borne by the proposer. More consideration may be given to projects with a greater-than-50 percent cost share. DOE cost share is limited to well drilling and drill site data acquisition activities. The applicant must cost share those portions of the project that are excluded from DOE cost share. The application will be evaluated on the nature and amount of cost-sharing. The applicant must demonstrate how it will meet its cost share. This demonstration will occur through the adequacy (e.g., completeness, relevancy, substantiation) of the cost portion of the application. Cash and cash-equivalent items (e.g., direct labor) are required.

b. Data package—The plan will be evaluated on the data to be collected and reported relative to the total DOE cost for the project.

c. Project financial plan—The project financial plan will be evaluated for the ability of the proposer to commit resources to finance the non-DOE share of the entire project and the adequacy of the proposer's financial condition.

Project cost/budget summary—This information should be provided for the proposed project. Reasonableness of cost to the government will be considered. The project cost/budget summary will be considered as an indication of the offeror's understanding of the job.

Evaluation of Applications

Applications submitted will be subject to a preliminary review by DOE to check for completeness and accuracy. Applications that are clearly non-responsive or do not provide evidence of cost-sharing agreements, will be rejected.

DOE reserves the right to support all, none, or certain parts of the applications submitted in response to this solicitation.

The information presented in the each application will be evaluated to determine the degree to which the stated objectives and priorities of this solicitation are met. The following is a summary listing of the criteria which will be considered in the evaluation and relative importance in the ranking process: resource potential, technical approach, cost- sharing, and business approach.

Issues relating to leasing, permitting, and related activities for the project development will be considered along with the environmental restrictions. The environmental evaluation will consider the impact of the proposed activities at the project site.

The proposed cost of the project will not be point scored. Applicants are advised, however, that notwithstanding the lower relative importance of the cost considerations, the evaluated cost may be the basis for selection. In making the selection decision, the apparent advantages of individual technical and business applications will be weighed against the probable cost to the government to determine whether the technical and business approaches (excluding cost considerations) are worth the probable cost differences.

Merit Reviews

All applications will be evaluated under the procedure for ''Objective Merit Review of Discretionary Financial Assistance Applications'', **Federal Register**, May 31, 1990, Vol. 55, No. 105 (copy provided upon request), and the criteria and programmatic considerations set forth in this solicitation. In conducting this evaluation, the Government may utilize assistance and advice from non-Government personnel. Applicants are therefore requested to state on the cover sheet of the applications if they do not consent to an evaluation by such non-Government personnel. The applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent.

General Conditions and Notice to Applicants

a. Applicants: All applicants will be notified in writing of the action taken on their applications in approximately 90 days after the closing date for this solicitation, provided no follow-up clarifications are needed. Status of any application during the evaluation and selection process will not be discussed with the applicants. Unsuccessful applications will not be returned.

b. False Statements: Applications must set forth full, accurate, and complete information as required by this solicitation. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

c. Application Clarification: DOE reserves the right to require applications to be clarified or supplemented to the extent considered necessary either through additional written submissions or oral presentations.

d. Amendments: All amendments to this solicitation will be mailed to recipients who submit a written request for the DOE application package.

e. Applicant's Past Performance: DOE reserves the right to solicit from available sources relevant information concerning an applicant's past performance and may consider such information in its evaluation.

f. Commitment of Public Funds: The Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with the proposed award. Any other commitment, either explicit or implied, is invalid.

g. Effective Period of Application: All applications should remain in effect for at least 180 days from the closing date.

h. Availability of Funds: The actual amount of funds to be obligated will be subject to availability of funds appropriated by Congress.

i. Loans under DOE Minority Economic Impact (MEI) Loan Program: Applicants are advised that loans under the DOE Minority Economic Impact (MEI) Loan Program are not available to finance the cost of preparing an application pursuant to this solicitation.

j. Assurances and Certifications: DOE requires the submission of preaward assurances of compliance and certifications which are mandated by law. The assurance and certification forms will be provided in the application package.

k. Questions and Answers: Questions regarding this solicitation should be submitted in writing to the DOE Contract Specialist no later than July 14, 1995. Any answers will be issued in writing.

l. Preaward Costs: The government is not liable for any costs incurred in preparation of an application. Awardees may incur preaward costs up to ninety (90) days prior to the effective date of award. Should the awardee take such action, it is done so at the awardee's risk and does not impose any obligation on the DOE to reimburse such costs if an award is not made.

m. Patents, Data, and Copyrights: Applicants are advised that patents, data, and copyrights will be treated in accordance with 10 CFR 600.33.

n. Environmental Impact: An applicant environmental checklist will be provided in the DOE application package. Award will not be made until the environmental checklist is completed. Review of the environmental checklist and the application will be conducted by DOE as required by 10 CFR 1021.216.

o. EPACT: Applicants shall be required to comply with Section 2306 of the Energy Policy Act of 1992 (EPACT) [42 U.S.C. 13525], as applicable.

p. Buy American Act: Any organization receiving an award under this solicitation must comply with the Buy American Provisions of Section 307 of Public Law 103–332, Department of the Interior and Related Agencies Appropriations Act of 1995.

Dated: June 16, 1995.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 95–15888 Filed 6–27–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ST95–2316–000 et al.]

Amoco Gas Co.; Notice of Self-Implementing Transactions

June 22, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act

of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The ''Recipient'' column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The ''Part 284 Subpart'' column in the following table indicates the type of transaction.

A ''B'' indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's Regulations and Section 311(a)(1) of the NGPA.

A ''C'' indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and Section 311(a)(2) of the NGPA.

A ''D'' indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An ''E'' indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

A ''G'' indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A ''G–I'' indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's Regulations.

A ''G–S'' indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A ''G–LT'' or ''G–LS'' indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A ''G–HT'' or ''G–HS'' indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A ''K'' indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A ''K–S'' indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's Regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2316	Amoco Gas Co	Western Gas Resources, Inc.	05–01–95	G–HT	40,000	N	I	02–15–95	02–01–96
ST95–2317	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	05–01–95	G–S	50,000	N	F	04–01–94	10–31–95
ST95–2318	Williston Basin Int. P/L Co.	Interenergy Resources Corp.	05–01–95	G–S	70	N	F	04–01–95	03–31–96
ST95–2319	Williston Basin Int. P/L Co.	Rainbow Gas Co	05–01–95	G–S	125,000	A	I	04–01–95	03–31–97
ST95–2320	Williston Basin Int. P/L Co.	Interenergy Resources Corp.	05–01–95	G–S	150,000	A	I	04–01–95	03–31–97
ST95–2321	Williston Basin Int. P/L Co.	KN Gas Supply Services, Inc.	05–01–95	G–S	20,000	A	I	04–01–95	03–31–97
ST95–2322	Great Lakes Gas Transmission L.P.	Kimball/Trippe Energy Associates.	05–01–95	G–S	12,000	N	F	04–01–95	11–30–09
ST95–2323	Great Lakes Gas Transmission L.P.	Westcoast Gas Services (America).	05–01–95	G–S	2,025	N	F	04–01–95	10–31–02
ST95–2324	Great Lakes Gas Transmission L.P.	Michigan Consolidated Gas Co.	05–01–95	G–S	300,000	N	F	04–01–95	10–31–95
ST95–2325	Great Lakes Gas Transmission L.P.	ANR Pipeline Co	05–01–95	B/G	49,918	Y	F	04–01–95	03–31–13
ST95–2326	Mississippi River Trans. Corp.	National Steel Corp	05–01–95	G–S	4,600	N	F	04–01–95	06–30–95
ST95–2327	Mississippi River Trans. Corp.	Chevron U.S.A., Inc	05–01–95	G–S	15,000	Y	I	04–01–95	Indef.
ST95–2328	Mississippi River Trans. Corp.	Fina Natural Gas Co.	05–01–95	G–S	20,000	Y	I	04–11–95	Indef.
ST95–2329	Columbia Gas Transmission Corp.	Amoco Energy Trading Corp.	05–01–95	G–S	150,000	N	I	04–01–95	Indef.
ST95–2330	Transcontinental Gas P/L Corp.	Baltimore Gas & Electric Co.	05–01–95	G–S	3,750	N	F	04–01–95	02–02–98
ST95–2331	Transcontinental Gas P/L Corp.	NUI Corp	05–01–95	G–S	2,500	A	F	04–04–95	04–01–99

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date com-menced	Projected termi-nation date
ST95–2332	Transcontinental Gas P/L Corp.	Exxon Corp	05–01–95	G–S	75,000	N	F	04–01–95	11–01–00
ST95–2333	Transcontinental Gas P/L Corp.	NUI Corp	05–01–95	G–S	1,393	A	F	04–04–95	02–02–98
ST95–2334	Transcontinental Gas P/L Corp.	Exxon Corp	05–01–95	G–S	50,000	N	F	04–01–95	11–01–98
ST95–2335	Transcontinental Gas P/L Corp.	New Jersey Natural Gas Co.	05–01–95	G–S	3,798	N	F	04–01–95	02–02–98
ST95–2336	Transcontinental Gas P/L Corp.	Noble Gas Marketing, Inc.	05–01–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2337	Florida Gas Transmission Co.	Pennunion Energy Services, L.L.C.	05–01–95	G–S	100,000	N	I	04–01–95	Indef.
ST95–2338	Florida Gas Transmission Co.	Aquila Energy Marketing Corp.	05–01–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2339	Florida Gas Transmission Co.	Prior Intrastate Corp	05–01–95	G–S	10,000	N	I	04–01–95	Indef.
ST95–2340	Algonquin Gas Tranmission Co.	Seitel Gas & Energy Corp.	05–01–95	G–S	4,000	N	F	04–03–95	10–31–95
ST95–2341	Algonquin Gas Tranmission Co.	Conslidated Edison Co. of New York.	05–01–95	B	9,261	N	F	04–01–95	Indef.
ST95–2342	Algonquin Gas Tranmission Co.	Associated Gas Services, Inc.	05–01–95	G–S	1,000	N	F	04–01–95	04–30–95
ST95–2343	Panhandle Eastern Pipe Line Co.	KN Gas Marketing, Inc.	05–01–95	G–S	50,000	N	I	02–11–95	08–31–95
ST95–2344	Transcontinental Gas P/L Corp.	Sara Lee Hosiery, Inc.	05–01–95	G–S	1,250	A	I	04–13–95	Indef.
ST95–2345	Transcontinental Gas P/L Corp.	Eastern Energy Marketing, Inc.	05–01–95	G–S	500,000	N	I	04–05–95	Indef.
ST95–2346	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	05–01–95	G–S	6,250	N	F	04–01–95	02–02–98
ST95–2347	Transcontinental Gas P/L Corp.	Frito Lay, Inc	05–01–95	G–S	1,700	A	I	04–13–95	Indef.
ST95–2348	Transcontinental Gas P/L Corp.	Williams Energy Systems Co.	05–01–95	G–S	500,000	Y	I	04–01–95	Indef.
ST95–2349	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	05–01–95	G–S	23,900	N	F	04–01–95	04–01–99
ST95–2350	Enogex Inc	ANR Pipeline Co., et al.	05–01–95	C	25,000	N	I	04–01–95	Indef.
ST95–2351	Tejas Gas Pipeline Co.	Texas Eastern Pipeline Co.	05–01–95	C	65,000	N	I	03–01–95	Indef.
ST95–2352	Enogex Inc	ANR Pipeline Co., et al.	05–01–95	C	10,000	N	I	04–13–95	Indef.
ST95–2353	Tennessee Gas Pipeline Co.	Seagull Marketing Services, Inc.	05–03–95	G–S	4	N	F	04–12–95	Indef.
ST95–2354	Tennessee Gas Pipeline Co.	Pennunion Energy Services, L.L.C.	05–03–95	G–S	10,000	N	I	04–06–95	Indef.
ST95–2355	Northwest Pipeline Corp.	Meridian Oil Trading Inc.	05–04–95	G–S	40,000	N	F	04–05–95	Indef.
ST95–2356	National Fuel Gas Supply Corp.	American Energy Management, Inc.	05–04–95	B	1,000	N	I	05–01–95	05–01–00
ST95–2357	Viking Gas Transmission Co.	Coastal Gas Marketing Co.	05–04–95	G–S	58,152	N	F	03–04–95	Indef.
ST95–2358	Viking Gas Transmission Co.	Interlink	05–04–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2359	Viking Gas Transmission Co.	Poco Petroleums Ltd.	05–04–95	G–S	5,000	N	F	05–01–95	Indef.
ST95–2360	Viking Gas Transmission Co.	Conagra Energy Services Co.	05–04–95	G–S	900	N	F	04–01–95	Indef.
ST95–2361	Viking Gas Transmission Co.	Northern States Power Co.	05–04–95	G–S	9,063	Y	F	05–01–95	Indef.
ST95–2362	Colorado Interstate Gas Co.	Conoco, Inc	05–05–95	G–S	5,000	N	F	05–01–95	08–31–95
ST95–2363	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	05–05–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2364	Colorado Interstate Gas Co.	Amoco Energy Trading Corp.	05–05–95	G–S	10,000	N	F	05–01–95	09–30–95
ST95–2365	Colorado Interstate Gas Co.	Aquila Energy Marketing Corp.	05–05–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2366	Colorado Interstate Gas Co.	Walden Capital Leasing Corp.	05–05–95	G–S	700	N	F	04–27–95	02–28–00

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date commenced	Projected termination date
ST95–2367	Panhandle Eastern Pipe Line Co.	Citizens Gas & Coke Utility.	05–08–95	B	25,000	N	I	04–06–95	04–30–98
ST95–2368	Panhandle Eastern Pipe Line Co.	Amgas, Inc	05–08–95	G–S	7,000	N	F	04–01–95	03–31–96
ST95–2369	Alabama-Tennessee Natural Gas Co.	Minnesota Mining & Manufacturing Co.	05–08–95	G–S	4,500	N	I	05–01–95	Indef.
ST95–2370	Sea Robin Pipeline Co.	Enron Gas Marketing, Inc.	05–08–95	G–S	10,000	Y	F	05–01–95	12–31–95
ST95–2371	Sea Robin Pipeline Co.	Wickford Energy Marketing, L.C.	05–08–95	G–S	1,600	Y	I	05–01–95	Indef.
ST95–2372	South Georgia Natural Gas Co.	Occidental Chemical Corp.	05–08–95	G–S	5,400	Y	F	05–01–95	09–30–95
ST95–2373	Southern Natural Gas Co.	Texican Natural Gas Co.	05–08–95	G–S	7,500	N	F	05–01–95	04–30–96
ST95–2374	Southern Natural Gas Co.	City of Quitman	05–08–95	G–S	300	N	F	05–01–95	10–31–96
ST95–2375	National Fuel Gas Supply Corp.	UGI Utilities, Inc	05–09–95	G–S	12,000	N	F	05–01–95	10–31–95
ST95–2376	Transok, Inc	ANR Pipeline Co., et al.	05–09–95	C	10,000	N	I	04–12–95	Indef.
ST95–2377	Columbia Gulf Transmission Co.	GGR Energy	05–09–95	G–S	2,500	N	F	11–01–94	Indef.
ST95–2378	Columbia Gulf Transmission Co.	GGR Energy	05–09–95	G–S	2,500	N	F	11–01–94	Indef.
ST95–2379	Columbia Gulf Transmission Co.	GGR Energy	05–09–95	G–S	5,000	N	F	11–01–94	04–30–95
ST95–2380	Columbia Gulf Transmission Co.	Petron Oil Corp	05–09–95	G–S	30,000	N	I	05–01–95	Indef.
ST95–2381	Columbia Gulf Transmission Co.	Torch Gas LC	05–09–95	G–S	10,000	N	F	11–01–94	Indef.
ST95–2382	Columbia Gas Transmission Corp.	Enron Access Corp	05–09–95	G–S	50,000	N	F	04–01–95	10–31–95
ST95–2383	Columbia Gas Transmission Corp.	Cenergy, Inc	05–09–95	G–S	10,000	N	F	04–01–95	05–31–95
ST95–2384	Columbia Gas Transmission Corp.	United States Gypsum Co.	05–09–95	G–S	2,100	N	F	04–01–95	10–31–95
ST95–2385	Columbia Gas Transmission Corp.	ANR Pipeline Co	05–09–95	G–S	100,000	N	I	04–01–95	Indef.
ST95–2386	Midwestern Gas Transmission Co.	Mobil Natural Gas, Inc.	05–10–95	G–S	5,000	N	F	05–01–95	Indef.
ST95–2387	Tennessee Gas Pipeline Co.	Noble Gas Marketing, Inc.	05–10–95	G–S	4	N	F	05–01–95	Indef.
ST95–2388	National Fuel Gas Supply Corp.	Progas U.S.A., Inc ..	05–10–95	G–S	12,000	N	I	04–01–95	04–01–15
ST95–2389	Algonquin Gas Transmission Co.	Boston Edison Co ..	05–10–95	B	100	N	F	04–10–95	04–30–95
ST95–2390	Algonquin Gas Transmission Co.	Chesapeake Energy Corp.	05–10–95	G–S	5,500	N	F	04–10–95	04–14–95
ST95–2391	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–07–94	Indef.
ST95–2392	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	01–01–94	Indef.
ST95–2393	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–09–94	Indef.
ST95–2394	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–23–94	Indef.
ST95–2395	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	12–01–94	Indef.
ST95–2396	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	02–15–94	Indef.
ST95–2397	Transtexas Gas Corp.	Florida Gas Transmission Co., et al.	05–10–95	C	30,000	N	I	09–02–94	Indef.
ST95–2398	Williston Basin Int. P/L Co.	Conoco, Inc	05–11–95	G–S	50,000	A	I	04–11–95	03–31–97
ST95–2399	Columbia Gas Transmission Corp.	Fuel Services Group	05–12–95	G–S	1,000	N	I	05–01–95	Indef.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date com-menced	Projected termi-nation date
ST95–2400	Columbia Gas Transmission Corp.	Panda-Brandywine LP.	05–12–95	G–S	24,240	N	I	05–01–95	Indef.
ST95–2401	Trunkline Gas Co ...	Appalachian Gas Sales, Inc.	05–12–95	G–S	30,000	N	I	05–01–95	Indef.
ST95–2402	Williston Basin Int. P/L Co.	Prairielands Energy Marketing, Inc.	05–12–95	G–S	100,000	A	I	04–14–95	03–31–97
ST95–2403	Northern Border Pipeline Co.	Associated Gas Services, Inc.	05–12–95	G–S	50,000	N	I	04–23–95	02–28–97
ST95–2404	Columbia Gas Transmission Corp.	NGC Transportation, Inc.	05–12–95	G–S	10,000	N	F	05–01–95	12–31–95
ST95–2405	Columbia Gas Transmission Corp.	Coenergy Trading Co.	05–12–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2406	Columbia Gas Transmission Corp.	Anadarko Trading Co.	05–12–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2407	ANR Pipeline Co	NGC Transportation, Inc.	05–12–95	G–S	80,000	N	F	04–01–95	10–31–95
ST95–2408	ANR Pipeline Co	North Shore Gas Co	05–12–95	G–S	36,661	N	F	04–01–95	03–31–00
ST95–2409	ANR Pipeline Co	Peoples Gas, Light & Coke Co.	05–12–95	G–S	21,997	N	F	04–01–95	03–31–00
ST95–2410	ANR Pipeline Co	NGC Transportation, Inc.	05–12–95	G–S	3,000	N	F	04–01–95	10–31–95
ST95–2411	ANR Pipeline Co	City of Gallatin	05–12–95	G–S	223	N	F	04–28–95	09–01–95
ST95–2412	ANR Pipeline Co	CMS Gas Marketing Co.	05–12–95	G–S	2,200	N	F	04–01–95	10–31–96
ST95–2413	ANR Pipeline Co	Pennzoil Exploration & Prod. Co.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2414	ANR Pipeline Co	H&N Gas Ltd	05–12–95	G–S	N/A	N	I	04–02–95	Indef.
ST95–2415	ANR Pipeline Co	Aurora Natural Co ..	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2416	ANR Pipeline Co	Columbia Gas Development Co.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2417	ANR Pipeline Co	LIG Chemical Co	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2418	ANR Pipeline Co	Pennunion Energy Services.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2419	ANR Pipeline Co	Wickford Energy Marketing Co.	05–12–95	G–S	N/A	N	I	04–01–95	Indef.
ST95–2420	ANR Pipeline Co	KCS Energy Co	05–12–95	G–S	N/A	N	F	04–01–95	Indef.
ST95–2421	ANR Pipeline Co	Pennunion Energy Services.	05–12–95	G–S	N/A	N	F	04–19–95	Indef.
ST95–2422	ANR Pipeline Co	NGC Transportation, Inc.	05–12–95	G–S	67,000	N	F	04–01–95	Indef.
ST95–2423	ANR Pipeline Co	Baltimore Gas & Electric Co.	05–12–95	G–S	12,336	N	F	04–01–95	Indef.
ST95–2424	Columbia Gulf Transmission Co.	Chevron USA, Inc ..	05–15–95	G–S	50,000	N	F	12–01–93	12–31–95
ST95–2425	NORAM Gas Transmission Co.	Conagra Boiler Co ..	05–15–95	G–S	1,790	N	F	04–01–95	Indef.
ST95–2426	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	05–15–95	G–S	12,000	N	F	05–01–95	Indef.
ST95–2427	Panhandle Eastern Pipe Line Co.	CONOCO, Inc	05–15–95	G–S	100,000	N	I	05–01–95	04–30–97
ST95–2428	Panhandle Eastern Pipe Line Co.	Eastex Hydrocarbons, Inc.	05–15–95	G–S	100,000	N	I	05–01–95	10–10–98
ST95–2429	Panhandle Eastern Pipe Line Co.	Koch Gas Services Co.	05–15–95	G–S	50,000	N	I	05–01–95	02–28–97
ST95–2430	Panhandle Eastern Pipe Line Co.	Oxy USA Inc	05–15–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2431	Panhandle Eastern Pipe Line Co.	BP Oil Co	05–15–95	G–S	1,500	N	F	05–01–95	10–31–95
ST95–2432	Panhandle Eastern Pipe Line Co.	Westcoast Gas Services (U.S.A.).	05–15–95	G–S	10,000	N	F	05–01–95	10–31–95
ST95–2433	Panhandle Eastern Pipe Line Co.	Anadarko Petroleum Corp.	05–15–95	G–S	30,000	N	F	05–01–95	05–31–95
ST95–2434	Questar Pipeline Co	Conoco, Inc	05–15–95	G–S	3,500	N	F	05–01–95	05–31–95
ST95–2435	DOW Pipeline Co ...	Channel Gas Marketing Co.	05–15–95	G–I	5,000	N	I	02–01–95	01–01–97

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ST95–2436	Lone Star Gas Co ..	El Paso Natural Gas Co., Et Al.	05–15–95	C	30,000	N	I	04–22–95	Indef.
ST95–2437	Transok, Inc	ANR Pipeline Co., Et Al,.	05–15–95	C	20,000	N	I	05–01–95	Indef.
ST95–2438	Transok, Inc	ANR Pipeline Co., Et Al.	05–15–95	C	10,000	N	I	05–01–95	Indef.
ST95–2439	Transok, Inc	ANR Pipeline Co., Et Al.	05–15–95	C	5,000	N	I	05–01–95	Indef.
ST95–2440	Midwestern Gas Transmission Co.	Resource Energy Services Co.	05–16–95	G–S	19,993	N	F	04–28–95	Indef.
ST95–2441	High Island Offshore System.	Columbia Gas Development Corp.	05–16–95	K–S	5,000	N	I	04–01–95	Indef.
ST95–2442	High Island Offshore System.	Union Pacific Fuels, Inc.	05–16–95	K–S	80,000	N	I	04–01–95	Indef.
ST95–2443	U–T Offshore System.	Columbia Gas Development Corp.	05–16–95	K–S	5,000	N	I	04–01–95	Indef.
ST95–2444	Canyon Creek Compression Co.	Midcon Gas Services Corp.	05–16–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2445	Tennessee Gas Pipeline Co.	Belden & Blake Corp.	05–17–95	G–S	4,150	N	F	05–01–95	Indef.
ST95–2446	Natural Gas P/L Co. of America.	Amoco Energy Trading Co.	05–17–95	G–S	30,000	N	F	05–01–95	05–31–95
ST95–2447	Natural Gas P/L Co. of America.	Associated Natural Gas, Inc.	05–17–95	G–S	160,000	N	F	05–01–95	03–31–00
ST95–2448	Tennessee Gas Pipeline Co.	CO Energy Trading Co.	05–18–95	G–S	4	N	F	05–01–95	Indef.
ST95–2449	Tennessee Gas Pipeline Co.	Valero Gas Marketing LP.	05–18–95	G–S	4	N	F	04–20–95	Indef.
ST95–2450	Valero Transmission, L.P.	El Paso Natural Gas Co., Et Al.	05–18–95	C	71,000	N	I	05–01–95	05–01–96
ST95–2451	Valero Transmission, L.P.	Transwestern Pipe Line Co.	05–18–95	C	1,000	N	I	05–01–95	Indef.
ST95–2452	Rocky Mountain Natural Gas Co.	Northwest Pipeline Co., Et Al.	05–18–95	G–HT	6,000	N	I	03–01–95	Indef.
ST95–2453	Pacific Gas Transmission Co.	Pacific Interstate Transmission Co.	05–18–95	G–S	246,960	N	I	05–01–95	Indef.
ST95–2454	Pacific Gas Transmission Co.	Suncor, Inc	05–18–95	G–S	50,000	N	I	05–01–95	Indef.
ST95–2455	K N Interstate Gas Trans. Co.	Universal Resources Corp.	05–18–95	G–S	10,000	N	F	04–01–95	04–04–95
ST95–2456	K N Interstate Gas Trans. Co.	Continental Natural Gas, Inc.	05–18–95	G–S	50,000	N	I	04–01–95	Indef.
ST95–2457	Florida Gas Transmission Co.	Tiger Bay Limited Partnership.	05–18–95	G–S	22,400	N	F	05–01–95	02–28–15
ST95–2458	Florida Gas Transmission Co.	Premier Enterprises, Inc.	05–18–95	G–S	5,000	N	I	05–01–95	Indef.
ST95–2459	Trunkline Gas Co ...	Tennessee Gas Pipeline Co.	05–18–95	G	400,000	N	I	02–18–95	Indef.
ST95–2460	Mississippi River Trans. Corp.	NGC Transportation, Inc.	05–18–95	G–S	200,000	N	I	04–20–95	Indef.
ST95–2461	Texas Gas Transmission Corp.	Shell Gas Trading Co.	05–18–95	G–S	10,000	Y	I	05–01–95	Indef.
ST95–2462	Algonquin Gas Transmission Co.	Chesapeake Energy Corp.	05–19–95	G–S	11,500	N	F	04–17–95	04–21–95
ST95–2463	Trailblazer Pipeline Co.	Conoco, Inc	05–19–95	G–S	5,000	N	F	05–01–95	08–31–95
ST95–2464	Trailblazer Pipeline Co.	Western Gas Resources, Inc.	05–19–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2465	Trailblazer Pipeline Co.	Aquila Energy Marketing Corp.	05–19–95	G–S	10,000	N	F	05–01–95	08–31–95
ST95–2466	Trailblazer Pipeline Co.	National Gas Resources L.P.	05–19–95	G–S	50,000	N	I	05–01–95	Indef.
ST95–2467	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	05–19–95	C	5,000	N	I	04–19–95	Indef.
ST95–2468	Transcontinental Gas P/L Corp.	Pennunion Energy Services, L.L.C.	05–19–95	G–S	3,912,600	N	I	04–19–95	Indef.
ST95–2469	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–19–95	G–S	40,000	A	I	04–21–95	03–31–97
ST95–2470	Columbia Gas Transmission Corp.	Enogex, Inc	05–23–95	B	160	N	F	05–10–95	Indef.

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ST95–2471	Columbia Gas Transmission Corp.	Jones Hamilton Co .	05–23–95	G–S	154	N	F	03–01–95	Indef.
ST95–2472	Columbia Gas Transmission Corp.	Transylvania University.	05–23–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2473	Columbia Gas Transmission Corp.	Transylvania University.	05–23–95	G–S	1,500	N	I	05–01–95	Indef.
ST95–2474	Columbia Gas Transmission Corp.	Petron Oil Corp	05–23–95	G–S	30,000	N	I	05–01–95	Indef.
ST95–2475	Columbia Gas Transmission Corp.	Petron Oil Corp	05–23–95	G–S	N/A	N	I	05–01–95	05–01–96
ST95–2476	Transwestern Pipeline Co.	Teco Gas Marketing Co.	05–23–95	B	35,765	N	F	04–04–95	04–30–95
ST95–2477	Transwestern Pipeline Co.	Coastal Gas Marketing Co.	05–23–95	G–S	15,000	N	F	04–04–95	04–30–95
ST95–2478	Transwestern Pipeline Co.	Richardson Products Co.	05–23–95	G–S	5,000	N	F	04–04–95	04–30–95
ST95–2479	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–23–95	G–S	10,000	Y	F	04–06–95	04–30–95
ST95–2480	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–23–95	G–S	10,000	Y	F	04–11–95	04–17–95
ST95–2481	Transwestern Pipeline Co.	Enron Capital & Trade Res. Corp.	05–23–95	G–S	28,000	Y	F	05–01–95	05–31–95
ST95–2482	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	05–23–95	G–S	45,000	N	F	04–01–95	04–30–95
ST95–2483	Transwestern Pipeline Co.	Richardson Products Co.	05–23–95	G–S	44,000	N	F	04–01–95	04–30–95
ST95–2484	Transwestern Pipeline Co.	NGC Transportation Inc.	05–23–95	G–S	1,900	N	F	04–01–95	04–30–95
ST95–2485	Transwestern Pipeline Co.	Amoco Energy Trading Corp.	05–23–95	G–S	39,476	N	F	04–01–95	07–31–95
ST95–2486	Transwestern Pipeline Co.	Phillips Gas Marketing Co.	05–23–95	G–S	15,000	N	F	04–01–95	06–30–95
ST95–2487	Transwestern Pipeline Co.	Coastal Gas Marketing Co.	05–23–95	G–S	10,000	N	F	04–01–95	04–30–95
ST95–2488	Transwestern Pipeline Co.	Phillips Gas Marketing Co.	05–23–95	G–S	15,000	N	F	04–01–95	07–31–95
ST95–2489	Delhi Gas Pipeline Corp.	Texas Eastern Trans. Corp., et al.	05–24–95	C	20,000	N	I	05–01–95	Indef.
ST95–2490	Ong Transmission Co.	Ozark Pipeline Co ..	05–24–95	C	50,000	N	I	04–01–95	Indef.
ST95–2491	Texas Eastern Transmission Corp.	Pennunion Energy Services, L.L.C.	05–24–95	G–S	240,000	N	I	05–01–95	Indef.
ST95–2492	Texas Eastern Transmission Corp.	Mobil Natural Gas Inc.	05–24–95	G–S	10,000	N	I	05–01–95	Indef.
ST95–2493	Texas Eastern Transmission Corp.	Peco Energy Co	05–24–95	G–S	27,865	N	F	05–08–95	Indef.
ST95–2494	Trailblazer Pipeline Co.	Coastal Gas Marketing Co.	05–24–95	G–S	12,000	N	F	04–01–95	10–31–95
ST95–2495	Natural Gas P/L Co. of America.	Tenneco Gas Marketing Co.	05–24–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2496	Natural Gas P/L Co. of America.	Koch Gas Services Co.	05–24–95	G–S	12,000	N	F	05–01–95	04–30–00
ST95–2497	Natural Gas P/L of America.	Aquila Energy Marketing Corp.	05–24–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2498	Natural Gas P/L of America.	Ashland Exploration, Inc.	05–24–95	G–S	100,000	N	I	05–01–95	Indef.
ST95–2499	El Paso Natural Gas Co.	Enron Capital & Trade Res. Corp.	05–24–95	G–S	200,000	N	I	04–26–95	Indef.
ST95–2500	Northwest Pipeline Corp.	Phillips Gas Marketing Co.	05–24–95	G–S	10,000	N	F	05–01–95	Indef.
ST95–2501	Koch Gateway Pipeline Co.	Alabama River Pulp Co., Inc.	05–24–95	G	3,500	N	F	05–01–95	05–01–96

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ST95–2502	Koch Gateway Pipeline Co.	Egan Gas Storage Co.	05–24–95	B	N/A	N	I	04–26–95	Indef.
ST95–2503	Koch Gateway Pipeline Co.	Fina Natural Gas Co.	05–24–95	G–S	150,000	N	F	04–26–95	10–01–97
ST95–2504	Koch Gateway Pipeline Co.	Koch Gas Services Co.	05–24–95	G–S	N/A	N	I	04–20–95	Indef.
ST95–2505	Koch Gateway Pipeline Co.	Noble Gas Marketing, Inc.	05–24–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2506	Koch Gateway Pipeline Co.	Elf Exploration, Inc .	05–24–95	G–S	N/A	N	I	04–26–95	Indef.
ST95–2507	Koch Gateway Pipeline Co.	Prior Intrastate Corp	05–24–95	G–S	7,000	N	F	05–01–95	04–01–96
ST95–2508	Koch Gateway Pipeline Co.	Florida Gas Transmission Co.	05–24–95	G	N/A	N	I	05–03–95	Indef.
ST95–2509	Koch Gateway Pipeline Co.	Progas, Inc	05–24–95	G–S	N/A	N	I	05–26–95	Indef.
ST95–2510	Koch Gateway Pipeline Co.	Fina Natural Gas Co.	05–24–95	G–S	N/A	N	I	04–26–95	10–01–97
ST95–2511	Columbia Gas Transmission Corp.	University of Kentucky.	05–24–95	G–S	N/A	N	I	05–01–95	Indef.
ST95–2512	Columbia Gas Transmission Corp.	University of Kentucky.	05–24–95	G–S	7,500	N	I	05–01–95	Indef.
ST95–2513	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	20,000	N	I	03–01–95	Indef.
ST95–2514	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	10,000	N	I	02–01–95	Indef.
ST95–2515	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	10,000	N	I	02–01–95	Indef.
ST95–2516	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	28,000	N	I	02–01–95	Indef.
ST95–2517	Louisiana Resources Pipeline Co.	ANR Pipeline Co., et al.	05–25–95	C	10,000	N	I	03–01–95	Indef.
ST95–2518	Kentucky West Virginia Gas Co.	J.W. Kinzer Drilling Co.	05–25–95	G–S	100	N	I	01–01–95	Indef.
ST95–2519	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2520	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2521	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2522	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	05–25–95	C	20,000	N	I	05–01–95	Indef.
ST95–2523	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	05–26–95	G–HT	50,000	N	I	04–21–95	03–31–96
ST95–2524	Tejas Gas Pipeline Co.	Trunkline Pipeline Co.	05–26–95	C	20,000	N	I	04–01–95	Indef.
ST95–2525	Tejas Gas Pipeline Co.	Tejas Power/Tomcat System.	05–26–95	C	20,000	N	I	04–01–95	Indef.
ST95–2526	Lone Star Gas Co ..	El Paso Natural Gas Co., et al.	05–26–95	C	50,000	N	I	05–01–95	Indef.
ST95–2527	Lone Star Gas Co ..	El Paso Natural Gas Co., et al.	05–26–95	C	50,000	N	I	05–01–95	Indef.
ST95–2528	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	05–26–95	G–S	1,268	N	F	05–01–95	05–31–95
ST95–2529	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	05–26–95	G–S	2,626	N	F	05–01–95	05–31–95
ST95–2530	Panhandle Eastern Pipe Line Co.	Associated Gas Services, Inc.	05–26–95	G–S	2,000	Y	F	05–01–95	05–31–95
ST95–2531	Panhandle Eastern Pipe Line Co.	Thermic Refractories, Inc.	05–26–95	G–S	200	N	F	05–01–95	04–30–96

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ST95–2532	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	05–26–95	G–S	228–600	N	F	05–01–95	11–30–95
ST95–2533	Panhandle Eastern Pipe Line Co.	Dayton Power and Light Co.	05–26–95	B	626	N	F	05–01–95	05–31–95
ST95–2534	Panhandle Eastern Pipe Line Co.	Citizens Energy Services Corp.	05–26–95	G–S	10,000	N	F	05–01–95	06–30–95
ST95–2535	Panhandle Eastern Pipe Line Co.	Associated Gas Services, Inc.	05–26–95	G–S	1,500	Y	F	05–01–95	05–31–95
ST95–2536	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse.	05–26–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2537	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	05–26–95	G–S	6,514	N	F	05–01–95	05–31–95
ST95–2538	Panhandle Eastern Pipe Line Co.	Amoco Energy Trading Corp.	05–26–95	G–S	2,300	N	F	05–01–95	10–31–95
ST95–2539	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	05–26–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2540	Panhandle Eastern Pipe Line Co.	Coenergy Trading co.	05–26–95	G–S	10,000	N	F	05–01–95	05–31–95
ST95–2541	Panhandle Eastern Pipe Line Co.	Amgas, Inc	05–26–95	G–S	4,000	N	F	05–01–95	05–31–95
ST95–2542	Trunkline Gas Co ...	Northern Indiana Public Service Co.	05–26–95	G–S	6,180	N	F	04–01–95	Indef.
ST95–2543	Trunkline Gas Co ...	Northern Indiana Public Service Co.	05–26–95	G–S	28,950	N	F	04–01–95	Indef.
ST95–2544	Transcontinental Gas P/L Corp.	Pennunion Energy Services, L.L.C..	05–25–95	G–S	3,200,000	N	I	05–01–95	Indef.
ST95–2545	Transcontinental Gas P/L Corp.	Amoco Energy Trading Corp.	05–25–95	G–S	30,000	N	F	05–01–95	06–30–00
ST95–2546	Transcontinental Gas P/L Corp.	Mobil Natural Gas Inc.	05–25–95	G–S	26,537	N	F	05–01–95	06–30–98
ST95–2547	Transcontinental Gas P/L Corp.	Petroleum Source & System Group.	05–25–95	G–S	4,000	N	I	05–01–95	Indef.
ST95–2548	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	05–30–95	C	20,000	N	I	05–01–95	Indef.
ST95–2549	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	05–30–95	C	35,000	N	I	05–01–95	Indef.
ST95–2550	ONG Transmission Co.	Ozark Pipeline Co ..	05–30–95	C	50,000	N	I	05–01–95	Indef.
ST95–2551	Tejas Gas Pipeline Co.	Texas Eastern Pipeline Co.	05–30–95	C	5,000	N	I	04–01–95	Indef.
ST95–2552	Amoco Gas Co	Centana Intrastate Pipeline Co.	05–30–95	G–HT	70,000	N	I	04–01–95	03–31–96
ST95–2553	Michigan Gas Storage Co.	Consumers Power Co.	05–30–95	B	150,000	Y	I	05–01–95	Indef.
ST95–2554	Consumers Power Co.	Michigan Gas Storage Co, et al.	05–30–95	G–HT	150,000	Y	I	05–01–95	Indef.
ST95–2555	Sabine Pipe Line Co.	Noble Gas Marketing, Inc.	05–30–95	G–S	100,000	N	I	05–23–95	Indef.
ST95–2556	Tennessee Gas Pipeline Co.	GGR Energy	05–30–95	G–S	4	N	F	05–03–95	Indef.
ST95–2557	Gasdel Pipeline System Inc.	Energy Development Corp.	05–30–95	G–S	14,432	N	I	01–01–95	Indef.
ST95–2558	Gas Co. of New Mexico.	Transwestern Natural Gas Co.	05–30–95	G–HT	5,000	N	I	05–01–95	Indef.
ST95–2559	Algonquin Gas Transmission Co.	Boston Edison Co ..	05–30–95	B	100	N	F	05–01–95	05–31–95
ST95–2560	Algonquin Gas Transmission Co.	CNG Gas Services Corp.	05–30–95	G–S	1,017	N	F	02–12–95	Indef.
ST95–2561	Algonquin Gas Transmission Co.	Bay State Gas Co ..	05–30–95	B	10,000	N	F	01–05–95	04–30–95
ST95–2562	Iroquois Gas Transmission System.	CNG Energy Services, Corp.	05–30–95	G–S	35,000	N	F	05–01–95	05–01–96
ST95–2563	Channel Industries Gas Co.	Tennessee Gas Pipeline Co.	05–31–95	C	5,000	Y	I	05–01–95	05–01–96
ST95–2564	Southern Natural Gas Co.	City of Quitman	05–31–95	G–S	778	N	F	05–03–95	10–31–96
ST95–2565	Mississippi River Trans. Corp.	Cerro Copper Products Co.	05–31–95	G–S	1,306	N	F	05–01–95	Indef.
ST95–2566	Mississippi River Trans. Corp.	National Steel Corp	05–31–95	G–S	778	N	F	05–01–95	Indef.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date com-menced	Projected termi-nation date
ST95–2567	Mississippi River Trans. Corp.	National Steel Corp	05–31–95	G–S	40	N	F	05–01–95	Indef.
ST95–2568	Transwestern Pipe-line Co.	Enron Capital & Trade Res. Corp.	05–31–95	G–S	10,000	Y	F	04–04–95	04–30–95
ST95–2569	Transwestern Pipe-line Co.	Enron Capital & Trade Res. Corp.	05–31–95	G–S	15,000	Y	F	04–04–95	04–10–95
ST95–2570	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2571	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2572	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2573	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2574	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2575	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2576	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2577	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2578	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2579	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2580	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2581	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2582	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2583	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2584	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2585	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2586	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2587	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2588	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2589	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2590	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2591	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2592	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2593	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2594	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2595	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2596	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2597	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2598	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2599	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2600	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2601	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity	Aff. Y/A/N	Rate Sch.	Date com-menced	Projected termi-nation date
ST95–2602	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2603	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2604	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2605	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2606	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2607	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2608	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2609	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2610	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2611	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2612	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2613	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2614	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2615	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2616	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2617	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2618	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2619	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2620	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97
ST95–2621	Williston Basin Int. P/L Co.	Koch Gas Services Co.	05–31–95	G–S	30,000	A	I	05–01–95	04–30–97

*Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

**Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

***Affiliation of reporting company to entities involved in the transaction. A ''Y'' indicates affiliation, an ''A'' indicates marketing affiliation, and a ''N'' indicates no affiliation.

[FR Doc. 95–15798 Filed 6–27–95; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. RP95–349–000]

The Brooklyn Union Gas Company v. CNG Transmission Corporation; Notice of Complaint

June 22, 1995.

Take notice that on June 20, 1995, pursuant to Rule 212 of the Commission's Rules of Practice and Procedures, The Brooklyn Union Gas Company (Brooklyn Union) filed a motion seeking an order from the Commission directing CNG Transmission Corporation (CNG) to refrain from requiring Brooklyn Union to comply with an operational flow order (OFO) that has required and will require Brooklyn Union to deliver gas transported by Transcontinental Gas Pipe Line Corporation (Transco) to CNG at Leidy, Pennsylvania for simultaneous redelivery by CNG back to Transco at Leidy for transportation and redelivery to Brooklyn Union.

Brooklyn Union states that during the 1994–1995 winter, CNG issued an OFO (Leidy OFO) which required Brooklyn Union to utilize up to its full X–56 capacity on Transco to deliver gas to Leidy if, and to the extent that, Brooklyn Union nominated FTNN service from CNG. Brooklyn Union states that the gas was then simultaneously ''redelivered'' to Transco at Leidy to be transported to Brooklyn Union's city gate.

Brooklyn Union states that the issuance of the Leidy OFO by CNG during the 1994–1994 winter imposed unjustified additional costs and administrative burdens on Brooklyn Union. Brooklyn Union was required to pay fuel charges to CNG and within-Zone-6 usage and fuel charges to Transco to reflect the fact that gas was being transported to CNG at Leidy and from CNG to Leidy to Brooklyn Union's city gate. Brooklyn Union submits that the application of the OFO to Brooklyn Union is not reasonably needed by CNG to permit it to maintain system reliability or provide firm service to its other customers.

Brooklyn Union requests the Commission to issue an order directing CNG to cease and desist from requiring Brooklyn Union to comply with the Leidy OFO to the extent that it requires Brooklyn Union to deliver gas at Leidy

where that gas will be simultaneously redelivered to Brooklyn Union at Leidy.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before July 6, 1995. 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. Answers to this complaint shall be due on or before July 6, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15799 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–186–005]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 22, 1995.

Take notice that on June 20, 1995, Carnegie Interstate Pipeline Company (CIPCO) made a compliance filing in response to the order in the above-captioned proceeding issued by the Commission on June 8, 1995.[1] CIPCO states that Ordering Paragraph (C) of that order required CIPCO to file a revised Section 32.2(e) of its tariff to provide for the refunding of overrecovered amounts remaining in its surcharge accounts following the last amortization period, with interest pursuant to Section 154.67 of the Commission's Regulations. Carnegie states that this requirement was satisfied when Carnegie made its January 6, 1995 compliance filing in this proceeding.

On December 2, 1994, the Commission issued in this proceeding an order accepting tariff sheets subject to a number of modifications, including the requirement of refunding with interest overrecovered amounts remaining in Carnegie's surcharge accounts following the last amortization period. On January 3, 1995, Carnegie filed a request for rehearing and clarification of some of the requirements of the December 2 order. On January 6, 1995, Carnegie filed in compliance with other requirements of the order. Carnegie did not seek rehearing of the refund with interest requirement; instead it filed in compliance with that requirement.

Thus, as part of its January 6, 1995 compliance filing, Carnegie submitted Second Revised Sheet No. 144, which included the revisions to Section 32.2(e) of the tariff in accordance with the Commission's order. That sheet, and a red-lined version of the sheet, are attached to the subject June 20, 1995 compliance filing, just as they were attached to the January 6 filing. The Commission accepted Second Revised Sheet No. 144 in a letter order dated May 1, 1995.

CIPCO states that Substitute Original Sheet No. 144, filed on June 20, 1995 is identical to Carnegie's Second Revised Sheet No. 144, except for the changes required by the corporate reorganization. A copy of CIPCO's Substitute Original Sheet No. 144 is also attached. Accordingly, CIPCO believes that it is currently in compliance with the Commission's June 8 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before June 29, 1995. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15800 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–24–001]

Colorado Interstate Gas Company; Notice of Filing of Refund Report

June 22, 1995.

Take notice that on June 13, 1995, Colorado Interstate Gas Company (CIG) filed a second refund report in Docket Nos. GP83–11, RI83–9, et al. CIG states that the filing and refunds were made to comply with the Commission's orders of December 1, 1993 and May 19, 1994.

CIG states that initial refunds were paid by CIG on December 14, 1994 and the second refund was made on April 12, 1995.

CIG notes that the refund report summarizes the Kansas ad valorem tax refund amounts related to tax bills rendered for production on or after June 28, 1988 pursuant to the Commission's December 1, 1993 and May 19, 1994 Orders. Lump-sum cash refunds were made by CIG to its former jurisdictional sales customers within 30 days of receipt from the producers. As provided for in the Orders, no additional interest was required to be paid.

CIG states that copies of CIG's filing have been served on CIG's former jurisdictional sales customers, interested states commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests should be filed on or before June 29, 1995. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15801 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–11–000]

Egan Hub Partners, L.P.; Notice of Petition for Rate Approval

June 22, 1995.

Take notice that on May 11, 1995, Egan Hub Partners, L.P. (Egan) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve as fair and equitable market-based rates for firm and interruptible storage and transportation services, including hub services, performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Egan states that it is an intrastate pipeline that is subject to regulation by the Louisiana Office of Conservation. Egan proposes an effective date of September 1, 1995.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-

[1] 71 FERC ¶ 61,310 (1995).

day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before July 7, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–15802 Filed 6–27–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5227–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, please refer to EPA ICR #1051.06.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standard (NSPS) for Portland Cement Industry (Subpart F)—(EPA No. 1051.06, OMB No. 2060–0025).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8 and the specific NSPS, for particulate and visible emissions from portland cement plants, at 40 CFR 60.60. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring facility compliance with the NSPS.

Owners or operators of all new facilities subject to this NSPS must provide EPA, or a delegated State or local authority, with: (1) Notification of the date of construction or reconstruction, (2) notification of the anticipated and actual dates of the start-up, (3) notification of the date of initial performance test, and (4) a copy of the initial performance test results. Owners and operators of new facilities that must conduct continuous opacity monitoring (COM) will be required to submit: (1) Notification of the COM system demonstration, and (2) notification that COM system data will be used during the initial performance test. Facilities that, as an alternative, are permitted to conduct opacity observations using EPA method 9 must notify EPA of the anticipated date for conducting these observations.

Owners and operators of all facilities must provide EPA, or a delegated State or local authority, with: (1) semiannual reports of malfunctions and excess emissions; and (2) notification of any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. All facilities must also maintain records on the facility operation that document: (1) the occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) initial performance test results; (3) all visible emissions from continuous opacity monitoring (COM) or, where applicable, from daily observations taken in accordance with EPA Method 9.

Presently there are an estimated 88 subject facilities with an average annual growth of 4 new facilities over the next three years. All subject facilities must maintain records related to compliance for 2 years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 3 hours per year for each respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden for each respondent is estimated to average 69 hours annually. The total annual public reporting burden is estimated to be 6750 hours.

Respondents: Businesses or other for-profit organizations.

Estimated Number of Respondents: 94.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Semiannual reporting for existing facilities in non-compliance, with additional one-time reporting requirements for new facilities. Daily recordkeeping for all facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #1051.06 and OMB #2060–0025) to:

Sandy Farmer, EPA ICR #1051.06, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M. Street, S.W., Washington, D.C. 20460.

and

Chris Wolz, OMB #2060–0025, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: June 21, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15878 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5227–6]

Public Water Supervision Program: Program Revisions for the State of Maine

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the state of Maine is revising its approved State Public Water Supervision Primacy Program. Maine has adopted four drinking water regulations for: (1) Volatile organic chemicals, (2) public notification, (3) for controlling lead and copper and (4) volatile organic chemicals, synthetic organic chemicals, and inorganic chemicals (known as Phase II, IIB, and V); that correspond to the National Primary Drinking Water Regulations promulgated by EPA on (1) July 8, 1987 (52 FR 25690), (2) October 18, 1987 (52 FR 41534), (3) June 7, 1991 (56 FR 26460) and (4) January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776). EPA has determined that the state program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by July 28, 1995 to the Regional

Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 28, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective July 28, 1995.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, at the following offices:

Maine Department of Human Services, Drinking Water Program, 157 Capitol Street, Augusta, ME 04333

and

U.S. Environmental Protection Agency—New England, Water Management Division, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203

FOR FURTHER INFORMATION CONTACT: Chris Ryan, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3609.

Authority: Section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: June 13, 1995.

John P. DeVillars,

Regional Administrator.

[FR Doc. 95–15879 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5227–9]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Disposal Systems, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Petition Reissuance.

SUMMARY: Notice is hereby given that reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Disposal Systems, Inc., for the Class I injection wells located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Disposal Systems, Inc., of the specific restricted hazardous waste identified in the exemption reissuance, into the Class I hazardous waste injection wells at the Deer Park, Texas facility specifically identified in the reissued exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued April 26, 1995. The public comment period ended on June 12, 1995. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of June 21, 1995.

ADDRESSES: Copies of the reissued petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Phil Dellinger, Unit Leader, UIC State Programs/Land Ban, EPA—Region 6, telephone (214) 665–7142.

Robert Mannesschlager,

Acting Director, Water Management Division (6W).

[FR Doc. 95–15877 Filed 6–27–95; 8:45 am]

BILLING CODE 6565–50–M

[AD–FRL–5249–4; Docket No. AQM–95–01]

Conference on Air Quality Modeling

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Conference.

SUMMARY: EPA announces the Sixth Conference on Air Quality Modeling. Such a conference is required by Section 320 of the Clean Air Act (CAA) to be held every 3 years. The purpose of the Sixth Conference is to provide a forum for public review of modeling techniques that may be candidates for use in regulatory applications.

DATES: The sixth conference will be held on August 9–10, 1995 from 9:00 a.m. to 5:00 p.m. As needed to allow for presentation of all verbal comments, the conference may extend to noon of the next day. Requests to speak at the conference should be submitted to the individuals listed below by July 26, 1995. All written comments must be submitted by COB October 10, 1995.

ADDRESSES: Conference: The conference will be held in the GSA Auditorium, GSA National Capitol Region Building, 7th and D Streets, SW., Washington, DC.

Comments: Written statements or comments not presented at the conference should be submitted (in duplicate if possible) to: OAR Regulatory Docket (6102), Room M–1500, Waterside Mall, Attention: OAR Regulatory Docket AQM–95–01, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of technical review materials may be obtained from several sources. Copies of all materials may be obtained from the docket. Many materials will also be available from the National Technical Information Service (NTIS), U.S. Dept. of Commerce, Springfield, VA 22161; (703) 487–4650. In addition, many materials may be obtained from the Support Center for Regulatory Air Models Bulletin Board System by downloading the appropriate file. To register or access this electronic bulletin board, users with a personal computer should dial (919) 541–5742.

Docket: Items referenced in this notice as well as comments received are maintained in Docket AQM–95–01. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711;

telephone (919) 541–5562 or C. Thomas Coulter, telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION

Background

The Guideline on Air Quality Models (Revised)(hereafter, ''Guideline'' [1]) is used by EPA, States, and private industry in the review and preparation of new source permits and SIP revisions. The Guideline serves as a means by which consistency is maintained in air quality analyses. It was first incorporated in the Code of Federal Regulations in 1978 and was subsequently revised in 1986 to include knowledge concerning modeling analyses that developed since the original guidance was issued. In 1988 four techniques were added as supplement A to the Guideline as a result of public comments on the 1986 revisions. In 1993, the Guideline was further revised with supplement B, and supplement C is expected to be promulgated soon.

To support the process of developing and revising the Guideline during the period 1977–1988, the First, Second and Third Conferences on Air Quality Modeling were held as required by Section 320 of the Clean Air Act to help standardize modeling procedures. These modeling conferences provided EPA with comments on the Guideline and associated revisions, thereby facilitating introduction of improved modeling techniques into the regulatory process.

In October 1988, the Fourth Conference on Air Quality Modeling was held. Its purpose was to advise the public on new modeling techniques and to solicit comments to guide EPA's consideration of any rulemaking needed to further revise the Guideline. The new models provide techniques for situations where specific procedures had not previously been available, and also improve several previously adopted techniques.

The Fifth Conference on Air Quality Modeling, held in March 1991, served as the public hearing for the proposed supplement B revisions to the Guideline (aforementioned). Since the Fifth Conference and the imminent adoption of supplement C, EPA believes it is time to consider a wide range of modeling issues in order to update its available modeling tools with state-of-the-science techniques. The Agency believes the Sixth Conference will appropriately serve as an ideal forum for the airing of these issues and the public offering of new ideas. The public feedback from such a conference is invaluable.

[1] The Guideline is published as appendix W to 40 CFR part 51.

Public Participation

The Sixth Conference on Air Quality Modeling will be open to the public; no admission fee is charged. The conference will begin the first morning with introductory remarks by EPA officials. The conference will continue with prepared presentations on several key modeling areas, i.e., long range transport modeling under the Interagency Workgroup on Air Quality Modeling (IWAQM [2]) and the development of an enhanced Gaussian dispersion model with boundary layer parameterization (AERMOD [3]). In the afternoon, invited speakers will discuss special topics, i.e., the Electric Power Research Institute's building downwash program, as well as several new and developing models (CAMRAQ, MODELS3, HPDM).

The second morning, discussion of special topics will continue based on voluntary presentations. Such presentations may include topics such as air models for accidental releases, fires, etc., air models for risk assessment of toxic pollutants, model evaluation, candidate models for Guideline appendix B, and miscellaneous models/data processing systems. These presentations will be followed by a critical review/discussion of the IWAQM and AERMOD modeling systems facilitated jointly by the Air & Waste Management Association's AB–3 Committee and the American Meteorological Society's Committee of Meteorological Aspects of Air Pollution. That afternoon representatives of State and local air pollution control agencies, appropriate Federal agencies, and professional and constituency groups will be invited to make statements. The conference will then be opened to statements and comments from the general public.

For the new models and modeling techniques described, EPA will be asking the public to address the following questions:

- What is the scientific merit of the models presented?
- What is their accuracy?
- What should be the regulatory use of individual models for specific applications?
- What implementation issues are apparent and what additional guidance is needed?
- What are the resource requirements of modeling systems presented?
- What additional analyses or information are needed?

Persons wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact EPA at the address given in the **FURTHER INFORMATION** section no later than July 26. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. An early contact regarding voluntary presentations of special topics, as well as time required and any materials that can be made publicly available, would help facilitate organization of the conference. If a presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket, for the convenience of the reporter. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket AQM–95–01 which will remain open until October 10, 1995 for the purpose of receiving additional comments.

Dated: June 21, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–15875 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound regional air quality models for regulatory assessments of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

[3] AMS/EPA Regulatory Model; AERMOD is being developed by AERMIC: AMS/EPA Regulatory Model Improvement Committee.

[FRL–5249–3]

Committee Meetings of the Grand Canyon Visibility Transport Commission

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) is announcing meetings of the Alternatives Assessment, Public Advisory, and Operations Committees of the Grand Canyon Visibility Transport Commission (Commission).

The Alternatives Assessment Committee (AAC) will meet on Monday, July 24, 8:30 am–5:00 pm, Tuesday, July 25, 8:30 am–5:00 pm, and on Wednesday, July 26, 8:30 am–12:00 noon. The meetings of the AAC will be held at the Doubletree Hotel, 4100 Admirality Way, Marina Del Ray, California. The purpose of these meetings will be to review the emission management scenarios being developed by the Commission's contractors.

The Public Advisory Committee (PAC) will meet on Wednesday, July 26, 3:00 pm–5:00 pm, Thursday, July 27, 8:30 am–5:30 pm, and Friday, July 28, 8:30 am–5:00 pm. The PAC meetings will be held at the Doubletree Hotel, 4100 Admirality Way, Marina Del Ray, California. The Wednesday session is intended as a briefing for new members on technical documents and policy issues under discussion. Thursday and Friday sessions will be on the main PAC meeting and workshops on fire management, and issues of restructuring of utility markets.

The Operations Committee will meet on Monday, July 31, 12:00 noon–5:00 pm, Tuesday, August 1, 3:00 pm–5:00 pm. The Operation Committee meetings will be held at the Doubletree Hotel, 4100 Admirality Way, Marina Del Ray, California. The Operations Committee will consider approving emissions management scenarios for further development.

The Commission was established by U.S. EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). All meetings are open to the public. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

FOR FURTHER INFORMATION CONTACT: Mr. John Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governors' Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

Dated: June 19, 1995.

David P. Havekamp,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 9.

[FR Doc. 95–15876 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

[PP 4G4347/T678; FRL 4960–1]

Abbott Laboratories; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the plant growth regulator, (*S*)-trans-2-Amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride in or on the raw agricultural commodity apples at 0.075 parts per million (ppm).

DATES: This temporary tolerance expires June 1, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Acting James Stone, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7740; e-mail: stone.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Road, North Chicago, IL 60064–4000, has requested in pesticide petition (PP) 4G4347, the establishment of a temporary tolerance for residues of the plant growth regulator, (*S*)-trans-2-Amino-4-(2-aminoethoxy)-3-butenoic acid hydrochloride in or on the raw agricultural commodity apples at 0.075 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 275–EUP–80, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Abbott Laboratories, must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 1, 1996. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: June 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15305 Filed 6–27–95; 8:45]

BILLING CODE 6560–50–F

[PP 4G4350/T679; FRL 4960–2]

American Cyanamid Co.; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the herbicide AC 299,263 ()-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methoxymethyl-3-

pyridinecaboxylic acid in or on the raw agricultural commodity soybean seed.

DATES: This temporary tolerance expires April 17, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543, has requested in pesticide petition (PP) 4G4350 the establishment of a temporary tolerance for residues of the herbicide AC 299,263 ( )-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-methoxymethyl-3-pyridinecaboxylic acid in or on the raw agricultural commodity soybean seed. This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit (EUP) 241–EUP–127, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of a temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Cyanamid Company, must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 17, 1997. Residues remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

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

Dated: June 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15306 Filed 6–27–95; 8:45]

BILLING CODE 6560–50–F

[OPP–30386; FRL–4951–1]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 28, 1995.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30386] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30386]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment 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 to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 22 James M. Stone (Acting),	Rm. 229, CM #2 (703–305–5540); e-mail: stone.james@unixmail.epa.gov.	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 31 Marion Johnson (Acting),	Rm. 270, CM #2 (703–305–6757); e-mail: johnson.marion@unixmail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 352–LTL. Applicant: E.I. duPont de Nemours and Company, Barley Mill Plaza, Walker Mill Bldg., 37 Wilmington, DE 19880–0038. Product name: Dupont KIH-2031 (DPX-PE350) Technical. Herbicide. Active ingredient: Pyrthiobac-sodium; sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate at 96.4 percent. Proposed classification/Use: General. For formulation of herbicides only. (PM 22)

2. File Symbol: 352–LTA. Applicant: E.I. duPont de Nemours and Co. Product name: Dupont Staple Herbicide. Herbicide. Active ingredient: Pyrthiobac-sodium; sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-ylthio)benzoate at 85 percent. Proposed classification/Use: General. For use on cotton. (PM 22)

3. File Symbol: 6836–ENO. Applicant: Lonza Inc., 17–17, Route 208, Fair Lawn, NJ 07410. Product name: Bardac 2180. Antimicrobial. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 80 percent Proposed classification/Use: None. For formulation or repackaging of disinfectants, santizers, fungicides, and water treatment microbiocides. (PM 31)

4. File Symbol: 66465–R. Applicant: Premier Medical Technology, Inc., 9800 Northwest Freeway, Suite 302, Houston, TX 77092. Product name: Formula 15. Antimicrobial. Active ingredient: Calcium oxide at 40 percent Proposed classification/Use: Restricted. For medical waste treament; it must be used in conjunction with the PMT500 processing unit. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30386] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 9, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15307 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30380A; FRL–4961–4]

LipaTech Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Difethialone Technical, Generation Pellets, Generation Pellets Placepacks, and Generation Rodenticide Bait Packs (Pellets), containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703)–305–6600; e-mail: forrest.robert@unixmail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 22, 1995 (60 FR 9838), which announced that LipaTech, Inc., 3101 West Custer Ave., Milwaukee, WI 53209, had submitted applications to register the pesticide products Difethialone Technical, Difethialone Pellets, and Difethialone Pellets Place Packs (EPA File Symbols 7173–ENU, 7173–ENL, and 7173–ENA), containing the active ingredients [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2 at 97.6, 0.0025, and 0.0025 percent respectively, active ingredients not

included in any previously registered products.

EPA subsequently received an application from LipaTech, to register the pesticide product Generation Rodenticide Bait Packs (Pellets) (File Symbol 7173–ERR), containing the active ingredients [(bromo-4'-[biphenyl-1-1']-yl-4) -3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2 at 0.0025 percent. However, since the notice of receipt of application did not publish in **Federal Register** as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically by sending electronic mail (e-mail to: opp-docket@epamail.epa.gov. More detailed information is contained in all documents requesting comments as of May 1995.

On May 3, 1995, EPA approved one technical and three end-use products as follows:

1. Difethialone Technical for formulation only into registered end-use rodenticides used in and around buildings and in transport vehicles (EPA Registration Number 7173–204).

2. Generation Pellets (formerly Difethialone Pellets) for indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats (EPA Registration Number 7173–205).

3. Generation Pellets Placepacks (formerly Difethialone Pellets Place Packs) for indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats (EPA Registration Number 7173–206).

4. Generation Rodenticide Bait Packs (Pellets) for indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats (EPA Registration Number 7173–211).

The Agency has considered all required data on risks associated with the proposed use of [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on [(bromo-4'-[biphenyl-1-1']-yl-4)-3-tetrahydro-1,2,3,4-naphthyl-1]-3-hydroxy-4, 2*H*-1-benzothiopyran-one-2.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 13. 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15309 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30389; FRL–4959–4]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and products involving a change use pattern, pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 28, 1995.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30389] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30389]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment 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 to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C),

Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
PM 21 Connie Welch,	Rm. 227, CM #2 (703–305–6900); e-mail: welch.connie@unixmail.epa.gov.	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 31 Marion Johnson,	Rm. 250, CM #2 (703–305–6757); e-mail: johnson.marion@unixmail.epa.gov.	Do.
PM 10 Richard Keigwin,	Rm. 713, CM #2 (703–305–7618); e-mail: keigwin.richard@unixmail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and products involving a change use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 48210–E. Applicant: Sankyo Company Ltd., c/o Rockwell Enterprises, Inc., 3331 Esplanade Circle S.E., Rio Rancho, NM 87124. Product name: Tachigaren Technical. Fungicide. Active ingredient: Hymexazol (5-methylisoxazol-3-ol) at 99.0 percent. Proposed classification/Use: General. For manufacturing or formulation use as a seed treatment of sugar beet seeds. (PM 21)

2. File Symbol: 65331–R. Applicant: Rhone Merieux, Inc., 115 Transtech Drive,, Athens, GA 30601. Product name: Frontline Spray Treatment. Insecticide. Active ingredient: Fipronil (5-amino-1-[2,6-dichloro-4-(trifluoromethyl)phenyl]-4-[(1R,S)-(trifluoromethyl)sulfinyl]-1H-pyrazole-3-carbonitrile at 0.29 percent. Proposed classification/Use: General. For the control of ticks and fleas on dogs, puppies, cats, and kittens. (PM 10)

II. Products Involving a Change Use Pattern

1. File Symbol: 6836–EER. Applicant: Lonza, Inc. 17-17 Route 208, Fair Lawn, NJ 07410. Product name: Bardac RW-50. Algaecide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 50 percent. Proposed classification/Use: None. To include in its presently registered use a new use to control algae in swimming pools and spas. (PM 31)

2. File Symbol: 6836–EEN. Applicant: Lonza, Inc. Product name: Bardac CW-50. Microbiocide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 50 percent. Proposed classification/Use: None. To include in its presently registered use a new use for industrial water treatment, paper processing, and cooling systems. (PM 31)

3. File Symbol: 6836–ERI. Applicant: Lonza, Inc. Product name: Bardac RW-10. Algaecide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 10 percent. Proposed classification/Use: None. To include in its presently registered use a new use to control algae in swimming pools and spas. (PM 31)

4. File Symbol: 6836–ERO. Applicant: Lonza, Inc. 17-17 Route 208, Fair Lawn, NJ 07410. Product name: Bardac CW-10. Microbiocide. Active ingredient: Decyl isononyl dimethyl ammonium chloride at 10 percent. Proposed classification/Use: None. To include in its presently registered use a new use for industrial water treatment, paper processing, and cooling systems. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30389] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 15, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15443 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 6G3306/T675A; FRL 4959–7]

Triclopyr; Renewal of Temporary Tolerances, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In FR Doc. 95–11147 in the **Federal Register** of May 10, 1995, at page 24855, the following correction is made: in the second paragraph under ''Supplementary Information'' change ''The company has requested a 1-year renewal of the temporary tolerances'' to read '' The company has requested a 2-year renewal of the temporary tolerances.''

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800; e-mail: taylor.robert@epamail.epa.gov.

Dated: June 13, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–15308 Filed 6–27–95; 8:45 am]

BILLING CODES 6560–50–F

[FRL 5227–4]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Liquid Dynamics, Inc., site in Chicago, Illinois. The settlement was proposed by U.S. EPA, Region 5 on February 17, 1995. The settlement resolves an EPA claim under Section 107(a) of CERCLA against Accutronics, Inc., Acme Galvanizing, Inc., Allied Tube & Conduit Corporation, American Waste Processing, Inc., Ashland Chemical Company, Bethlehem Steel Corporation, BorgWarner Corporation, C. M. Products, Inc., Chicago Steel & Wire (Division of Valhi, Inc.), Chicago Tribune Company, Ford Motor Company, General Tube Corporation, Gould Electronics, H.H. Howard Corporation, Kaiser Aluminum & Chemical Corporation, Mid-West Manufacturing Company, Outboard Marine Corporation, Panduit Corporation, Regal Tube Company (Division of Copperweld Tubing Products Co.), Reliable Galvanizing Company, Rollins Leasing Corporation, Signode Corporation, Moen, Inc. (f/k/a Standyne, Inc.), Stuart Industrial Coatings (f/k/a Stuart Paint), Verson Allsteel Press Company, Wayne Circuits, Inc., and Zenith Electronics Corporation. The settlement requires the settling parties to pay $57,000.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. EPA Office of Regional Counsel, 29th Floor, 200 West Adams, Chicago, Illinois 60606.

DATES: Comments must be submitted on or before July 28, 1995.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. EPA Office of Regional Counsel, 29th Floor, 200 West Adams, Chicago, Illinois 60606. A copy of the proposed settlement may be obtained from Reginald A. Pallesen, Associate Regional Counsel, Office of Regional Counsel (CM–29A), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Liquid Dynamics, Inc., site, Chicago, Illinois, and should be addressed to Reginald A. Pallesen, Associate Regional Counsel, Office of Regional Counsel (CM–29A), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen at (312) 886–0555.

Dated: June 8, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–15880 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00412; FRL–4962–8]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on Monday, July 10, 1995, and ending on Tuesday, July 11, 1995. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, July 10, 1995, from 8:30 a.m. to 5:00 p.m., and Tuesday, July 11, 1995, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The DoubleTree Hotel, National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia 22202, 703–892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5306.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following:

1. Reports from the SFIREG working committees.
2. Regional SFIREG reports.
3. Discussion of old and new issue papers.
4. Update on acetochlor registration partnership.
5. Status of Endangered Species Program and American Crop Protection Association (ACPA) task force.
6. FY '96 Cooperative agreement guidance and funding update.
7. Discussion of laboratory issues & National Enforcement Information Center updates.
8. Bulk packaging initiative program report.
9. Update on worker protection standard and implementation.
10. Discussion of homeowner pesticide marketing.
11. Biopesticides management and enforcement status report.
12. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: June 20, 1995.

William L. Jordan,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 95–16020 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–F

EXECUTIVE OFFICE OF THE PRESIDENT

Open Meeting of Policy Dialog Advisory Committee To Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions From Personal Motor Vehicles

AGENCY: Executive Office of the President.

ACTION: Meeting of Policy Dialog Advisory Committee.

SUMMARY: The Executive Office of the President has established a Policy Dialog Advisory Committee to assist in the development of measures to significantly reduce greenhouse gas emissions from personal motor vehicles. The tenth meeting of this committee will be held on July 11 and 12, 1995. The committee's meetings are open to the public without need for advance registration.

DATES: The committee will meet on July 11, 1995 from 9:30 a.m. to 5:30 p.m., on July 12, 1995 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Both sessions of the meeting will be held in Room 2230 at the United States Department of Transportation, 400 7th Street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive issues to be dealt with by the advisory committee, contact: Ellen Seidman, Special Assistant to the President for Economic Policy, Washington, D.C. 20500, phone (202) 456–2802, fax (202) 456–2223; Henry Kelly, Assistant Director for Technology, Office of Science and Technology Policy, phone (202) 456–6034, fax (202) 456–6023; Wesley Warren, Associate Director, Council on Environmental Quality, phone (202) 456–6224, fax (202) 456–2710; or Michael Toman, Senior Economist, Council of Economic Advisors, phone (202) 395–5012, fax (202) 395–6853. For information pertaining to administrative matters contact: Deborah Dalton, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, phone (202) 260–5495.

Information about the Committee is also available on the Technology Transfer Network of the Office of Air Quality Planning & Standards of the Environmental Protection Agency, which can be accessed electronically by calling (919) 541–5742. Help in accessing the system can be obtained by calling (919) 541–5384 between 1:00 and 5:00 Eastern Standard Time. Neither of these numbers is a toll-free number. The Committee's total-free information line—1–800–884–9190—provides recorded information about the Committee, including meeting dates and locations. (In the local Washington, DC area, call (202) 366–2373.)

AGENDA FOR THE MEETING: At the meeting, the Committee will discuss:

- Potential policies in the areas of vehicle miles traveled, alternative fuels and alternative fuel vehicles, and vehicle and stock fuel economy;
- Analysis of the cost of potential policy options;
- Potential combinations of policies; and
- Initial drafts of the committee's final report.

Dated: June 15, 1995.

W. Bowman Cutter,

Deputy Assistant to the President for Economic Policy.

John H. Gibbons,

Director, Office of Science and Technology Policy.

Kathleen A. McGinty,

Chair, Council on Environmental Quality.

[FR Doc. 95–16089 Filed 6–26–95; 4:17 pm]

BILLING CODE 3195–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Society Expeditions, Inc. and Discoverer Reederei GmbH, 2001 Western Avenue, Suite 300, Seattle, Washington 98121

Vessel: WORLD DISCOVERER

Dated: June 22, 1995.

Joseph C. Poking,

Secretary.

[FR Doc. 95–15791 Filed 6–27–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Carroll County Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Carroll County Bancshares, Inc., Carroll, Iowa; to acquire Carroll Credit, Inc., Carroll, Iowa, and thereby engage in purchasing retail sales finance contracts and receivables from retailers. Carroll Credit, Inc., will be an industrial loan company, pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15823 Filed 6-27-95; 8:45 am]

BILLING CODE 6210-01-F

New England Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 21, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. New England Community Bancorp, Inc., Windsor, Connecticut (formerly known as Olde Windsor Bancorp, Inc., Windsor, Connecticut); to acquire 100 percent of the voting shares of The Equity Bank, Wethersfield, Connecticut.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis Minnesota; to acquire 100 percent of the voting shares of Alice Bancshares, Inc., Alice, Texas.

Board of Governors of the Federal Reserve System, June 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15824 Filed 6-27-95; 8:45 am]

BILLING CODE 6210-01-F

John Mark Whitfield; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 12, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John Mark Whitfield, Jasper, Georgia; to retain 10.27 percent, for a total of 10.27 percent, of the voting shares of JBC Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire Jasper Banking Company, Jasper, Georgia.

Board of Governors of the Federal Reserve System, June 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-15825 Filed 6-27-95; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Acquisition Operations and Electronic Commerce Center; Cancellation of Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage, Optional Form 274 Equipment Warranty Label is canceled.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa McCullough, Acquisition Operations and Electronic Commerce Center (703) 305–7557.

DATES: Effective June 28, 1995.

Dated: June 20, 1995.

John R. Roehmer,

Director, Acquisition Operations and Electronic Commerce Center.

[FR Doc. 95–15773 Filed 6–27–95; 8:45 am]

BILLING CODE 6820–24–M

Interagency Sharing of Indefinite-Delivery/Indefinite Quantity Contracts for Information Technology

AGENCY: Information Technology Service, GSA.

ACTION: Notice with request for comments.

SUMMARY: GSA will be considering changes to the Federal Information Resources Management Regulation (FIRMR) to provide agencies more flexibility in making future contracts for information technology (IT) available for use by all agencies. Some companies have requested, however, that existing contracts for IT products and services be amended to open them up for use by all agencies. GSA is seeking comments on whether it would be appropriate to consider a policy that would allow existing IT contracts to be amended for use by other agencies.

DATES: Comments are due: August 28, 1995.

ADDRESSES: Comments may be mailed to GSA/KAR, 18th and F Streets, NW., room 3224, Washington, DC 20405, Attn: B. Walter MacDermid, or delivered to that address between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: B. Watler MacDermid, GSA, Office of Information Technology Policy and Leadership (KAR), 18th and F Streets, NW., room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: GSA is responsible under the Federal Property and Administrative Services Act of 1949, as amended, for the economic and efficient acquisition of IT resources. In conformance with that objective, GSA will be proposing FIRMR changes to provide agencies more flexibility in making future IT contracts available for use by all agencies. However, during the past year, several companies requested that certain existing contracts for IT products and services be amended to open them up for use by all agencies.

GSA has taken the position that this would not be fair to other companies, and contract scope changes of this

magnitude should not be made after contract award. Others have suggested that a policy covering all existing contracts would, in fact, be fair to all companies. As a result, GSA is seeking comments from a broader universe and especially from IT companies and other interested parties on the following proposal:

Policy Proposal: GSA is considering allowing agencies to open up all existing indefinite-delivery indefinite quantity type contracts for information technology products and services awarded under the authority of Public law 89–306 for the use of all agencies to a maximum of 20% of the total contract amount.

Dated: June 14, 1995.

Francis A. McDonough,

Deputy Commissioner for Information Technology Policy and Leadership.

[FR Doc. 95–15774 Filed 6–27–95; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: July 27–28, 1995, 8:30 a.m.

Place: Ramada Inn, 1775 Rockville Pike, Georgetown Room, Rockville, MD 20852.

Open July 27, 8:30 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications on research that will examine the effects on patient outcomes of various proposed or existing mechanisms for managing selection, utilization, and cost of pharmaceutical therapies and services.

Agenda: The open session of the meeting on July 27, from 8:30 a.m. to 9:00 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–2462.

Agency items for this meeting are subject to change as priorities dictate.

Dated: June 20, 1995.

Lisa Simpson,

Acting Administrator.

[FR Doc. 95–15842 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–90–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A35, Rockville, MD 20857, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 et seq, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on November 21, 1991 through December 31, 1992.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed

above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Elayne De Maria on behalf of Paige Galasso, Deceased, Hackensack, New Jersey, Claims Court Number 91–1625 V.
2. Deborah Leone, Trinidad, Colorado, Claims Court Number 91–1634 V.
3. Elizabeth Pipkins on behalf of Daniel Pipkins, Deceased, Avondale, Arizona, Claims Court Number 91–1635 V.
4. Thomas Brown on behalf of Amanda Brown Norwich, Connecticut, Claims Court Number 91–1636 V.
5. Pamela Gall on behalf of Karlea Gall, Deceased, Bismarck, North Dakota, Claims Court Number 91–1642 V.
6. Michelle Geery on behalf of Mitchell Geery, Deceased, Newhall, California, Claims Court Number 91–1659 V.
7. Alfred Hindle on behalf of Alfred Hindle, III, Deceased Woodbury, New Jersey, Claims Court Number 91–1660 V.
8. Bruce Hunter on behalf of Emily Hunter, Attleboro, Massachusetts Claims Court Number 91–1664 V.
9. Ann Engelbrektson on behalf of Brett Engelbrektson, Deceased, Fargo, North Dakota, Claims Court Number 91–1665 V.
10. Anita Jenkins on behalf of Curtis Jenkins, Leominster, Massachusetts, Claims Court Number 91–1668 V.
11. Lee Audau on behalf of James Audau, Staten Island, New York, Claims Court Number 91–1669 V.
12. Rita Lindsay on behalf of Margaret Lindsay, Deceased, Oklahoma City, Oklahoma, Claims Court Number 91–1670 V.
13. Kenneth Roberson on behalf of Corey Roberson, Deceased, Portsmouth, Virginia, Claims Court Number 91–1677 V.
14. Terrence Carroll on behalf of Cody Carroll, Houston, Texas, Claims Court Number 91–1694 V.
15. Edith Buenavista on behalf of Edward Buenavista, Stockton, California, Claims Court Number 91–1701 V.
16. David Henley on behalf of Alex Henley, Denver, Colorado, Claims Court Number 91–1702 V.
17. Timothy Swope on behalf of Brice Swope, Salt Lake City, Utah, Claims Court Number 91–1712 V.
18. Wayne Shands on behalf of Megan Shands, Flint, Michigan, Claims Court Number 91–1713 V.
19. Jeff Cannon on behalf of Casey Cannon, Deceased, Powell, Wyoming, Claims Court Number 91–1714 V.
20. James Velez on behalf of Larissa Velez, Renton, Washington, Claims Court Number 91–1718 V.
21. Turner Turnbull on behalf of Samantha Turnbull, Fayetteville, North Carolina, Claims Court Number 92–0002 V.
22. Stephen Davis on behalf of Sarah Davis, Dayton, Ohio, Claims Court Number 92–0003 V.
23. Darlene Arito, Downers Grove, Illinois, Claims Court Number 92–0004 V.
24. Lori Misenko on behalf of Lynette Misenko, Deceased, Ashtabula, Ohio, Claims Court Number 92–0013 V.
25. Lori Crouse on behalf of Adam Crouse, Fort Dodge, Iowa, Claims Court Number 92–0018 V.
26. Israel Ntaganzwa, Fishkill, New York, Claims Court Number 92–0023 V.
27. Julie Cortes on behalf of Erick Cortes, Deceased, Savannah, Georgia, Claims Court Number 92–0024 V.
28. Wendy Jones, Preston, Georgia Claims Court Number 92–0028 V.
29. Debra Stone on behalf of Thomas Stone, Lock Haven, Pennsylvania, Claims Court Number 92–0029 V.
30. Nelson Menard on behalf of Belle Menard, Lafayette, Louisiana, Claims Court Number 92–0031 V.
31. Dawn Barnes on behalf of Christopher Barnes, Seminole, Florida, Claims Court Number 92–0032 V.
32. Cathy Hersom on behalf of Crystal Marchlewski, Deceased, Cleburne, Texas, Claims Court Number 92–0037 V.
33. Linda Thomas on behalf of Lavell Thomas, Lake City, South Carolina, Claims Court Number 92–0046 V.
34. Laurie Collins, Glendale, Arizona, Claims Court Number 92–0047 V.
35. Thomas Konsitzke on behalf of Aaron Konsitzke, Elm Grove, Wisconsin, Claims Court Number 92–0048 V.
36. Teresa Farmer on behalf of Bradley Farmer, Bakersfield, California, Claims Court Number 92–0056 V.
37. Harvey Wilcox on behalf of Terry Wilcox, Mobile, Alabama, Claims Court Number 92–0057 V.
38. Margo Clarke on behalf of LaShawn Clarke, Deceased, Washington, D.C., Claims Court Number 92–0058 V.
39. Terri Wodicker on behalf of Ashley Wodicker, Fenton, Missouri, Claims Court Number 92–0064 V.
40. Gene Palmer on behalf of Kyle Palmer, Cincinnati, Ohio, Claims Court Number 92–0066 V.
41. Patricia Johnson, Idaho Falls, Idaho, Claims Court Number 92–0067 V.
42. Christina Bertels, Durham, North Carolina, Claims Court Number 92–0075 V.
43. Gwendolyn Hawkins on behalf of Christian Bazuaye, Washington, D.C., Claims Court Number 92–0078 V.
44. Lillian Awad, Bronx, New York, Claims Court Number 92–0079 V.
45. Valarie Baker on behalf of Serenity Baker, Salt Lake City, Utah, Claims Court Number 92–0080 V.
46. Hellen Jack, Los Angeles, California, Claims Court Number 92–0083 V.
47. Christine Murphy, Weymouth, Massachusetts, Claims Court Number 92–0087 V.
48. Michael Kotowski on behalf of Tyler Kotowski, Santa Barbara, California, Claims Court Number 92–0088 V.
49. Lydia Tang on behalf of Kathleen Tang, Deceased, Meriden, Connecticut, Claims Court Number 92–0094 V.
50. Avital Kornblum, Brooklyn, New York, Claims Court Number 92–0095 V.
51. Kathleen Bailey, Safford, Arizona, Claims Court Number 92–0101 V.
52. Jan May on behalf of Alicia Rice, Newburyport, Massachusetts, Claims Court Number 92–0105 V.
53. Harmony Abrams on behalf of Jared Abrams, Deceased, Fort Bragg, California, Claims Court Number 92–0109 V.
54. Roger Russell on behalf of Ethan Russell, Deceased, Salyersville, Kentucky, Claims Court Number 92–0111 V.
55. Cherly Ann Smith on behalf of Reginald Smith, Deceased, Shreveport, Louisiana, Claims Court Number 92–0113 V.
56. Wynell Manshack on behalf of Travis Chase Manshack, Channelview, Texas, Claims Court Number 92–0119 V.
57. Sandra Britton on behalf of Joseph Britton, Warrenton, Virginia, Claims Court Number 92–0132V.
58. Julie Dwyer on behalf of Sean Dwyer, Denver, Colorado, Claims Court Number 92–0135 V.
59. Lisa Leo on behalf of Scott Leo, Waterville, Maine, Claims Court Number 92–0139 V.
60. Kippy Schuler, Great Falls, Montana, Claims Court Number 92–0140 V.
61. Jaime Fuentes on behalf of Alba Fuentes, Deceased, San Antonio, Texas, Claims Court Number 92–0162 V.

62. Linda Nelson on behalf of Kenneth Nelson, Marlton, New Jersey, Claims Court Number 92–0177 V.
63. Janet Glassman on behalf of Jennifer Glassman, Simsbury, Connecticut, Claims Court Number 92–0183 V.
64. Brian Bruneau on behalf of Andrea Bruneau, Deceased, Phoenix, Arizona, Claims Court Number 92–0196 V.
65. Rozie Warner, Detroit, Michigan, Claims Court Number 91–0201 V.
66. Veronica Gilbert on behalf of Steven Gilbert, Oscoda, Michigan, Claims Court Number 92–0204 V.
67. Sandra Small on behalf of Benjamin Hatfield, Kerrville, Texas, Claims Court Number 92–0207 V.
68. Milton English on behalf of Jacqueline English, Bakersville, North Carolina, Claims Court Number 92–0208 V.
69. Suzanne Staats on behalf of Phillip Staats, Old Bethpage, New York, Claims Court Number 92–0210 V.
70. Barbara Parsons, Arcadia, California, Claims Court Number 92–0221 V.
71. Marilyn Lavender on behalf of Erica Cooley, Forest Park, Georgia, Claims Court Number 92–0222 V.
72. Sherri Brown on behalf of Christopher Brown, Payette, Idaho, Claims Court Number 92–0226 V.
73. Teresa Gibson, Orlando, Florida, Claims Court Number 92–0234 V.
74. Kimberly Bender on behalf of Kimberlie Ann Bender, Deceased, Pittsburgh, Pennsylvania, Claims Court Number 92–0238 V.
75. Ruby Flowers on behalf of Melissa Malone, Deceased, Akron, Ohio, Claims Court Number 92–0239 V.
76. Milan Zeman on behalf of Milan Zeman, III, LaGrange, Illinois, Claims Court Number 92–0240 V.
77. David Maasch on behalf of Jonathon Maasch, San Diego, California, Claims Court Number 92–0241 V.
78. James Bullock, Sr. on behalf of James Bullock, Jr., Deceased, Buffalo, New York, Claims Court Number 92–0258 V.
79. Sharon Mandel, Binghamton, New York, Claims Court Number 92–0260 V.
80. Suk Soon Song on behalf of Nicholas Song, Staten Island, New York, Claims Court Number 92–0279 V.
81. Phillip Tiemeier on behalf of Brett Tiemeier, Phoenix, Arizona, Claims Court Number 92–0280 V.
82. Christina Mahmood, Seattle, Washington, Claims Court Number 92–0282 V.
83. Magda Guirguis, Lincoln, Rhode Island, Claims Court Number 92–0287 V.
84. Gilbert Higgins on behalf of Zachary Higgins, Deceased, Dagus Mines, Pennsylvania, Claims Court Number 92–0313 V.
85. Curtis Crosier on behalf of Zane Crosier, Golden, Colorado, Claims Court Number 92–0316 V.
86. John Eli on behalf of Nicholas Eli, Baltimore, Maryland, Claims Court Number 92–0324 V.
87. Etta McGhee on behalf of Ashley McGhee, Jacksboro, Tennessee, Claims Court Number 92–0332 V.
88. Andre Doszpoly on behalf of Dezso Doszpoly, Bryn Mawr, Pennsylvania, Claims Court Number 92–0333 V.
89. Ron Vant Erve on behalf of Christian Vant Erve, Montgomery, Alabama, Claims Court Number 92–0341 V.
90. Stephen Goldman on behalf of David Goldman, Cherry Hill, New Jersey, Claims Court Number 92–0342 V.
91. Gladys Williams on behalf of Roxie Hollis, Deceased, Dorchester, Massachusetts, Claims Court Number 92–0343 V.
92. Richard Sepulveda, Denver, Colorado, Claims Court Number 92–0349 V.
93. Michael Kraus on behalf of Matthew Kraus, Howell, New Jersey, Claims Court Number 92–0352 V.
94. Beth Newton on behalf of Kate Newton, Lincoln, Nebraska, Claims Court Number 92–0353 V.
95. Melanie Long, Birmingham, Alabama, Claims Court Number 92–0357 V.
96. Patricia Haislop on behalf of Christa Haislop, Tampa, Florida, Claims Court Number 92–0366 V.
97. Teresa Gasper on behalf of Marissa Gasper, San Antonio, Texas, Claims Court Number 92–0368.
98. Debra Morack on behalf of Angela Rovak, Boulder, Colorado, Claims Court Number 92–0374 V.
99. William Halperin on behalf of Stacey Halperin, Palm Beach Gardens, Florida, Claims Court Number 92–0381 V.
100. Elizabeth Mooney, Albuquerque, New Mexico, Claims Court Number 92–0383 V.
101. Janice Freeman on behalf of Victoria Freeman, Melbourne, Florida, Claims Court Number 92–0384 V.
102. Kathryn Lee, Clifton Park, New York, Claims Court Number 92–0386 V.
103. Nikki Anderson on behalf of Nikkell Anderson, Deceased, Memphis, Tennessee, Claims Court Number 92–0388 V.
104. Kristina Steele on behalf of Ashton Steele, Paris, Tennessee, Claims Court Number 92–0394 V.
105. Lawrence Burns on behalf of Justin Burns, San Antonio, Texas, Claims Court Number 92–0404 V.
106. Archie Clark on behalf of Cabe Clark, Wellpinit, Washington, Claims Court Number 92–0405 V.
107. Joyce Jones on behalf of Corey Jones, Farmville, Virginia, Claims Court Number 92–0408 V.
108. Susan Seber on behalf of Alex Seber, Freehold, New Jersey, Claims Court Number 92–0422.
109. Arlene Norber, Banning, California, Claims Court Number 92–0426 V.
110. Alecia Bilotti, Kalamazoo, Michigan, Claims Court Number 92–0429 V.
111. Mark Sparks on behalf of Rita Sparks, Spruce Pine, North Carolina, Claims Court Number 92–0443 V.
112. Richardo Lee on behalf of Andrew Lee, La Habra, California, Claims Court Number 92–0454 V.
113. Lisa Ditlev-Aste on behalf of Mikael Ditlev-Aste, Salt Lake City, Utah, Claims Court Number 92–0456 V.
114. Danny Brown, Sr. on behalf of Danny Brown, Jr., Bowling Green, Kentucky, Claims Court Number 92–0460 V.
115. Patrick Boland on behalf of Andrew Boland, Sumter, South Carolina, Claims Court Number 92–0465 V.
116. Kimberly Harris, Baltimore, Maryland, Claims Court Number 92–0471 V.
117. Patricia Johnson, Idaho Falls, Idaho, Claims Court Number 92–0478 V.
118. Rebecca Maranz, Marlton, New Jersey, Claims Court Number 92–0487 V.
119. Kathryn Redder, Cincinnati, Ohio, Claims Court Number 92–0490 V.
120. Susan Siljee, Ridgewood, New Jersey, Claims Court Number 92–0493 V.
121. Evelyn Marcelis on behalf of Erica Marcelis, Philadelphia, Pennsylvania, Claims Court Number 92–0498 V.
122. Patti Haulot, Phoenix, Arizona, Claims Court Number 92–0502 V.
123. Katrina Tobias on behalf of Ashley Tobias, Deceased, San Diego, California, Claims Court Numbers 92–0509/0510 V.
124. Ana Hernandez on behalf of Karen Hernandez, Wayne, New Jersey, Claims Court Number 92–0511 V.
125. Lee Delia on behalf of Erick Delia, Nutley, New Jersey, Claims Court Number 92–0513 V.
126. David Marsh on behalf of Jacob Marsh, Sturgis, Michigan, Claims Court Number 92–0519 V.
127. Anna Noel on behalf of Christian Noel, East Los Angeles, California, Claims Court Number 92–0520 V.
128. Michael Schroeder on behalf of Travis Schroeder, Ottawa, Ohio, Claims Court Number 92–0521 V.

129. Olga Krel on behalf of Rinata Krel, Panorama City, California, Claims Court Number 92–0528 V.

130. D. Keith Jones on behalf of Morgan Jones, Deceased, Lawrence, Kansas, Claims Court Number 92–0529 V.

131. James Smith on behalf of Dreama Smith, Binghamton, New York, Claims Court Number 92–0539 V.

132. Richard Homuth on behalf of Brady Homuth, Olean, New York, Claims Court Number 92–0543 V.

133. Rafael Taveras on behalf of Pamela Taveras, Tampa, Florida, Claims Court Number 92–0544 V.

134. Mark Kern on behalf of Kristen Kern, Deceased, Saint Louis, Missouri, Claims Court Number 92–0545.

135. Pamela Cleveland, Enid, Oklahoma, Claims Court Number 92–0549 V.

136. Linda Mikos, Park Ridge, Illinois, Claims Court Number 92–0558 V.

137. Marsha Sampica on behalf of Benjamin Sampica, Cedar Rapids, Iowa, Claims Court Number 92–0568 V.

138. Carolyn Harris on behalf of Amberly Harris, Columbus, Mississippi, Claims Court Number 92–0573 V.

139. Linda Smart on behalf of Jonathan Smart, Mobile, Alabama, Claims Court Number 92–0576 V.

140. Karen Sanders, Miami Lakes, Florida, Claims Court Number 92–0587 V.

141. Jaylene Majourau on behalf of Jaycee Rae Faria, San Bernardino, California, Claims Court Number 92–0589 V.

142. Michele Hatcher, Mesa, Arizona, Claims Court Number 92–0621 V.

143. Alan Hoopes on behalf of Justin Hoopes, Deceased, Las Vegas, Nevada, Claims Court Number 92–0628 V.

144. Stacey Vogel on behalf of Kaylynn Nuss, Denver, Colorado, Claims Court Number 92–0629 V.

145. John Boyer on behalf of Joseph Boyer, Reading, Pennsylvania, Claims Court Number 92–0632 V.

146. Cassandra Plott on behalf of William Plott, San Francisco, California, Claims Court Number 92–0633 V.

147. Adrienne Jackson on behalf of Nikisha Jackson, Dallas, Texas, Claims Court Number 92–0634 V.

148. Gail Imeson on behalf of Dusti Imeson, Valparaiso, Indiana, Claims Court Number 92–0639 V.

149. Paul Mead on behalf of Lisa Michelle Mead, Cortez, Colorado, Claims Court Number 92–0640 V.

150. Tammy Stewart on behalf of Cherise Stewart, Seattle, Washington, Claims Court Number 92–0643 V.

151. Lucy Luisi on behalf of Erin Luisi, Tarzana, California, Claims Court Number 92–0645 V.

152. Lamour McCall on behalf of Sharon McCall Woodbridge, Virginia, Claims Court Number 92–0651 V.

153. Francisco Garcia on behalf of Isabel Garcia, Haverstraw, New York, Claims Court Number 92–0658 V.

154. Debra Lenander on behalf of Steven G. Lenander, Warren, Michigan, Claims Court Number 92–0659 V.

155. Janet Zuhlke on behalf of Rachel Zuhlke, Rockledge, Florida, Claims Court Number 92–0674 V.

156. LaShelle Haider on behalf of Jessi Winters, Portland, Oregon, Claims Court Number 92–0692 V.

157. Michelle Lodge, Milwaukee, Wisconsin, Claims Court Number 92–0697 V.

158. Donna Sholberg on behalf of Brittany Sholberg, Deceased, Vacaville, California, Claims Court Number 92–0698 V.

159. Ethel Sindi Klemsz, Wahoo, Nebraska, Claims Court Number 92–0702 V.

160. Richard Mathisen on behalf of Andrew Mathisen, Maplewood, Minnesota, Claims Court Number 92–0703 V.

161. Debra Anderson, Gadsden, Alabama, Claims Court Number 92–0704 V.

162. Darlene and Randall Moses on behalf of Megan B. Moses, Gainesville, Florida, Claims Court Number 92–0711 V.

163. Denise L. Carr, Neenah, Wisconsin, Claims Court Number 92–0722 V,

164. Marjorie E. Lyons, Springfield, Massachusetts, Claims Court Number 92–0723 V.

165. Cathy and Leroy Johnson on behalf of Chauncey Johnson, Alamance, North Carolina, Claims Court Number 92–0724 V,

166. Linda Ann Cook, Atlanta, Georgia, Claims Court Number 92–0725 V.

167. Richard Sorensen on behalf of Tyler Sorensen, Deceased, Salt Lake City, Utah, Claims Court Number 92–0729.

168. Robin and Geoff Brittain on behalf of Caleb Brittain, Summerville, South Carolina, Claims Court Number 92–0730 V.

169. David Boulton on behalf of Natasha J. Boulton, Deceased, Scottsdale, Arizona, Claims Court Number 92–0745 V.

170. Victoria Watson on behalf of Michael Duane Yarborough, Jr., Deceased, Portland, Oregon, Claims Court Number 92–0754 V.

171. Tracey Statz on behalf of Audra Statz, Evansville, Indiana, Claims Court Number 92–0755 V.

172. William McCarren, Sr. on behalf of William McCarren, Jr., Baltimore, Maryland, Claims Court Number 92–0764 V.

173. Carol Jacobs on behalf of Joshua Jacobs, West Columbia, South Carolina, Claims Court Number 92–0778 V.

174. Henry and Elizabeth Richards on behalf of Catherine Richards, New Orleans, Louisiana, Claims Court Number 92–0779.

175. Steve G. Burkholder on behalf of Kylie J. Burkholder, Deceased, Lancaster, Pennsylvania, Claims Court Number 92–0792 V.

176. Mitchell Josephs on behalf of Rachel Josephs, Haddonfield, New Jersey, Claims Court Number 92–0795 V.

177. Ron L. Marquette on behalf of Eric C. Marquette, Houston, Texas, Claims Court Number 92–0796 V.

178. Carol L. Davies, Washington, D.C., Claims Court Number 92–0800 V.

179. Karen Davis on behalf of Glenia Athleen Davis, Portsmouth, Virginia, Claims Court Number 92–0804 V.

180. Bradford Irwin Sr. on behalf of Bradford Irwin Jr., Charleston, Mississippi, Claims Court Number 92–0805 V.

181. Clara and Dwayne Walker on behalf of Darvis Walker, Milwaukee, Wisconsin, Claims Court Number 92–0814 V.

182. Susan and Mickey Damian on behalf of Joshua Damian, Lincoln, Nebraska, Claims Court Number 92–0831 V.

183. Jack M. Farrington on behalf of Michael J. Farrington, Metairie, Louisiana, Claims Court Number 92–0833 V.

184. Amanda Sword on behalf of Dana Sword, Corry, Pennyslvania, Claims Court Number 92–0834 V.

185. Ronald F. and Kay Nummy on behalf of Jessica Nummy, Montgomery, Alabama, Claims Court Number 92–0835 V.

186. Donald T. and Helen Hutchings on behalf of Donald T. Hutchings, Atlanta, Georgia, Claims Court Number 92–0836 V.

187. Charles Eades on behalf of Elliott Donald Eades, Deceased, Storm Lake, Iowa, Claims Court Number 92–0842 V.

188. Kay Vargo on behalf of Jordan Vargo, Flint, Michigan, Claims Court Number 92–0854

189. Kimberly Akers on behalf of Ashley Akers, Bristol, Tennessee, Claims Court Number 92–0867 V.

190. Kendra Holmes on behalf of Patrick and Torris Freeman, Houston, Texas, Claims Court Number 92–0868 V.

191. Laura L. Torres, Midland, Michigan, Claims Court Number 92–0877 V.

192. Kelly Olsen on behalf of Christopher Olsen, Baldwin, New York, Claims Court Number 92–0881 V.

193. John R. Moeding, Greeley, Colorado, Claims Court Number 92–0882 V.

Dated: June 22, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15843 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Notice of Meeting of the Subcommittee on Activities and Agenda, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of National Cancer Advisory Board Subcommittee on Activities and Agenda, July 14, 1995 at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

The entire meeting will be open to the public from 9 am to adjournment. Discussions will address the Board's format, potential future agenda items and activities of the National Cancer Advisory Board. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630M, MSC 7405, 9000 Rockville Pike, Bethesda, Maryland 20892–7405 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. Marvin R. Kalt, Executive Secretary, Subcommittee on Activities and Agenda, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 600, Bethesda, Maryland 20892 (301/496–4128), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Marvin R. Kalt on (301/496–4128) in advance of the meeting.

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15803 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 13, 1995.

Time: 4 p.m.

Place: Parklawn Building, Room 9C–04, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Greg Zimmerman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 1995.

Time: 8:30 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Greg Zimmerman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 1995.

Time: 12:30 p.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Greg Zimmerman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumental Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMA Science Education Partnership Award.)

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15804 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 19–20, 1995.

Time: 7 p.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Phyllis L. Zusman, Grant Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1340.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15805 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Cancer Institute; Notice of Meeting President's Cancer Panel

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, on July 20, 1995, at the Hotel Intercontinental Chicago, 505 North Michigan Avenue, Chicago, Illinois 60611.

This meeting will be open to the public on July 20, 1995 from 8 a.m. to approximately 5 p.m. Attendance by the public will be limited to space available. The topic will be Progress in Leukemia.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301–496–1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15806 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: July 15, 1995.

Time: 1:00 p.m..

Place: NIH, Rockledge II, Room 4144, Telephone Conference.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator 6701 Rockledge Drive, Room 4144, Bethesda, MD 20892, (301) 435–1716.

Name of SEP: Clinical Sciences.

Date: July 19, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge II, Room 4106, Telephone Conference.

Contact Person: Ms. Josephine Pelham, Scientific Review Admin., Bethesda, MD 20892, (301) 435–1786.

Name of SEP: Microbiological and Immunological Sciences.

Date: July 19, 1995.

Time: 3:00 p.m.

Place: NIH, Rockledge II, Room 4186, Telephone Conference.

Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, MD 20892, (301) 435–1150.

Name of SEP: Clinical Sciences.

Date: July 21, 1995.

Time: 11:00 a.m.

Place: NIH, Rockledge II, Room 4138, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20892, (301) 435–1213.

Name of SEP: Clinical Sciences.

Date: July 25, 1995.

Time: 3:00 p.m.

Place: NIH, Rockledge II, Room 4140, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, MD 20892, (301) 435–1214.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 21, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–15807 Filed 6–27–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–803695

Applicant: Ward E. Jones II, Irving, TX.

The applicant requests a permit to import one sport-hunted bontebok (*Damaliscus pygarcus dorcas*) culled from the approved captive-bred herd maintained by Mr. D.B. Pohl, Republic of South Africa, for the purpose of enhancement of the species.

PRT–803444

Applicant: Calvin L. Tipton, Ridgefield, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by Walter Murray, Groothock, Graaff-Reinet, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–803810

Applicant: Ringling Bros.-Barnum & Bailey, Vienna, VA.

The applicant requests a permit to import and reexport two captive-born male tigers (*Panthera tigris*), from Chipperfield Enterprises Ltd., Oxon, United Kingdom to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three-year period.

PRT–803692

Applicant: Brookfield Zoo, Brookfield, IL.

The applicant requests a permit to import up to 115 blood and plasma samples collected from wild American crocodiles (*Crocodylus acutus*) at four sample sites in Mexico to enhance the survival of the species through scientific research.

PRT–803779

Applicant: John Glover, Colerain, NC.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from the captive herd maintained by F.W.M. Bowker, Thornkoof, Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–803993

Applicant: Zoo Atlanta, Atlanta, GA.

The applicant requests a permit to import one male captive-born drill (*Mandrillus leucophaeus*) from Touroparc, Lyon Satolas, Romaneche Thorins, France for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: 703/358–2104; FAX: 703/358–2281.

Dated: June 23, 1995.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–15826 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–55–P

Receipt of Application(s) for Permit

The following Applicant(s) have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

PRT–803839

Applicant: LCDR A.S. Griffith, Naval Air Station Kingsville, Kingsville, Texas.

The Applicant requests a permit to take the South Texas ambrosia (*Ambrosia cheiranthifolia*) in Texas, for the purpose of scientific research, recovery actions, and survival of the species as prescribed by Service recovery documents.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days from the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above office within 30 days of the date of publication of this notice. (See **ADDRESSES** above.)

James A. Young,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–15848 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–050–1430–01; CACA 12930]

Termination of Recreation and Public Purposes Classification and Opening Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Recreation and Public Purposes Classification, CACA 12930. The land will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws.

EFFECTIVE DATE: Termination of the classification is effective on June 28, 1995. The land will be open to entry at 10 a.m. on July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Room E–2845, Sacramento, California 95825–1889; telephone number 916–979–2858.

SUPPLEMENTARY INFORMATION: On July 2, 1982, I.O.O.F. Lodge No. 75 submitted an application to purchase 1.12 acres of land for expansion of the existing French Gulch Cemetery. On January 17, 1983, the land described below was classified as suitable for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The land was segregated from appropriation under the public lands laws and the general mining laws. The Classification Decision was published in the **Federal Register**, on February 1, 1983 (48 FR 2559). On December 27, 1983, because the applicant had failed to comply with the terms of the lease offer, the application was denied. No appeal was filed within the time allowed and the case was closed. Pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), and the regulations contained in 43 CFR 2091.7–1(b)(1)(ii), Recreation and Public Purposes Classification, CACA 12930, is hereby terminated in its entirety and the segregation for the following described land is hereby terminated:

Mount Diablo Meridian

T. 33 N., R. 7 W.,

Sec. 22, that portion of lot 9, further described as adjoining the present cemetery and lying directly to the west. Conforming with the present north-south measurement of 163 feet and a westerly extension of 300 feet containing approximately 1.12 acres.

The classification no longer serves a needed purpose as to the land described above and is hereby terminated.

At 10 a.m. on July 28, 1995, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirement of applicable law. All valid applications received at or prior to 10 a.m. on July 28, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on July 28, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: June 19, 1995.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 95–15776 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–40–P

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the fifteenth meeting of the Gettysburg National Military Park Advisory Commission.

DATE: The Public meeting will be held on July 20, 1995, from 7:00 p.m.—9:00 p.m.

Location: The meeting will be held at Gettysburg Hotel One Lincoln Square Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, the Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange alternative study, the National Museum of the American Civil, War, recent land activities and land acquisition issues, and an operational update on park activities.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: June 19, 1995.

Anthony M. Corbisiero,

Field Director, Northeast Field Area.

[FR Doc. 95–15884 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Human Remains in the Possession of Pipe Spring National Monument, National Park Service, Moccasin, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of Inventory for Native American human remains in the possession of the National Park Service at Pipe Spring National Monument, Moccasin, AZ.

The human remains represent four individuals. The first set of remains (accession PISP–00155, catalog PISP 667) has been identified as male and consists of a cranium. The second set of remains (accession PISP–00155) has been identified as male and consists of a cranium and mandible (catalog PISP 668); a tibial shaft segment (catalog PISP 675); and a fibular fragment (catalog PISP 676). Accession records indicate that both sets of remains were excavated from south of the Pipe Spring fortified ranch house, and given to the National Park Service by former Monument Custodian Leonard Heaton in 1939.

The third set of remains—unaccessioned and uncatalogued—has been identified as female and consists of a cranium, one phalange, one metatarsal, four small rib fragments, and two disarticulated pieces of the left temporal. The fourth set of remains—also unaccessioned and uncatalogued—has been identified as female and consists of twelve cranial fragments and a fragment of the head of a femur. National Park Service records do not indicate the location where these sets of remains were found, or information on how the remains came into the possession of the Monument. The Monument is asserting control over these human remains.

The Kaibab Paiute Tribe expressed interest in repatriation of these remains as early as July 1992 and have agreed to efforts to date and identify the cultural affiliation of the remains. As a result, the National Park Service arranged for an assessment of the remains by Dr. Mark Taylor, Professor of Anthropology, Northern Arizona University, in December 1992. Dr. Taylor concluded that all four sets of remains were of prehistoric Native Americans, who died over seven-hundred years before present.

Given the standing interest of the Kaibab Paiute Tribe in repatriation of these remains and the findings of Dr. Taylor, additional consultations with the Kaibab Paiute and Hopi tribes were conducted in 1993. There is archaeological evidence for ties between both Kaibab Paiute and Hopi culture and prehistoric Puebloan culture in the Arizona Strip area north of the Grand Canyon. Both tribes also have oral traditions linking their cultures to prehistoric occupants of the area. National Park Service consultations with the Hopi tribe resulted in agreement that the Hopi tribe would defer to the Kaibab Paiute regarding this repatriation given that the remains came from Kaibab Paiute traditional lands. The Kaibab Paiute Tribe formally requested repatriation of the human remains on January 4, 1995. Based upon the Kaibab Paiute aboriginal occupancy of the area where the human remains appear to have been found, and a preponderance of the evidence supporting a cultural affiliation of the remains with the Kaibab Paiute Tribe, as well as Hopi concurrence in repatriation to the Kaibab Paiute Tribe, the National Park Service has concluded that repatriation to the Kaibab Paiute Tribe is appropriate.

Inventory of the human remains and funerary objects and review of accompanying documentation from the four sets of Native American human remains listed above indicate that no known individuals were identifiable.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the Native American human remains and the Kaibab Paiute Tribe.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact John W. Hiscock, Superintendent, Pipe Spring National Monument, HC 65 Box 5, Fredonia, AZ 86022, telephone, (520) 643–7105, before July 28, 1995. Repatriation of the four sets of human remains to the Kaibab Paiute Tribe of Arizona will begin after that date if no additional claimants come forward.

Dated: June 22, 1995.

Veletta Canouts,

Acting Departmental Consulting Archeologist and Acting Chief, Archeological Assistance Division

[FR Doc. 95–15883 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–70–F

Notice of Availability

SUMMARY: Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and according to provisions of Section 9.17 of 36 CFR 9A, Steve Hicks has filed plans of operations in support of proposed appraisal sampling operations on lands embracing the Howtay Association Claims 1a and 2a, the Lee Bench Howtay Association Claims 1–6, the Caribou-Howtay Claims 1–4, the Little Audrey Claims 1–4, and the Alder Claims 1–4. These unpatented mining claims are located within Denali National Park and Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following locations:

Denali National Park and Preserve, Park Headquarters, Denali National Park, Alaska

Alaska System Support Office, Minerals Management Division, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892

FOR FURTHER INFORMATION CONTACT: Linda Toms, Assistant Superintendent, Denali National Park and Preserve, (907) 683–2294, or Floyd Sharrock, Chief, Minerals Management Division, (907) 257–2626, at the addresses above.

David B. Ames,

Acting Field Director, Alaska Field Office.

[FR Doc. 95–15885 Filed 6–27–95; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–732–733 (Preliminary)]

Circular Welded Non-Alloy Steel Pipe From Romania and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Romania and South Africa of circular welded non-alloy steel pipe, provided for in subheadings 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 26, 1995, petitions were filed with the Commission and the

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Watson and Commissioner Crawford dissenting.

Department of Commerce by Allied Tube, Harvey, IL; Armco/Sawhill, Sharon, PA; LTV Steel, Youngstown, OH; Sharon Tube, Sharon, PA; Laclede Steel, St. Louis, MO; Wheatland Tube, Collingswood, NJ; and Century Tube, Pine Bluff, AR, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of circular welded non-alloy steel pipe from Romania and South Africa. Accordingly, effective April 26, 1995, the Commission instituted antidumping investigations Nos. 731–TA–732–733 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 3, 1995 (60 FR 21828). The conference was held in Washington, DC, on May 17, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on June 12, 1995. The views of the Commission are contained in USITC Publication 2899 (June 1995), entitled ''Circular Welded Non-Alloy Steel Pipe from Romania and South Africa: Investigations Nos. 731–TA–732–733 (Preliminary).''

Issued: June 22, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–15855 Filed 6–27–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (95–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a third quarter 1995 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.080. The third quarter RCAF (Adjusted) is 0.816, a decrease of 0.5% from the second quarter 1995 RCAF (Adjusted). Maximum third quarter 1995 RCAF rate levels may not exceed 99.5% of maximum second quarter 1995 rate levels.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 927–6239 or H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 16, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–15764 Filed 6–27–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) who will be asked or required to respond, as well as a brief abstract;

(4) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) an estimate of the total public burden (in hours) associated with the collection; and,

(6) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Reinstatement, With Changes, of a Previously Approved Collection for Which Approval Has Expired

(1) Survey of Inmates of Local Jails.

(2) Form SIJ–43, Form SIJ–50. Bureau of Justice Statistics.

(3) Primary=Individuals and households. Others: State, Local or Tribal Government. This survey will profile jail inmates nationwide; determine trends in inmate composition, criminal histories, and drug use; report on guns and crime as well as victims of crime. The data will be used by the Bureau of Justice Statistics, Congress, researchers, practitioners, and others in the criminal justice community.

(4) 6,430 total annual respondents at 1.0 hours per response.

(5) 6,430 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 22, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–15794 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–18–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Consolidated Rail Corp. (''Conrail''),* Civil Action No.

94–1437 (E.D.Pa.), was lodged on June 20, 1995, with the United States District Court for the Eastern District of Pennsylvania. The decree addresses Conrail's violations of Section 112 of the Clean Air Act (the ''Act''), 42 U.S.C. 7412, and certain provisions of the National Emission Standard for Hazardous Air Pollutants for asbestos (''Asbestos NESHAP'') which occurred at the Port Richmond Grain Elevator facility located at 2870 E. Allegheny Avenue, Philadelphia, PA. Conrail owns the Grain Elevator, which was being renovated during the time the violations occurred, in late 1992 and early 1993. Conrail's violations included failure to notify the City of Philadelphia or EPA of asbestos removal activities involved in the renovation, failure to wet adequately the asbestos that was being removed from the facility, and failure to assure that no visible emissions were released into the outdoor atmosphere.

Under the proposed Partial Consent Decree, Conrail has agreed to pay a civil penalty of $800,000 to resolve its liability in the instant District Court action as well as its liabilities in an unrelated administrative asbestos NESHAP action involving another Conrail facility in Philadelphia.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Consolidated Rail Corp.*, DOJ Ref. #90–5–2–1–1883.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, 13th Floor, Suite 1300, Philadelphia Life Building, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–15777 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree for Claims Under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy and 28 CFR 50.7, notice is hereby given that on June 15, 1995, a proposed Partial Consent Decree in *United States* v. *Smuggler-Durant Mining Corporation, et al.*, Civil Action No. 89–C–1802, was lodged with the United States District Court of the District of Colorado. The Complaint in this case was brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, against several parties who are owners or operators of facilities at which hazardous substances are being released into the environment, or who owned or operated facilities at a time when hazardous substances were disposed of there. The United States' Complaint sought recovery of costs incurred and to be incurred by the United States in connection with the clean up of hazardous substances at the Smuggler Mountain Superfund Site (''Site'') in and adjacent to the City of Aspen, Colorado.

The proposed partial Consent Decree involves the Smuggler Durant Mining Corporation (''SDMC''). This decree settles claims brought by the United States against SDMC under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and provides SDMC a convenant not to sue for past and future response costs or response actions under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. 6973, regarding Operable Unit 1 of the Site. The proposed partial consent decree dismissed without prejudice the claims of the United States against SDMC regarding Operable Unit 2 of the Site. In return, SDMC will reimburse the United States $400,000 for response costs incurred in connection with the Site. Finally, the decree resolves potential counterclaims by SDMC against the United States for any activities conducted on-Site by any instrumentality of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Smuggler-Durant Mining Corporation, et al.*, DOJ Ref. No. 90–11–2–174. In accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request a public meeting in the affected area.

The proposed Partial Consent Decree may be examined at the Environment and Natural Resources Division, Department of Justice Field Office, Suit 945, 999 18th Street—North Tower, Denver, Colorado 80202 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the proposed Partial Consent Decree may also be examined at or obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 for the decree (additional charges may apply if attachments are requested) (twenty-five cents per page reproduction costs) payable to the ''Consent Decree Library.''

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–15778 Filed 6–27–95; 8:45 am]

BILLING CODE 4401–01–M

Notice of Lodging of Consent Decree in United States v. Ford Motor Company Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *James H. Spiegelberg*, Civil Action No. 95 CV 72450DT, was lodged with the United States District Court for the Eastern District of Michigan, Flint Office on June 19, 1995. This action was brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.* to recover costs expended by the United States in connection with the ''Spiegelberg Superfund Site'' (See the National Priorities List in 40 CFR Part 300, Appendix B) which is located on Spicer Road, in Green Oak Township, Livingston County, Michigan. Under the proposed decree, Spiegelberg has agreed

to pay $97,000 in partial reimbursement of past response costs incurred by the United States in connection with the Spiegelberg Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *James H. Spiegelberg,* DJ Ref. #90–11–2–285B.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Michigan, Flint Office, 600 Church Street, Room 206, Federal Building, Flint, Michigan 48502; the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Seventh Floor, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (twenty-five cents per page reproduction costs) payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–15779 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on May 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bell Communications Research, Inc. (''Bellcore'') has filed written notifications on behalf of Bellcore; Tektronix, Inc. (''Tektronix''); and The University of Pennsylvania (''UPenn'') simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; Tektronix, Beaverton, OR; and UPenn, Philadelphia, PA. Bellcore, Tektronix, and UPenn entered into Articles of Collaboration, effective as of May 2, 1995, establishing a consortium to engage in a collaborative research effort of limited duration in order to gain further knowledge in the area of asynchronous transfer mode (''ATM'') interoperability technology and to better understand the applications of such technology for telecommunications networks, particularly exchange and exchange access service networks.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15780 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.; Scientific Atlanta Inc.

Notice is hereby given that, on May 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs''); and Scientific Atlanta Inc. (''SA''), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CableLabs, Boulder, CO; and SA, Norcross, GA.

The area of planned activity is to conduct certain tests of a prototype modem for digital signal transmission on North American cable television systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15781 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Corporation for Open Systems International

Notice is hereby given that, on March 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Corporation for Open Systems International has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Booz-Allen & Hamilton, Inc., Central and South West Services, Inc., DSET Corporation, the General Services Administration, Hewlett-Packard Company, HP Idacom (formerly known as Idacom Electronics Ltd.), Life Cycle Technology Corporation, Tekelec, Inc., and Unified Communications, Inc., ceased membership in COS effective December 31, 1994. Applied Digital Access, Inc., San Diego, CA, became an Associate of COS SONET Interoperability Forum (the ''Forum'') effective January 3, 1995; National Computing Centre, Manchester, UNITED KINGDOM; The Oasys Group, LLC, Los Gatos, CA, became Auditing Members of the Forum effective January 3, 1995; COS has established the DVHT EIG to conduct research regarding communications and interoperability between digital video home terminals and networks and other equipment in an open digital video network.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation for Open Systems International intends to file additional written notification disclosing all changes in membership.

On May 14, 1986, the Corporation for Open Systems International filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 1, 1986 (51 FR 21260).

The last notification was filed with the Department on December 22, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1994 (60 FR 15307).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15792 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—''EHC Technologies Consortium Electrical Energy-Source Alternatives,'' a Cooperative Industry Research Study

Notice is hereby given that, on April 13, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Centro Ricerche Fiat has withdrawn from participation; and the period of performance has been extended to February 28, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in the project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On October 18, 1993 SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 14, 1994 (59 FR 2438–9). The last notification was filed with the Department on January 27, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (65 FR 15307).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15787 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on April 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following party was admitted as Principal Member: Barnett Bank, Jacksonville, FL. The following parties were admitted as Associate Members of the Consortium: CU Cooperative Systems, Inc., Pomona, CA; Bolt Beranek and Newman Inc., Cambridge, MA; Unisys Corporation, Plymouth, MI; Digital Equipment Corporation, Merrimack, NH; The Tower Group, Wellesley, MA; CommerceNet, Menlo Park, CA; and Cybercash, Reston, VA. The following party was admitted as an Advisory Member of the Consortium: United States Postal Service, Washington, DC.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on January 18, 1995. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15782 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Fuel Cell Commercialization Group

Notice is hereby given that, on May 31, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Fuel Cell Commercialization Group (''FCCG'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the resignation and withdrawal of six members of the FCCG. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the FCCG advised that Public Service Electric and Gas Company; General Public Utilities Service Corporation; Southern California Gas Company; Arizona Electric Power Cooperative; City of Palo Alto Utilities Department; and City of Riverside Public Utilities Department are no longer members of the FCCG.

No other changes have been made in either the membership or planned activity of the FCCG. Membership in the FCCG remains open, although certain membership benefits are based in part on the date on which the member joined the organization. The FCCG intends to file additional written notification disclosing all changes in its membership.

On September 21, 1990, the FCCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 25, 1990, 55 FR 43050. The last notification was filed with the Department on March 3, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 11, 1994, 59 FR 17110.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15783 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Information Initiative Consortium

Notice is hereby given that, on March 30, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Health Informatics Initiative Consortium (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a research and production venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: The Koop Foundation, Inc. Hanover, NH; AT&T Corporation, Basking Ridge, NJ; Booz-Allen & Hamilton, Inc., McLean, VA; Corporation for Studies and Analysis (CSA), Centreville, VA; D. Appleton Company, Inc. (DACOM), Manhattan Beach, CA; Logicon, Inc. Arlington, VA; Meta Software, Cambridge, MA; Oracle Corporation, Redwood Shores, CA; Science Applications International Corporation (SAIC), Falls Church, VA; Systems Research and Applications Corporation (SRA), Arlington, VA; Western Consortium for Public Health, Berkeley, CA; and Wizdom Systems, Inc., Naperville, IL.

The nature and objectives of the Consortium are to collaborate on

research and development of emerging information technologies in the health care industry.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15793 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on May 24, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Digital Equipment Corporation, Marlboro, MA, has agreed to participate in MCC's TRICE Project; Express Star Systems, Austin, TX, has agreed to participate in MCC's Infosleuth Project; and EINet Acquisition Corporation, Austin, TX, has agreed to become an Associate Member. Bell Communications Research Corporation and Unisys Corporation have not renewed their Associate memberships with MCC.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 Fed. Reg. 2633).

The last notification was filed with the Department on November 17, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 13, 1995 (60 FR 18857).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15784 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on June 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: ISICAD, Anaheim, CA; LDDS Communications, Inc., Tulsa, OK; and SBC Communications Inc., St. Louis, MO are Corporate Members. DSI PTY Ltd., Toowong, Queensland, AUSTRALIA; Gruppe Fur Angewandte Informatik Ag, Herrenschwanden, SWITZERLAND; ISR Global Telecom, Orlando, FL; Samsung Electronics Co., Ltd., Seoul, KOREA; and TCSI, Berkeley, CA are Associate Members. National Aeronautics and Space Agency, Greenbelt, MD; Nova Lepidoptera Ltd., Ilford, Essex, UK; Open Technology Pty Ltd., North Sydney, AUSTRALIA; Stanford Telecom, Reston, VA; and Technology Partners International, Columbus, OH are Affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on March 14, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 24, 1995 (60 FR 27559).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–15785 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Cooperative Research and Development Agreement No. SC92/1074 Seismic Source Development

Notice is hereby given that, on May 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''Act''), the Participants in the Cooperative Research and Development Agreement No. SC92/1074 (''CRADA'') titled ''Seismic Source Development,'' have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to CRADA, and (2) the nature and objectives of the venture. The notification were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties participating in the CRADA are Amoco Production Company, Tulsa, OK; Chevron Petroleum Technology Company, Houston, RX; Conoco, Inc., Houston, TX; Exxon Production Research Production Company, Houston, TX; E-Systems, Montek Division, Salt Lake City, UT; Gas Research Institute, Chicago, IL; Pelton Company, Inc., Ponca City, OK; and Sandia Corporation, Albuquerque, NM.

The objective of this Project is to investigate the feasibility with respect to the technical definition and establishment of as well as the development of a downhole seismic source. The general objectives of the Project are to develop a seismic source having an advanced hydraulic system with high-temperature electronics along with a high frequency seismic receiver. This technology is useful to image the region between two boreholes, to determine the geologic structure, rock properties, and possibly the fluid statuation between the boreholes. The seismic source developed hereunder is positioned in one borehole and the seismic receiver is positioned in the other, to permit the generation of a topographic image of the earth. The results of the Project will be evaluated to demonstrate the potential for commercial use of the technologies developed thereunder and to identify which limiting factors might restrict this application.

Participation in this venture will remain open to all interested persons and organizations until the Project Completion Date, which is presently anticipated to occur approximately March 1, 1996. The Participants intend to file additional written notifications disclosing all changes in the membership of the group of Participants involved in this Project.

Information regarding participation in the Project may be obtained from Robert F. Heming, Chevron Petroleum

Technology Company, 2811 Hayes Road, Houston, TX 77082.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 95–15786 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–58]

Lawson A. Akpulonu, M.D.; Revocation of Registration

On May 16, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lawson A. Akpulonu, M.D. (Respondent), who currently holds DEA Certificates of Registration in Los Angeles, Culver City, South Gate and El Monte, California, proposing to revoke his DEA Certificates of Registration, AA9426481, BA3296286, BA3386679 and BA3295931, as a practitioner, pursuant to 21 U.S.C. 824(a)(5). Specifically the Order to Show Cause alleged: between January 1981 and December 1990, Respondent submitted false Medicaid claims to the California Medical Assistance Program and, as a result, Respondent obtained over $15,000 to which he was not entitled; in March 1991, Respondent pled quality to and was convicted of one count of Section 14107 of the California Welfare and Institution Code, presenting a false Medicaid claim, in the Municipal Court of Los Angeles Judicial District Court and as a result of such conviction, Respondent paid a $5,000 fine and was placed on probation; and effective October 15, 1992, the Office of Inspector General, United States Department of Health and Human Services, excluded Respondent from participating in the Medicare program and in any State health care program pursuant to 42 U.S.C. 1320a–7(a), for a period of five years.

The Order to Show Cause was sent to Respondent by registered mail and Respondent submitted a timely request for a hearing. Pursuant to an order of the administrative law judge, the Government filed its prehearing statement. Although Respondent requested and was granted an extension of time in which to file his prehearing statement, he failed to file a prehearing statement or a second motion to extend the time to file his prehearing statement. Consequently, on October 20, 1994, the administrative law judge terminated the proceedings.

Pursuant to 21 CFR 1301.54(d) and 1301.54(e), Respondent is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The investigative file reveals that the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California (Medical Board) suspended Respondent's medical license and his privilege to handle controlled substances, effective April 14, 1995. Although the Medical Board had a pending accusation against Respondent based upon allegations which included those set forth in the Order to Show Cause, the recent suspension was based upon new allegations that Respondent had committed sexual battery against female patients while these patients were under sedation.

Since Respondent is not authorized to prescribe, dispense, administer or otherwise handle controlled substances in the State of California, the Deputy Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to continue or renew the registrations if the registrant is without state authority to handle controlled substances. 21 U.S.C. 802(21) and 823(f). The DEA has consistently so held. See Roman Pla, M.D., Docket No. 86–54, 51 FR 41168 (1986); George S. Heath, M.D., Docket No. 86–24, 51 FR 26610 (1986); Dale D. Shahan, D.D.S., Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since this suspension is extant, it is not necessary to make findings pertaining to the allegations in the Order to Show Cause. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration, AA9426481, BA3296286, BA3386679 and BA3295931, previously issued to Lawson A. Akpulonu, M.D., be, and they hereby are, revoked, and any pending applications for the renewal of such registrations be, and they hereby are, denied. This order is effective July 28, 1995.

Dated: June 21, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–15865 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–74]

Richard C. Matzkin, M.D., Grant of Continued Registration; Correction

In notice document 95–14369 appearing on page 31166 in the issue of Tuesday, June 13, 1995, make the following correction:

On page 31167, in the third column, last paragraph, in the eleventh line ''AM2432631'' should read ''AM2532631''.

Dated: June 21, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–15866 Filed 6–27–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and Section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. App. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Friday, July 21, 1995 and Saturday, July 22, 1995. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Friday, July 21, 1995 in Room S2508 at the Department of Labor, 200 Constitution Avenue, NW Washington, DC 20210 beginning at 4 pm and continuing until approximately 10 pm (EDT) and again on Saturday, July 22, 1995 beginning at 8 am and continuing until resolution of the outstanding issues and concluding no later than 10 pm (EDT).

The Commission will be meeting and discussing recommendations for its final report.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis (202) 219–7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Rene A. Redwood, Executive Director, The Glass Ceiling Commission, c/o U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210. Telephone (202) 219–7342.

Signed at Washington, DC., this 23 day of June 1995.

Rene A. Redwood,

Executive Director, Glass Ceiling Commission.

[FR Doc. 95–15853 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–23–17

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

June 22, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ([202] 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ([202] 395–7316).

Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Type of Review: New.

Agency: Occupational Safety and Health Administration.

Title: Logging Operations (29 CFR 1910.226).

OMB Number: 1218–0 new.

Affected Public: Business or other for-profit.

Category	Frequency	Respondents	Estimated time per respondent
Operator's Manual	One-time	11,658	.17 hour.
CPR	Annual	11,658	4 hours.
First-Aid	Every 3rd year	11,658	4 hours.

Total Burden Hours: 55,016.

Description: Section 1910.266(f)(iii) requires employers to assure that operating and maintenance instructions are available on the machine or in the area when the machine is being operated. Also, paragraph 1910.266(i)(7)(ii) requires that all employers assure that each employee receives first-aid training at least every three years and receives CPR training at least annually.

Type of Review: Reinstatement.

Agency: Occupational Safety and Health Administration.

Title: Mechanical Power Press Standard (29 CFR 1910.217).

OMB Number: 1218–0143.

Frequency: Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 2.238.

Estimated Time Per Respondent: 11.43 hours.

Total Burden Hours: 25,578.

Description: The prohibition on the use of Presence Sensing Devices Initiation (PSDI) has been removed. To assure the safety of the system, this regulation requires a certification program. The manufacturers and employers who choose to the PSDI will have to maintain some records in order to meet the requirements of this standard.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Report of Changes that may Affect your Black Lung Benefits.

OMB Number: 1215–0084.

Agency Number: CM–929.

Frequency: Annual.

Affected Public: Individuals or households.

Number of Respondents: 80,000.

Estimated Time Per Respondent: 5 to 8 minutes.

Total Burden Hours: 7,067.

Description: The CM–929 is used to help determine continuing eligibility of primary beneficiaries receiving benefits from the Black Lung Disability Trust Fund. It is also used to verify and update on an annual basis factor that affect a beneficiary's entitlement to benefits, including income, marital status, receipt of State worker's compensation, and dependents' status.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Alternative Method of Compliance for Certain Simplified Employee Pensions.

OMB Number: 1210–0034.

Frequency: Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 1,393.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 116.

Description: In keeping with Section 408(k) the Internal Revenue Code, the regulation provides an alternative type of reporting and disclosure arrangement for Simplified Employee Pensions (SEPs) that is easier to establish and administer than otherwise required under the Employee Retirement Income Security Act.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Suspension of Benefits Regulation.

OMB Number: 1210–0048.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 57,374.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 13,344.

Description: This regulation allows a plan to suspend an individual's pension benefits if the individual continues to work or returns to work. The plan is required to notify the individual during the first calendar month or payroll

period in which the plan withholds payment.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

OMB Number: 1210–0049.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 624.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 4,212.

Description: This class exemption exempts from the prohibited transaction restrictions of Employee Retirement Income Security Act the purchase and sale by an employee benefit plan of shares of a registered, open-end mutual fund when a fiduciary with respect to the plan (e.g. an investment manager) is also investment adviser for the mutual fund.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 90–1—Certain Transactions Involving Insurance Company Pooled Separate Accounts (formerly 78–19).

OMB Number: 1210–0054.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1.

Description: This exemption allows parties in interest of an employee benefit plan that invests in an insured pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed certain limits. Six year recordkeeping is required.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 81–8.

OMB Number: 1210–0061.

Frequency: 5 per year.

Affected Public: Business or other for-profit.

Number of Respondents: 18,245.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 15,204

Description: This class exemption exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act the investment of plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of certain types of short-term investments.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Exemption 77–8

OMB Number: 1210–0063.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 18,712.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 1,352.

Description: This class exempts from the prohibited transaction restrictions of the Employee Retirement Income Security Act (ERISA) the sale of individual life insurance of annuity contracts by a plan to participants, relatives or participants, employers any of whose employees are covered by the plan or other employee benefit plans which are parties in interest.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 81–6

OMB Number: 1210–0065.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 18,245.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 3,041.

Description: This class exemption allows banks and registered broker-dealers to borrow securities that are assets of employee benefit plans.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Adoption of ERISA Class Exemption for Purposes of FERSA.

OMB Number: 1210–0074.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 1.

Description: The adoption of this class exemption under the Employee Retirement Income Security Act (ERISA) for purposes of the Federal Employees' Retirement System Act (FERSA) would permit fiduciaries with respect to the FERS Thrift Savings Fund to engage in certain transactions that would otherwise be prohibited under FERSA.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Pension Welfare Benefits Administration.

Title: Participant Loans.

OMB Number: 1210–0076.

Frequency: One time.

Affected Public: Business or other for-profit.

Number of Respondents: 7,000.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 21,000.

Description: This regulation clarifies requirements under the Employee Retirement Income Security Act of 1974 with respect to loans from pension plans which are made to plan participants and beneficiaries who are parties in interest with respect to the plan.

Type of Review: Revision of a currently approved collection.

Agency: Pension Welfare Benefits Administration.

Title: Transaction between Individual Retirement Accounts and Authorized Purchasers of American Eagle coins Class Exemptions, PTE 91–55.

OMB Number: 1210–0079.

Frequency: on occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 12.

Estimated Time Per Respondent: 1.5 minutes.

Total Burden Hours: 36,666.

Description: This proposed class exemption provides relief from certain taxes imposed by the Internal Revenue Code on broker-dealers who are disqualified persons under the code with respect to certain individual retirement accounts, regarding transactions involving American Eagle Coins.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Unemployment Insurance Quality Control Program.

OMB Number: 1205–0245.
Agency Number: ETA Handbook No. 395.
Frequency: Weekly.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number of Respondents: 52.
Estimated Time Per Respondent: 2,575 hours.
Total Burden Hours: 133,900.
Description: An extension of the existing Benefits Quality Control (BQC) data collection with no change in size or methods is being requested. The BQC program provides reliable estimates of the accuracy of benefit payments in the unemployment insurance program, and identifies the sources of mispayments so that their causes can be eliminated.

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Occupational Code Request.
OMB Number: 1205–0137.
Agency Number: ETA 741.
Frequency: As needed.
Affected Public: State, Local or Tribal Government.
Number of Respondents: 55.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 28.
Description: ETA 741, Occupational Code Request (OCR), is provided as a public service to the States to obtain occupational codes and titles for jobs not included in the Dictionary of Occupational Titles.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: Employee Benefits Survey.
OMB Number: 1220–0084.
Frequency: Annual (varies).
Affected Public: State and local governments and small private establishments in even-numbered years; Medium and large private establishments in odd-numbered years; Business or other for-profit organizations; Not-for-profit institutions.
Number of Respondents:
Estimated Time Per Respondent:
1996, 1998: 3,550 respondents; 1.12 hours per respondent; 3,975 Total Burden Hours
1997: 2,300 respondents; 1.25 hours per respondent; 2,875 Total Burden Hours

Description: The Employee Benefits Survey (EBS) will present data on employee benefits in small (1–99 employees) private establishments and in State and local governments in 1996 and 1998, and in medium and large private establishments in 1997. The EBS, which covers State and local governments, and small, medium, and large private establishments in private industry, is used by Federal agencies and the Congress to determine policy affecting benefits of all workers; and by the private sector and State and local governments in benefits administration, union negotiations, and research.

Type of Review: New.
Agency: Bureau of Labor Statistics.
Title: National Longitudinal Survey of Youth 1996.
OMB Number: 1220–0new.

Form Number	Frequency	Affected Public	Respondents	Average time respondent (minutes)
Screeners	Once	Individuals	91,433	5.09
Youth Questionnaire and Pretest	Annual	.....do	15,733	64
Parent Questionnaire and Pretest	Annual	.....do	12,633	60.72
School Survey	Annual	Schools	8,333	40.79
CAT–ASVAB	Once	Individuals	21,030	120.85
Interest Finder	Once	.....do	20,490	44
On-Line Eval.	Once	.....do	20,490	15
ASVAB Pencil and Paper	Once	.....do	540	180
DOD Subset of Youth Questions	Once	.....do	9,570	15

Total Burden Hours: 109,499.
(Note: Total number of respondents does not equal the sum of the numbers in the same column above because of overlap. There will be about 75,800 household screeners where there is no youth in scope, about 12,633 parents interviewed (screener and parent interview) for the main BLS sample and Learning Disabled (LD) oversample, 6,000 screeners in households having only an ASVAB respondents (but not in BLS sample), 8,333 schools, 15,733 youths in the BLS main or LD oversamples and 9,570 youths in the ASVAB study but not in either the BLS main sample of LD oversample.)

Description: The information provided in this survey will be used by the Department of Labor and other government agencies to help understand the school to work transition of young men and women in this age group. It will also be used by the Department of Defense to assess the pool of potential entrants to the Armed Forces.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–15852 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Birdeye Coal Company, Inc.

[Docket No. M–95–83–C]

Birdeye Coal Company, Inc., HC 66, Box 494, Artemus, Kentucky 40903 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 4 Mine (I.D. No. 15–17676) located in Knox County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using machine-mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner states that this petition request is based on the safety of the miners involved.

2. Old Ben Coal Company

[Docket No. M–95–84–C]

Old Ben Coal Company, P.O. Box 270, Edgarton, West Virginia 25672 has filed a petition to modify the application of 30 CFR 75.364(b) (1) and (2) (weekly examination) to its Mine No. 20 (I.D. No. 46–02052) located in Mingo County, West Virginia. Due to deteriorating roof conditions in the intake and return air courses of the Alma ''C'' seam (lower seam), the area cannot be traveled

safely. The petitioner proposes to establish evaluation points to measure the quantity and direction of airflow entering and leaving each airway in the affected area; to have a certified person examine the check points on a weekly basis and record the results in an approved record book; to provide a date board at the evaluation points; to maintain the evaluation stations and the approaches to the station in safe condition; and to investigate immediately any change in air quantity and quality. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Westmoreland Coal Company

[Docket No. M–95–85–C]

Westmoreland Coal Company, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.380(f)(1) (escapeways; bituminous and lignite mines) to its Pierrepont Mine (I.D. No. 44–06206) located in Wise County, Virginia. The petitioner proposes to have battery charging stations in the primary escapeway; to install a low-level early warning smoke detection sensor in all intake aircourses used as primary escapeways and to have the sensor located so that the air is monitored at a point 50 feet inby the crosscut; and to have the intake air ventilating the crosscuts coursed into the return be of sufficient velocity to prevent rollback around the check curtains, and not be used to ventilate working places. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 28, 1995. Copies of these petitions are available for inspection at that address.

Dated: June 20, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–15788 Filed 6–27–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95–046)]

National Environmental Policy Act; Ames Research Center Aerodynamics Testing Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 150–1508), and NASA policy and procedures (14 CFR part 1216, subpart 1216.3), NASA has prepared and issued a draft environmental impact statement (DEIS) for the proposed Aerodynamics Testing Program at Ames Research Center (ARC), Moffett Field, California. This document serves as a programmatic environmental impact statement for proposed wind tunnel testing of high performance aircraft in the National Full-scale Aerodynamics Complex (NFAC) at ARC.

DATES: Comments on the DEIS must be provided in writing to NASA on or before August 14, 1995 or 45 days from the date of publication in the **Federal Register** of the U.S. Environmental Protection Agency's notice of availability of the Ames Research Center Aerodynamics Testing Program DEIS, whichever is later.

ADDRESSES Comments should be addressed to Sandy Olliges, Mail Stop 218–1, NASA Ames Research Center, Moffett Field, CA 94035–1000. The DEIS may be reviewed at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW, Washington, DC 20546.

(b) Sunnyvale Public Library, 665 West Olive Street, Sunnyvale, CA 94086.

In addition, the DEIS may be examined at the following NASA locations by contacting the pertinent Freedom of Information Act Office:

(c) NASA, Ames Research Center, Moffett Field, CA 94035 (415–604–4191).

(d) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).

(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–0730).

(f) Jet Propulsion Laboratory, NASA Resident Office, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5179).

(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).

(h) NASA, Kennedy Space Center, FL 32899 (407–867–2468).

(i) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).

(j) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (216–433–2902).

(k) NASA, Marshall Space Flight Center, AL 35812 (205–544–5252).

(l) NASA, Stennis Space Center, MS 39529 (601–688–2164).

Limited copies of the DEIS are available by contacting Sandy Olliges at the address or telephone number indicated herein.

FOR FURTHER INFORMATION CONTACT: Sandy Olliges, 415–604–3355.

SUPPLEMENTARY INFORMATION: The overall purpose of the proposed ARC Aerodynamics Testing Program is to support the development of future generations of civilian and military aircraft through large- and full-scale wind tunnel testing of these aircraft and aircraft components. The Aerodynamics Testing Program would occur in the 40- to 80-Foot Wind tunnel and the 80- by 120-Foot Wind Tunnel of the NFAC. The DEIS considers the alternatives associated with the proposed Aerodynamics Testing Program and their related environmental impacts. Potentially significant impacts of the purposed action and reasonable alternatives are principally related to an increase in noise and vibration. The first proposed tests under the Aerodynamics Testing Program in the NFAC could begin in early 1996.

Public meetings will be held in late July or early August, 1995. The specific meeting time(s) and location(s) will be published in the San Jose Mercury News and the La Oferta Review. The meeting schedule can also be obtained from Sandy Olliges at the address or telephone number stated above.

Dated: June 22, 1995.

Benita A. Cooper,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 95–15815 Filed 6–27–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice (95–047)]

NASA Advisory Council (NAC), NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions.

DATES: July 19, 1995, 9 a.m. to 5 p.m.

ADDRESSES: Room #966, Building 1, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, 2101 NASA Road 1, Houston, Texas 77058–3696.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Kirkham, Code MOC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1692.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the upcoming Shuttle-Mir rendezvous and docking missions from the following perspectives: Planning, training, operations, management and communications.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 22, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–15816 Filed 6–27–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–044]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Automated Dynamics Corporation of 407 Front Street, Schenectady, New York 12305 has applied for an exclusive license to practice the inventions described and claimed in: U.S. Patent No. 5,395,477 entitled ''An Apparatus for Consolidating a Pre-Impregnated, Filament-Reinforced Polymeric Prepreg Material,'' which was issued on March 7, 1995, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; U.S. Patent No. 5,057,338 entitled ''Process for Application of Power Particles to Filamentary Materials,'' which was issued October 15, 1991, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; and U.S. Patent Application Serial No. 08/425,005 entitled ''A Dry Process for making Uni-Tape Prepreg from Powder Coated Towpreg,'' which was filed on April 10, 1995, by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license to Automated Dynamics Corporation should be sent to George F. Helfrich, Patent Counsel, NASA Langley Research Center.

DATES: Responses to this Notice must be received by August 28, 1995.

FOR FURTHER INFORMATION CONTACT: George F. Helfrich, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, Virginia 23681–0001; (804) 864–3227.

Dated: June 19, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–15814 Filed 6–27–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirements Submitted to OMB for Review

June 20, 1995.

The National Credit Union Administration submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–0011.

Form Number: NCUA 9600.

Type of Review: Extension of currently approved collection.

Title: Application for Insurance of Accounts of State-chartered Credit Unions.

Description: The Federal Credit Union Act and NCUA's regulations require that state-chartered credit unions seeking federal insurance of accounts must apply for the insurance. This also applies to federal credit unions converting to a state charter and wish to maintain federal insurance.

Respondents: Credit unions making application for federal insurance.

Estimated Number of Respondents: 107.

Estimated Burden Hours per Response: 3 hours.

Frequency of Response: One time.

Estimated Total Reporting Burden: 336 hours.

OMB Number: 3133–0114.

Form Number: None.

Type of Review: Extension of currently approved collection.

Title: Payments on Shares by Public Units and Non-members.

Description: Non-member and public unit deposits in federally-insured credit unions may not exceed 20 percent of the credit union's shares. This information collection will be used by NCUA to determine whether or not a particular credit union will be granted an exemption to the 20 percent limit on non-member and public unit deposits.

Respondents: Credit unions requesting an exemption to the 20 percent limit on non-member and public unit deposits.

Estimated Number of Respondents: 20.

Estimated Burden Hours per Response: 2 hours.

Frequency of Response: Once per year.

Estimated Total Reporting Burden: 40 hours.

Clearance Officer: Wilmer A. Theard or Betty P. May (703) 518–6410, National Credit Union Administration, Room 4009, 1775 Duke Street, Alexandria, VA 22314–3428.

OMB Reviewer: Milo Sunderhauf (202) 395–5167, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 95–15789 Filed 6–27–95; 8:45 am]

BILLING CODE 7535–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for July 27, 1995 at 10:00 a.m., in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to

Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C., June 16, 1995.

Charles H. Atherton,

Secretary.

[FR Doc. 95–15772 Filed 6–27–95; 8:45 am]

BILLING CODE 6330–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Membership of the Performance Review Board (PRB)

AGENCY: Office of the United States Trade Representative.

SUMMARY: The following staff members are designated to serve on the Performance Review Board:

Performance Review Board (PRB)

Chair—Jim Murphy
Alternate Chair—Chris Marcich
Members:
Howard Reed
Ken Freiberg
Bob Cassidy
Dorothy Dwoskin
Don Abelson
Executive Secretary—Lorraine Green

EFFECTIVE DATE: June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lorraine Green, Director, Human Resources, (202) 395–7360.

John Hopkins,

Assistant United States Trade Representative for Administration.

[FR Doc. 95–15766 Filed 6–27–95; 8:45 am]

BILLING CODE 3190–01–M

POSTAL SERVICE

Cashing Domestic Postal Money Orders

AGENCY: Postal Service.

ACTION: Notice of procedure.

SUMMARY: The Postal Service published a final rule in the **Federal Register** on February 2, 1995, that restricted the negotiation of domestic postal money orders to the United States and its possessions and territories and to the Freely Associated States. 60 FR 7912–7913. This final rule took effect March 1, 1995, and amended section 391.11 of the International Mail Manual, incorporated by reference in the Code of Federal Regulations (see 39 CFR 20.1).

In response to this rule, the Postal Service will print domestic postal money orders with the endorsement ''NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS'' on the face (front) and reverse (back). This restrictive endorsement will appear in bold, red lettering on the lower right face and in bold, black lettering on the reverse.

These printing changes to the domestic postal money order do not alter current regulations established by the final rule. In addition, current domestic postal money orders printed without this restrictive endorsement will continue to be valid and negotiable for international use.

The Postal Service intends to charge back any domestic postal money order bearing the restrictive endorsement accepted by a bank in any foreign country that is not identified as a U.S. possession or territory or as part of the Freely Associated States. This charge will be handled in accordance with the standard commercial banking procedures in the United States.

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Al Gillum, (703) 905–3818.

SUPPLEMENTARY INFORMATION: Because the Postal Service receives numerous complaints from foreign postal administrations regarding the acceptance of domestic postal money orders by the banking systems in those countries, and because the domestic postal money order is being used in international money laundering schemes, the Postal Service determined to restrict the negotiation of domestic postal money orders to the United States and its possessions and territories and to the Freely Associated States. This change prevents the practice of circumventing the policies and procedures for the acceptance of international postal money orders agreed to within the Universal Postal Union, and minimizes the use of domestic postal money orders in international money laundering activities.

The Postal Service is committed to complying with the agreements with its foreign partners, and to taking proactive measures to minimize the use of its products and services in illegal activities. A concerted effort is being made to restrict the negotiation of domestic postal money orders to the United States and its possessions and territories and to the Freely Associated States.

U.S. possessions and territories are American Samoa (including Manua Island, Swain's Island, Tutuila Island); Baker Island; Guam; Howland Island; Jarvis Island; Johnston Island; Kingman Reef; Midway Island; Navassa Island; Northern Marianas Islands (including Rota, Saipan, and Tinian); Palmyra Island; Puerto Rico; Sand Island; U.S. Virgin Islands (including St. Croix, St. John, and St. Thomas); and Wake Island.

The Freely Associated States are Marshall Islands (including Ebeye and Majuro Island); Palau (including Koror Island); and Micronesia (including Chuuk (Truk) Island, Kosrae Island, Pohnepi Island, Yap Island).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–15767 Filed 6–27–95; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35874; File No. SR–NASD–94–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Applicable Position Limits for OTC Collar Transactions

June 21, 1995.

I. Introduction

On October 27, 1994, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its options position limit rule to provide that positions in conventional put and call options establishing OTC collars meeting certain qualifications need not be aggregated for position limit purposes (''OTC Collar Aggregation Exemption'').[3] The NASD filed Amendment No. 1 to the proposed rule change on December 14, 1994 (''Amendment No. 1'').[4] Notice of the proposal and Amendment No. 1 appeared in the **Federal Register** on December 29, 1994.[5] No comment letters were received on the proposed

[1] 15 USC § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] Section 33(b)(3) of the NASD Rules of Fair Practice provides that ''options contracts of the put and call class on the same side of the market covering the same underlying security'' are aggregated for position limit purposes. Accordingly, long calls and short puts are aggregated and short calls and long puts are aggregated.

[4] See Letter from Thomas R. Gira, Assistant General Counsel, NASD, to Stephen M. Youhn, Derivative Products Regulation, SEC, dated Dec. 14, 1994. See *infra* note. 8.

[5] Securities Exchange Act Release No. 35134 (Dec. 21, 1994), 59 FR 67359.

rule change. On May 19, 1995, the NASD filed Amendment No. 2 (''Amendment No. 2'') to the proposal to clarify in the language of the proposed exemption the maximum number of contracts that may comprise a collar that is governed by the OTC Collar Aggregation Exemption.[6] The effect of Amendment No. 2 is to clarify that the exemption from aggregation only applies to the hedge exemption portion of the position limit. This order approves the NASD's proposal, as amended.

II. Description of Proposal

An OTC collar transaction involves the purchase (sale) of a put and the sale (purchase) of a call on the same underlying security to hedge a long (short) stock position. The proposal would amend Section 33 of the NASD Rules of Fair Practice, the NASD's position limit rule for standardized and conventional options, in the following manner:

Section 33 of the NASD By-Laws

Section (b)(3) Position Limits

(A)(1)–(5) No change.

(A)(6) OTC Collar Aggregation Exemption

(a) For purposes of this subsection, the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

(b) Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subsections (A)(1)–(A)(3) above, the conventional options positions involved in a particular OTC collar transaction established pursuant to the position limit hedge exemption in subsection (A)(5) need not be aggregated for position limit purposes, provided the following conditions are satisfied:[7]

1. the conventional options can only be exercised if they are in-the-money;
2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;
3. the conventional options must be European-style (*i.e.*, only exercisable upon expiration) and expire on the same date;
4. the strike price of the short call can never be less than the strike price of the long put; and
5. neither side of the transaction can be in-the-money when the collar is established.[8]
6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subsections (A)(1)–(3) above must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

(c) For multiple OTC collars on the same security meeting the conditions set forth in subsection (b) above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

(d) Except as provided above in subsections (b) and (c), in no event may a member fail to aggregate any conventional or standardized options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.

Nothing in this subsection (6) changes the applicable position limit for a particular equity security.

According to the NASD, market participants typically establish OTC collars to hedge price exposure to long stock positions. However, the NASD states that the current position limit aggregation rules constrain members seeking to establish OTC collar positions for their customers. For example, if a customer wanted to hedge 900,000 shares in XYZ with an OTC collar (assuming XYZ is subject to a position limit of 4,500 contracts), and if the calls and puts associated with the collar must be aggregated, the customer could only establish the collar for 450,000 shares (*i.e.*, 4,500 short calls and 4,500 long puts).[9] As a result, the remaining 450,000 shares of XYZ would remain unhedged.

Accordingly, in order to facilitate the needs of market participants seeking to hedge their long stock positions with OTC collars, the NASD proposes to waive the position limit aggregation rules for certain OTC collar transactions meeting specific criteria. Specifically, the OTC Collar Aggregation Exemption will provide that puts and calls on the same side of the market (*e.g.*, short calls and long puts) which are established pursuant to Section 33(b)(3)(A)(5), the equity option position limit hedge exemption rule (''equity option position limit hedge exemption'') are not required to be aggregated for position limit purposes if they are part of an OTC collar transaction meeting all of the conditions of proposed Section 33(b)(3)(A)(6) above.[10]

Consistent with the NASD's equity option position limit hedge exemption rule, to the extent that the size of the controversial options involved in a particular OTC collar exceed the size of the applicable basic position limit for that option, the proposed OTC Collar Aggregation Exemption provides that such options positions must be hedged on a one-for-one basis with the corresponding long/short stock position for the duration of the collar. The NASD also notes that the OTC Collar Aggregation Exemption will not affect the NASD's other aggregation rules for options positions on the same side of the market. Thus, the NASD will aggregate all standardized and conventional options positions with options positions established pursuant to the OTC Collar Aggregation Exemption, as well as options positions established in multiple OTC collars on the same security.

The proposal also contains provisions governing the aggregation of conventional options positions establishing multiple OTC collars. Specifically, for multiple OTC collars on the same security meeting the conditions for the OTC Collar Aggregation Exemption, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

The following examples are intended to illustrate the operation of the OTC Collar Aggregation Exemption (assume a position limit of 4,500 contracts and an applicable hedge exemption of 4,500 contracts):

A. An investor has no established conventional or standardized option position. The investor may establish an OTC collar consisting of 6,750 short calls and 6,750 long puts. Pursuant to proposed Section 33(b)(3)(A)(6)(b)(6), the options

[6] See Letter from Thomas R. Gira, Assistant General Counsel, NASD, to Stephen M. Youhn, Derivative Products Regulation, SEC, dated May 19, 1995.

[7] See Amendment No. 2.

[8] The NASD originally proposed that one side of the collar could be in-the-money when the collar was established. Amendment No. 1 changes this requirement by stating that neither side of a particular OTC collar may be in-the-money at the time the collar is established.

[9] In this instance, 4,500 of the 9,000 contracts are permissible under the basic position limit contained Section 33(b)(3)(A)(1) of the NASD Rules of Fair Practice and the remaining 4,500 contracts are permissible because they are hedged by the 900,000 shares of XYZ and, therefore, fall within the NASD's hedge exemption contained in Section 33(b)(3)(A)(5).

[10] Under Section 33(b)(3)(A)(5), the Equity Hedge Exemption rule, the hedge exemption may not exceed twice the position limit established under NASD rules. Position limits are set at either 4,500, 7,500 or 10,500 contracts on the same side of the market, depending on the characteristics of the stock.

comprising the collar in excess of the applicable basic position limit (*i.e.,* 4,500) must be hedged on a one-for-one basis with 450,000 shares. The total number of allowable option contracts on the same side of the market in this example would be 13,500.

B. An investor is short 1,000 calls. The investor may establish an OTC collar consisting of 6,250 short calls and 6,250 long puts. Pursuant to proposed Section 33(b)(3)(A)(6)(b)(6), the options comprising the collar in excess of the applicable basic position limit (*i.e.,* 4,500) must be hedged on a one-for-one basis with 450,000 shares. The total number of allowable option contracts on the same side of the market in this example would be 13,500.

C. An investor is short 6,500 calls (4,500 pursuant to the position limit and 2,000 pursuant to the hedge exemption) and long 200,000 shares of stock. An OTC collar consisting of 2,500 short calls and 2,500 long puts may be established. Pursuant to proposed Section 33(b)(3)(A)(6)(b)(6), the options comprising the collar in excess of the applicable basic position limit (*i.e.,* 4,500) must be hedged on a one-for-one basis with an additional stock position of 250,000 shares. The total number of allowable option contracts on the same side of the market in this example would be 11,500.

D. An investor is short 9,000 calls (4,500 pursuant to the position limit and 4,500 pursuant to the hedge exemption) and long 450,000 shares of stock. An OTC collar may not be established since the investor has already reached the maximum allowable position limit.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Art. Specifically, the Commission believes the conditions and limitations contained in the proposal strike a reasonable balance between the need to facilitate legitimate hedging needs of market participants and the need to have rules in place that do not compromise the regulatory purposes served by the equity option position limit rules. In particular, because the conditions and limitations for the OTC Collar Aggregation Exemption effectively provide that neither leg of the OTC collar can be in-the-money at the time the collar is established and that no more than one leg of the collar can ever be exercised throughout the term of the collar, the Commission does not believe that the larger options position resulting from the proposed non-aggregation of short (long) calls and long (short) puts for the hedge exemption portion of the position limit pursuant to the OTC Collar Aggregation Exemption will increase the potential for market manipulation or disruption.[11]

In addition, even though the conventional options positions involved in a particular OTC collar transaction do not have to be aggregated (if the collar meets the standards for the aggregation exemption), the collar position must be aggregated with all other standardized and conventional options on the same side of the market overlying the same security. In this respect, the Commission notes that while the NASD's proposal does not change the recognized position limit levels (*i.e.,* 4,500, 7,500, 10,500), it does alter the manner in which contracts are aggregated for position limits purposes, with the net result being an increase in certain situations in the number of contracts an investor may hold on the same side of the market from 9,000 to 13,500 (assuming a position limit of 4,500). While the maximum number of contracts an investor may hold is effectively increased, the proposal's requirements ensure that the amount of stock that may be controlled by an investor's option position is not increased. Instead, the proposal merely facilitates the use of an OTC collar by not aggregating the positions for determining the number of contracts pursuant to the hedge exemption. To the extent that investors have greater latitude to use a collar for hedging purposes, the proposal will enhance investors' risk management of stock positions.[12]

The Commission also believes that the larger options positions available by virtue of the proposal will not result in disruptions to the underlying stock market due to the conditions and limitations that must be met to be eligible for the aggregation exemption, and the NASD's surveillance program. In this connection, the Commission notes the NASD will monitor the use of the OTC Collar Aggregation Exemption to ensure that NASD members are complying with the requirements of the exemption.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 has the effect of limiting and clarifying the maximum number of contracts that may comprise a particular OTC collar established pursuant to the OTC Collar Aggregation Exemption, and as a result, should further reduce any speculative or manipulative impact caused by the net increase in the number of options held by an investor. Therefore, the Commission believes there is good cause to approve Amendment No. 2 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by July 19, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [13] that the proposed rule change (SR–NASD–94–60) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15810 Filed 6–27–95; 8:45 am]

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[11] Furthermore, in order to ensure that the positions covered by this proposal are maintained in a collar transaction, the proposal requires that all of the conventional options comprising the OTC collar must be European-style and expire on the same date.

[12] As noted above, the non-aggregation of collar positions only applies to positions established pursuant to the existing hedge exemption. *See supra* note 10.

[13] 15 USC 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35875; File No. SR–NASD–95–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Adjustment of Open Orders

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 19, 1995,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is proposing to amend Article III, Section 46 of the Rules of Fair Practice to provide that where the issuer of a security declares a cash dividend or other distribution of less than one cent ($.01) members will not adjust open orders for such securities. Below is the text of the proposed rule change. Proposed new language is italics.

Rules of Fair Practice

Article III

Adjustment of Open Orders

Sec. 46.

(a) A member holding an open order from a customer or another broker/dealer shall, prior to executing or permitting the order to be executed, reduce, increase or adjust the price and/or number of shares of such order by an amount equal to the dividend, payment or distribution, on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest, *except where a cash dividend or distribution is less than one cent ($.01),* as follows:

(i) In the case of a cash dividend or distribution, the price of the order shall be reduced by subtracting the dollar amount of the dividend or distribution from the price of the order and rounding the result to the next lower ⅛ of a dollar;

(ii) In the case of a stock dividend or split, the price of the order shall be reduced by rounding the dollar value of the stock dividend or split to the next higher ⅛ of a dollar and subtracting that amount from the price of the order; provided, further, that the size of the order shall be increased by (1) multiplying the size of the original order by the numerator of the ratio of the dividend or split, (2) dividing the result by the denominator of the ratio of the dividend or split, and (3) rounding the result to the next lower round lot; and

(ii) In the case of a dividend payable in either cash or securities at the option of the stockholder, the price of the order shall be reduced by the dollar value of the cash or securities, whichever is greater, according to the formulas in (a)(i) or (a)(ii), above; provided, that if the stockholder opts for securities, the size of the order shall be increased pursuant to the formula in (a)(ii), above.

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 NASD 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 NASD 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

Article III, Section 46 of the Rules of Fair Practice requires members holding open orders to proportionally reprice such orders according to the value of the dividend or distribution on the date the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. Shortly after the rule became effective in September 1994, several member firms questioned the necessity of complying with Section 46 if a dividend or other distribution was less than one cent ($.01).

The NASD has examined the matter and determined that where dividends of less than one cent ($.01) are involved inefficiencies and costs associated with complying with Section 46 may exceed any benefit to be gained. The impact of such a small dividend on the price of the security is probably *de minimis* in nature and the likelihood that unadjusted orders will result in bad executions for customers is low. Accordingly, the NASD is proposing to amend Section 46 to state that where a dividend or other distribution is less than one cent ($.01) the price of the order shall not be adjusted.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[2] in that the elimination of the costs and inefficiencies associated with mandating the repricing of orders where the dividend or distribution is less than one cent ($.01) will refine the functioning of Section 46 to the benefit of the market and investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (iii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 NASD. All

[1] The NASD originally submitted the proposed rule change on May 23, 1995. On June 19, 1995, the NASD submitted Amendment No. 1 which amendment made technical changes to the proposal.

[2] 15 U.S.C. 78*o*–3

submissions should refer to File Number SR–NASD–95–27 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15811 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35877; File No. SR–NASD–95–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Regarding Trading in Anticipation of the Issuance of a Research Report

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Pursuant to the provisions of Section 19(b)(1) of the Act, the NASD hereby proposes to amend Article III, Section 1 of the NASD Rules of Fair Practice[1] by adding a new Interpretation regarding a prohibition against purposeful trading that affects a member firm's inventory position in a given security prior to the firm's issuance of a research report in that same security. Below is the text of the proposed rule change. Proposed new language is in italics.

Trading Ahead of Research Reports Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice

The Board of Governors, under its statutory obligation to protect investors and enhance market quality, is issuing an Interpretation to the Rules of Fair Practice regarding a member firm's trading activities that occur in anticipation of a firm's issuance of a research report regarding a security. The Board of Governors is concerned with activities of member firms that purposefully establish or adjust firm's inventory position in Nasdaq-listed securities, an exchange-listed security traded in the OTC market, or a derivative security based primarily on a specific Nasdaq or exchange-listed security in anticipation of the issuance of a research report in that same security. For example, a firm's research department may prepare a research report recommending the purchase of a particular Nasdaq-listed security. Prior to the publication and dissemination of the report, however, the trading department of the member firm might purposefully accumulate a position in that security to meet anticipated customer demand for that security. After the firm had established its position, the firm would issue the report, and thereafter fill customer orders from the member firm's inventory positions.

The NASD believes that such activity is conduct which is inconsistent with just and equitable purposes of trade, and not in the best interests of investors. Thus, this Interpretation prohibits a member from purposefully establishing, creating or changing the firm's inventory position in a Nasdaq-listed stock, and exchange-listed stock traded in the third market, or a derivative security related to the underlying equity security, in anticipation of the issuance of a research report regarding such security by the member firm.

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

In accordance with Article VII, Section 1(a)(2) of the NASD By-laws, the NASD Board of Governors has approved the following Interpretation of Article III, Section 1:

Trading activity purposefully establishing, increasing, decreasing, or liquidating a position in a Nasdaq security, an exchange-listed security traded in the over-the-counter market, or a derivative security based primarily upon a specific Nasdaq or exchange-listed security, in anticipation of the issuance of a research report in that security is inconsistent with just and equitable principles of trade and is a violation of Article III, Section 1 of the Rules of Fair Practice.

For the purposes of this Interpretation, a ''purposeful'' change in the firm's inventory position means any trading activities undertaken with the intent of altering a firm's position in a security in anticipation of accommodating investor interest once the research report has been published. Hence, the Interpretation does not apply to changes in an inventory position related to unsolicited order flow from a firm's retail or broker-dealer client base or to research done solely for in-house trading and not in any way used for external publication.

Under this Interpretation, the Board recommends, but does not require, that member firms develop and implement policies and procedures to establish effective internal control systems and procedures that would isolate specific information within research and other relevant departments of the firm so as to prevent the trading department from utilizing the advance knowledge of the issuance of a research report. Firms that choose not to develop ''Chinese Wall'' procedures bear the burden of demonstrating that the basis for changes in inventory positions in advance of research reports was not purposeful.

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 NASD 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 NASD 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

(a) Background

At times, broker-dealers that have research departments prepare research reports that recommend that customers take certain actions with respect to certain identified securities. The research reports may advise the firm's customers to buy or sell the security that is the subject of the research report. For instance, prior to publication of a research report, some firms would intentionally establish a proprietary position in the security that was to be the subject of a report in anticipation of meeting expected customer demand in response to the research report. Once the firm had accumulated stock, it would issue the research report and commence solicitation of orders, expecting to fill customer orders from the inventory position it had accumulated.

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[3] 17 CFR 200.30–3(a)(12).

[1] *NASD Manual*, Rules of Fair Practice, Art, III, Sec. 1 (CCH) ¶ 2151.

In 1991, the New York Stock Exchange (''NYSE''), in NYSE Information Memo 91–8, issued a policy statement regarding stock accumulations by a NYSE member organization in advance of that member's issuance of research reports. NYSE Information Memo 91–8 stated that where an NYSE member organization intended to purposefully acquire a position in an NYSE-listed security in contemplation of its issuance of a favorable research report, the NYSE would find such conduct to be inconsistent with just and equitable principles of trade.

At that time, the NASD also considered the issue of trading activity in anticipation of the issuance of research reports but determined to address the issue on a case-by-case basis. Thus, in response to individual member firm requests for a position on the issue, the NASD staff informally had taken the position that trading based upon material, non-public market information could be considered a violation of just and equitable principals of trade. In 1994, however, the NASD solicited member comment in Notice To Members 94–40 (''NTM 94–40'') on the development of a formal policy that clearly would state that trading in anticipation of a research report would be deemed a violation of Article III, Section 1 of the Rules of Fair Practice. The NASD Board, in proposing this new Interpretation, also sought comment on a policy to recommend, but not require, that member firms develop and implement ''Chinese Wall'' restrictions that would isolate research and trading activities within individual departments of the firm.

(b) Comments Received

In response to its proposal on trading ahead of research reports, the NASD received eleven comments that were fairly evenly split between support of and opposition to the proposed policy. Three firms either fully supported the proposal or suggested very minor changes. These firms believed that the proposed Interpretation would: (1) Clarify a member firm's obligations in Nasdaq and third market securities; (2) promote consistency among self-regulatory organization rules; (3) ease the compliance burden on the firms; and (4) engender greater investor confidence that the investor will not be disadvantaged by the professional.[2] Two other firms[3] supported the proposed policy in part, but expressed certain reservation. For example, A.G. Edwards believed that it was important that an Interpretation be developed to address issues related to a firm's unfair trading in advance of a research report. The firm also believed that any Interpretation should be extended to third Market trading in advance of research report on NYSE-listed companies. However, Edwards was concerned that the proposal could harm small capitalized issues with limited liquidity and it could undercut a firm's interest in developing research reports, especially with low liquidity stocks. J.P. Morgan's letter raised similar concerns.

Finally, six comments[4] opposed the adoption of the proposed Interpretation. These comments expressed two principle concerns with the proposal: (1) It would adversely affect the liquidity and pricing of Nasdaq SmallCap stocks because firms would not be able to develop a readily available inventory in such stock to meet investor demand after the issuance of the report; and (2) member firms likely would diminish their research efforts because their own customers would not be able to benefit from securities that the firm had been able to secure at advantageous prices.

(c) Discussion

As noted above, the NASD has carefully examined its policies regarding the trading practices for member firms in anticipation of the issuance of a firm's research reports. The NASD believes that purposeful inventory adjustments made in anticipation of customer trading activity as a result of the firm's research report could appear to, and at times would, conflict with the firm's fiduciary duties toward its customers. The NASD, after weighing the issues related to the matter, has determined that in the interests of investor protection, it would be deemed a violation of just and equitable principles of trade if a member firm purposefully adjusts its inventory position in a Nasdaq security, in an exchange listed security that is traded in the third market, or in a derivative product of any such securities in anticipation of the issuance of a research report in that security. At the least, such purposeful activity creates an appearance of impropriety that harms the perception of the marketplace and could lead to a loss of investor confidence. The NASD notes that it is important that investors understand that they will not be disadvantaged by professionals, and accordingly, it seeks to further enhance its rules and policies that promote the fair treatment of investors and maintain the confidence of such investors. This new policy should enhance the overall perception of Nasdaq and the third market and encourage investors to participate in those markets, thereby promoting liquidity. In addition, because the NASD believes that the proposed Interpretation is consistent with the policy found in NYSE Information Memorandum 91–8, this clear statement of NASD policy will promote consistency among self-regulatory organizations and help to alleviate compliance burdens for member firms that operate in multiple markets.

After considering the comments on the proposal in NTM 94–40, the NASD Board determined to refine the proposal slightly to incorporate comments recommending that the proposed Interpretation address third market trading in listed securities that are the subject of a firm's research report. The NASD believes it important from an investor protection viewpoint to clearly state that it would be a violation of just and equitable principles of trade if a member firm trading in the third market in anticipation of the issuance of a research report were to establish, increase, or decrease a position in an exchange-listed security. Without the inclusion of exchange-listed securities traded in the third market, there could be a significant gap in customer protection rules on this issue. Similarly, the NASD has amended its policy as proposed in NTM 94–40 to clarify that it would also be a violation if the firm were to decrease or liquidate its position in a security because it was about to issue a negative research report. This amendment to the proposed policy also closed a potential gap in the policy and clarified the intent of the NASD.

Finally, the NASD, in reaction to a comment letter[5] decided to include in the proposed Interpretation a prohibition regarding a member firm's attempts to do indirectly what it is not permitted to do directly. Accordingly, the proposed Interpretation prohibits a member firm from purposefully establishing, increasing, decreasing or liquidating a derivative security position in anticipation of the firm's issuance of a research report on the security underlying the derivative position. The NASD's concern is, for example, that by trading in options on an underlying security that is to be the subject of a research report, the member

[2] See letters from Merrill Lynch; Lehman Bros.; and the Association for Investment Management and Research (''AIMR'').

[3] See letters from J.P. Morgan Securities and A.G. Edwards.

[4] See letters from Kemper Securities, Inc.; Brown & Wood; Pacific Growth Equities; Conning & Co.; First Albany; and Rauscher Pierce Refsnes, Inc.

[5] See Lehman Bros. letter.

firm is doing by means of an economically equivalent transaction that which it would otherwise be prohibited from doing. Such activity would undermine the effectiveness of the proposed Interpretation.

The proposed Interpretation specifically notes that the intent of the prohibition is to cover situations where the member firm is ''purposefully'' altering its inventory position in anticipation of the issuance of a favorable or unfavorable research report. In accord with that intent, the proposed Interpretation is not intended to halt all of a firm's trading activity in that security. Even if the trading desk knows of a forthcoming research report on a particular security, the trading desk is fully permitted to continue to trade with its retail customers or with other broker-dealers if such trading arises from unsolicited order flow. Similarly, the proposed Interpretation would not apply to situations where the firm conducts research solely for in-house use and such research is not made available for external distribution.

In addition, the proposed Interpretation encourages but does not require firms to establish Chinese Wall procedures to control the flow of information between their research and trading departments. Such Chinese Wall procedures are risk management control adopted by securities firms that include physical and informational barriers between different departments of firms to enhance the likelihood that knowledge of upcoming events will be isolated within a single group and not disclosed to other groups that might trade on or otherwise benefit from the information. Because many firms today already use Chinese Wall restrictions between the research and trading departments of their firms, the NASD decided that the policy should encourage but not require the use of Chinese Walls as the preferred method of complying with the new policy.

While the NASD's proposed Interpretation would not require a member to develop Chinese Wall procedures, the NASD believes that Chinese Wall restrictions are the most effective means for a member firm to demonstrate that any trading activity before its issuance of a research report had not been in violation of the proposed Interpretation. Accordingly, if a member decides not to implement Chinese Wall procedures, it would carry the significantly greater burden of proving that stock accumulations or liquidations prior to the issuance of a research report had not been purposeful if an NASD investigation into the firm's buying or selling activity were initiated. Chinese Wall procedures are therefore, the recommended and preferred approval, but members are allowed to analyze their own environments and determine where Chinese Wall procedures were appropriate for their firm.

While some commenters on NTM 94–40 objected to the proposed policy, the NASD notes that such comments were almost equally balanced by comments expressing strong support for the proposed policy. Indeed, even those commenters objecting to the proposal recognized that there were significant investor protection concerns that could arise when a firm adjusted its inventory positions in anticipation of its issuance of a research report. While not disregarding such investor protection issues, such commenters were more concerned about how they believed the proposed Interpretation would impact the liquidity of less well-capitalized stocks, and the potential dissemination of research into such smaller companies. Several firms raising this issue argued that they should be permitted to ''passively'' accumulate inventory positions and pass along the advantageous cost of acquisition to its customers when the research report was released.

Such comments, however, did not deal with two fundamental issues: (1) Trading ahead of customers based on non-public information; and (2) fair pricing in subsequent resales. Accordingly, because the practice of purposefully adjusting inventory in anticipation of research report issuance raises such significant potential for disadvantaging public investors, the NASD believes that the better practice is to prohibit such activity as violative of just and equitable principles of trade.[6] Accordingly, the NASD believes that the proposed rule change is consistent with Section 15A(b)(6) in that these proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, 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. The NASD believes that any potential negative effects of the policy will be significantly outweighed by the increased confidence of investors and their corresponding willingness to trade with member firms.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments regarding the NASD's proposal in NTM 94–40 are summarized above.

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 NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 NASD. All submissions should refer to SR–NASD–95–28 and should be submitted by July 19, 1995.

[6] The issuance of research reports also may raise issues under the Securities Act of 1933 and the Act. *See, e.g.*, Section 5 of, and Rules 137, 138 and 139 under, the Securities Act of 1933 and Rule 10b–6 under the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15812 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35879; File No. SR–MSRB–95–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

June 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, notice is hereby given that on June 16, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. 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 Board is filing the proposed rule change to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business.[1]

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 Board 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 Board 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

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[2] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published four prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G–37.[3] In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G–37, and, from time to time, will publish additional notices of interpretations, as necessary.[4] In light of questions recently received from market participants concerning the applicability of the rule to contributions to issuer officials seeking election to the U.S. Presidency, as well as the operation of the exemption provision set forth in section (i) of rule G–37, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this fifth set of questions and answers.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in manicipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, the Board does not believe that the proposed rule change will impose any burden on competition 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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, 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 purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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[1] The Board plans to publish the interpretations in MSRB Reports Vol. 15, no. 2, at 3 (July 1995). The interpretations also are available for inspection and copying at the Commission's public reference room and at the Board.

[2] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[3] *See* Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Exchange Act Release No. 34603 (Aug. 25, 1994), 59 FR 45049 (Aug. 31, 1994); Securities Exchange Act Release No. 35128 (Dec. 20, 1994), 59 FR 66989 (Dec. 28, 1994) and Securities Exchange Act Release No. 35544 (Mar. 28, 1995), 60 FR 16896 (Apr. 3, 1995). See also MSRB Reports Vol. 14, No. 3 at 11–16 (June 1994); Vol. 14, No. 4 at 31–32 (August 1994); Vol. 14, No. 5 at 8 (December 1994) and Vol. 15, No. 1 (April 1995) at 21; MSRB Manual, General Rules, Rule G–37 (CCH) ¶ 3681.

[4] File Nos. SR–MSRB–94–6, SR–MSRB–94–15, SR–MSRB–94–16 and SR–MSRB–95–02.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–95–11 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15809 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35876; File No. SR–CBOE–95–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees for the Provision of Last Sales Data

June 21, 1995.

Pursaunt to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 23, 1995, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. 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 CBOE hereby gives notice that it is establishing a fee, pursuant to Rule 2.22 (''Other Fees or Charges''), for the provision to members of last sales tape data (''Time and Sales'' data) over the CBOE Trade Match (''CTM'')[1] terminal network. This service will replace the Exchange's present service whereby Time and Sales data is provided on microfiche. Consequently, the Exchange is also eliminating the fee associated with the microfiche service.

The text of the proposed rule change is available at the Office of the Secretary, 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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee for a new service the Exchange is offering to its members to enable the members to obtain Time and Sales data.

The Exchange has been providing a service to its members whereby the Exchange would reproduce on microfiche the last sales tape, which reports all of the daily sales on the Exchange and the time of those sales. The fee for this service has been $335 per month. However, the cost of reproducing this report on microfiche has continued to rise to the point that the Exchange has been unable to cover its expenses at this price. Consequently, the Exchange has decided to discontinue this service, which has been used by few members due to its cost.

In place of this microfiche report, the Exchange is now offering to its members the opportunity to access the Time and Sales data on-line on the CTM terminal network.[2] The fee for this service will be $175 per month. In addition, a firm will be charged $5 for each recall of data older than three days. There will be no charge for the first five such historical recalls in a given month.

In addition to reducing costs to members and eliminating a cost to the Exchange, this new proposal provides a number of other advantages. This service provides immediate access to information using terminals that are already present in members' back offices, eliminates fiche storage, and allows the printing of specific pages when necessary.

The CBOE represents that the proposed rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable distribution of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No 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

The rule change described herein establishes or changes a due, fee, or other change imposed by the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e) thereunder. At any time within 60 days of the filing of such 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

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[1] The CTM is a comparison system for trades, used to resolve any discrepancies between price, quantity, parties, and contract terms. Subsequent to the execution of a trade on the Exchange, the Exchange. through computer runs, matches the trade information data recorded by the purchasing member with the information recorded by the selling member. Clearing members are advised of transactions for which matching buy and sell data has not been submitted. After allowing the relevant clearing members to submit corrections or changes, the matched transaction data is sent by the CBOE to the Options Clearing Corporation for clearance and settlement. *See* Securities Exchange Act Release No. 30000 (November 26, 1991) 56 FR 63531 (December 4, 1991).

[2] The CTM terminal network is an internal on-line network of the Exchange through which clearing firm members of the Exchange can access information on matched and unmatched trades. Back office personnel of clearing firm members generally have access to the CTM terminal network in their offices.

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–95–29 and should be submitted by July 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15808 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Air-Cure Environmental, Inc., Common Stock, $.001 Par Value, Redeemable Warrants) File No. 1–10668

June 22, 1995.

Air-Cure Environmental, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, its common stock is listed on the American Stock Exchange, Inc. (''Amex'') and its redeemable warrants are quoted on Nasdaq. The issuer cannot justify the expense of having the securities dually and therefore, wishes to withdraw from the BSE.

Any interested person may, on or before July 14, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–15839 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21156; 811–8232]

Nationar Funds, Inc.; Notice of Application

June 21, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Nationar Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 22, 1995 and amended on June 5, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 330 Madison Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a New York corporation. On December 21, 1993, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 to register its shares. The registration statement became effective on June 13, 1994, and the initial public offering commenced on June 16, 1994.

2. On February 6, 1995, the Acting Superintendent for the Banks of the State of New York took possession of Nationar, applicant's investment adviser, a commercial bank organized under the laws of the State of New York. During a telephonic board meeting held on February 13, 1995, applicant's board of directors considered what was the appropriate action to be taken regarding the applicant and its funds. At that time, the board of directors took formal action to close applicant's Money Market Portfolio as all of the shareholds other than Nationar had redeemed their shares. At a subsequent telephonic meeting of applicant's board of directors held on February 17, 1995, the chairman reported that he had been contacted by most, if not all, of the shareholders in each of applicant's other funds and had been advised that all of them were contemplating redeeming their shares. Throughout the period February 6, 1995 through February 17, 1995, officers of Nationar, fund counsel and applicant's accountants had been communicating with the SEC and the New York State Banking Department in order to determine what action should be taken with respect to applicant and its funds. By unanimous written consent dated March 1, 1995, the board of directors adopted resolutions authorizing the officers of the applicant to take all such action as necessary to cease offering shares of applicant's Money Market Portfolio, Government Securities Portfolio, and U.S. Mortgage Securities Portfolio.

3. All assets of applicant have been distributed to shareholders through individual redemptions. Immediately prior to the redemptions, each fund's assets were converted into cash. No brokerage commissions or other fees were paid in connection with the redemptions or the conversion of portfolio securities into cash.

4. All expenses incurred in connection with the liquidation,

approximately $37,500, consisting of legal fees and trustee fees, were paid by applicant. Certain deferred organizational expenses of $79,116 were assumed and paid by the Adviser.

5. As of the date of the application, applicant had no debts or liabilities and is not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant intends to file a certificate of dissolution with the State of New York.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15813 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 50252 and 50253]

Applications of Prime Air, Inc., d/b/a Transmeridian Airlines, for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 95–6–25).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Prime Air, Inc. d/b/a TransMeridian Airlines fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 29, 1995.

ADDRESSES: Objections and answers to objections should be filed in Dockets 50252 and 50253 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: June 22, 1995.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–15822 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Receipt of Revision To Approved Noise Compatibility Program and Request for Review; Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed revision to the approved noise compatibility program that was submitted for Reno/Tahoe International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150 by the Airport Authority of Washoe County, Nevada. The Noise Compatibility Program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Reno/Tahoe International Airport were in compliance with applicable requirements effective February 22, 1991. The Noise Compatibility Program for Reno/Tahoe International Airport was approved by the FAA on September 1, 1993. The proposed revision to the approved noise compatibility program will be approved or disapproved on or before December 10, 1995.

EFFECTIVE DATE: The effective date of the start of FAA's review of the revision to the approved noise compatibility program is June 13, 1995. The public comment period ends July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Elisha Novak, Senior Planner, SFO–612, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone 415/876–2928. Comments on the proposed revision to the approved noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed revision to the approved noise compatibility program for Reno/Tahoe International Airport which will be approved or disapproved on or before December 10, 1995. This notice also announces the availability of this revision for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the revision to the approved noise compatibility program for Reno/Tahoe International Airport, effective June 13, 1995. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. On September 1, 1993, the FAA approved the noise compatibility program for Reno/Taho International Airport. An announcement of FAA's approval of the noise compatibility program was published in the Federal Register on September 24, 1993. Preliminary review of the submitted material for the revision indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180-days, will be completed on or before December 10, 1995.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measure may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revision with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed revision to the approved noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591
Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthrone, California 90261
Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303
Mr. Robert C. White, Director of Aviation, Airport Authority of Washoe County, Nevada, Box 12490, Reno, Nevada 89510

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on June 13, 1995.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 95–15891 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

T.F. Green State Airport; Providence, Warwick, RI; Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Rhode Island Department of Transportation (RIDOT) for T.F. Green State Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is June 15, 1995.

FOR FURTHER INFORMATION CONTACT: John Silva, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for T.F. Green State Airport are in compliance with applicable requirements of Part 150, effective June 15, 1995.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by RIDOT. The specific maps under consideration are Figure 6–1, 1993 Baseline DNL Contours, and Figure 6–7, 1998 Forecast DNL Contours Using Airport Master Plan Forecasts, each of which is published in ''Revised Noise Exposure Maps for T.F. Green State Airport'', dated April 1995. FAA has determined that these maps for T. F. Green State Airport are in compliance with applicable requirements. This determination is effective on June 15, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours; or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New England Region, Airports Division, 16 New England Executive Park, Burlington, Massachusetts 018033
Rhode Island Airport Corporation, T. F. Green State Airport, Warwick, Rhode Island 02886

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, June 15, 1995.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 95–15892 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Public Conference

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: This notice announces an International Conference on Cabin Safety Research, which is being held by the Federal Aviation Administration (FAA) for the purpose of presenting the agency's Cabin Safety Research Program (CSRP) plan, and soliciting input from the public on the content of the plan. The CSRP and the conference are being jointly sponsored by the Joint Aviation Authorities (JAA) of Europe, and Transport Canada Aviation (TCA).

DATES: The Conference is scheduled for Tuesday thru Thursday, November 14–16, 1995. Registration will begin at 7:30 a.m., November 14 and the Conference will begin at 8:30 a.m.

REGISTRATION: Persons planning to attend the public conference are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information. Pre-registration is requested by October 13, 1995.

ADDRESSES: The public conference will be held at Harrahs Casino-Hotel, 1725 Brigantine Boulevard, Atlantic City, New Jersey 08401, telephone 1–800–242–7724 (outside the United States: 609–441–5600).

FOR FURTHER INFORMATION CONTACT: April Horner, Galaxy Scientific Corporation, c/o FAA Technical Center, Fire Safety Branch, AAR–422, Bldg. 287, Atlantic City International Airport, New Jersey 08405, telephone 609–485–4471, fax 609–646–5229, or on internet at: smtplink%april__horner__at__ct27 @admin.tc.faa.gov.

SUPPLEMENTARY INFORMATION: Notice is given of a public conference November 14–16, 1995 at the Harrahs Casino-Hotel, 1725 Brigantine Boulevard, Atlantic City, New Jersey 08401. The purpose of this conference is to present the proposed joint FAA/JAA/TCA Cabin Safety Research Program plan to the interested public, and provide an opportunity for public comment and provide input on the content of the plan.

Cabin safety has long been the focus of extensive research. This research has historically taken two primary forms: (1) Study of means to increase the speed at which evacuation from an airplane is possible, and (2) Study of means to prolong the time available for evacuation. Examples of the former include exit sizes and access provisions, escape slide performance and effects of interior features. Examples of the latter include material flammability and fire protection systems. In addition, research into human tolerance and impact protection has more recently assumed a greater overall role in the research program.

Until recently this research has at various times been focused on very specific areas and has been conducted mostly independently of other cabin safety research. Evacuation research at the FAA is conducted at the Civil Aeromedical Institute (CAMI) in Oklahoma City, Oklahoma; fire safety research is conducted at the Technical Center in Atlantic City, New Jersey. Research into crash dynamics is conducted at both facilities, with CAMI concentrating on human tolerance and seating systems and the Technical Center concentrating on airframe structural performance. Various facilities in Europe and Canada conduct research in specific areas.

While research up to now has been very productive and has resulted in improved safety standards, it has been largely carried out in piecemeal fashion, outside of a systematic framework. There has been no formal vehicle to integrate all cabin safety research so that the benefits are maximized, and the available funds are spent most efficiently. The FAA has developed such a vehicle to improve both the efficiency and quality of future cabin safety research. Because research will often result in new guidance or regulation, and because the aviation industry is largely an internation entity, this potential regulatory impact must be harmonized between regulatory authorities. Therefore, the FAA has coordinated on the development of the CSRP with the joint Aviation Authorities and Transport Canada Aviation.

The agenda for the conference will include:

Tuesday, November 14, 1995

Morning Session

- Opening Address (Addresses)
- Overview of Program and Plan
- Presentations pertaining to overall Program

Afternoon Session

- Presentations and discussion on Evacuation

Wednesday, November 15, 1995

Morning Session

- Presentations and discussion on Crash Dynamics
- Presentations and discussion on Inflight Emergencies

Afternoon Session

- Presentations and discussion on Fire Safety

Thursday, November 16, 1995

Morning Session

- Break Out Sessions

Afternoon Session

- Reconvene and present recommendations
- Closing statements

Attendance is open to the interested public, but will be limited to the space available.

Conference Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at Harrahs Hotel-Casino at a Conference rate. Persons wishing to attend the Conference are encouraged to make reservations by October 13, 1995, by contracting the Hotel direct at 1–800–242–7724 (outside the United States: 609–441–5600).
Be sure to identify yourself as an FAA Cabin Safety Conference attendee to receive the special rate.

Persons in Canada that wish to pre-register, may contact the following, in lieu of the person listed under **FOR FURTHER INFORMATION CONTACT**, if that would be more convenient: Mr. Claude Lewis, Transport Canada Aviation, Airworthiness Branch—AARDH, Ottawa, Ontario, Canada KIA 0N8, Telephone: 613–990–5906.

Persons who plan to attend the Conference should be aware of the following procedures which are established to facilitate the workings of the conference.

1. The Conference will be open on a space available basis to all persons registered.
2. There is no fee for attending the conference however, no meals/refreshments will be provided.
3. Following each presentation, a brief question and answer period will be allowed and all persons will be given the opportunity to open discussions on the presentation, within the time available. In addition, there will be separate, break-out sessions on each of the technical areas for open discussion.
4. Statements made by FAA participants at the conference will not be taken as expressing final FAA positions.

Issued in Renton, Washington, on June 16, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–15893 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

DEPARTMENT OF THE INTERIOR

National Parks Service

[Docket No. 25149]

Airspace Management Over the Grand Canyon National Park; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT and National Parks Service (NPS), DOI.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location of a public meeting to address issues related to Special Federal Aviation Regulations for the Grand Canyon (SFAR No. 50–2). In October 1994, the National Parks Service submitted its Report to Congress as required by Public Law 100–91. The purpose of this meeting is to provide the

public with the opportunity to provide comments on improving SFAR No. 50–2 with respect to safety and mitigating the noise impacts of aircraft overflights of the Grand Canyon.

DATES: The meeting will be held on August 30, 1995, in two sessions. The first session will begin at 1 p.m.; the second session will begin at 7 p.m.

ADDRESSES: The meeting will be held at the Best Western Woodlands Plaza Hotel, 1175 West Route 66, Flagstaff, Arizona (520) 773–8888.

Persons unable to attend the meeting may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 25149, 800 Independence Avenue, SW., Washington, DC 20591. Written comments are invited and must be received on or before September 8, 1995

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Effie Upshaw, FAA, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7626.

Questions concerning the subject matter of the meeting should be directed to Ellen Crum, telephone (202) 267–8783, FAA, Air Traffic Rules Branch, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1987, the FAA issued SFAR No. 50 (subsequently amended on June 15, 1987; 52 FR 22734) establishing flight regulations in the vicinity of the Grand Canyon. The purpose of the SFAR was to reduce the risk of midair collision, reduce the risk of terrain contact accidents below the rim level, and reduce the impact of aircraft noise on the park environment.

On August 18, 1987, Congress enacted legislation that, in part, required a study of aircraft noise impacts at a number of national parks and imposed flight restrictions at three parks: Grand Canyon National Park in Arizona, Yosemite National Park in California, and Haleakala National Park in Hawaii (Pub. L. 100–91, the National Park Overflights Act of 1987).

As part of Public Law 100–91, the NPS was required to evaluate whether the Grand Canyon airspace management plan (now known as SFAR 50–2) ''has succeeded in substantially restoring the natural quiet in the park;'' and ''such other matters, including possible revisions in the plan, as may be of interest.'' In that legislation, Congress found that ''Noise associated with aircraft overflights at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park * * *.''

Further, Public Law 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon. In December 1987, the DOI transmitted to the FAA its recommendations for an aircraft management plan at the Grand Canyon which included both rulemaking and nonrulemaking actions. If the FAA determined that executing the recommendations would adversely affect aviation safety, the FAA was required to revise the DOI recommendations to resolve the safety impact and to issue regulations implementing the revised recommendations in the plan.

On May 27, 1988, the FAA issued SFAR No. 50–2 revising the procedures for operation of aircraft in the airspace above the Grand Canyon (53 FR 20264, June 2, 1988). The rule implemented DOI's preliminary recommendations for an airspace management plan with some modifications that the FAA initiated in the interest of aviation safety.

A further requirement of Public Law 100–91 relative to the FAA's plan (SFAR No. 50–2) was that the NPS study and discuss: ''(A) whether the plan has succeeded in substantially restoring the natural quiet in the park; and (B) such other matters, including possible revisions in the plan, as may be of interest.'' The NPS submitted its Report to Congress in October 1994. On June 15, 1995, the FAA extended the expiration date of SFAR No. 50–2 from June 15, 1995, to June 15, 1997, to allow the FAA sufficient time to review thoroughly the NPS recommendations as to their impact on the safety of air traffic at the Grand Canyon National Bank (60 FR 31608).

The FAA and the NPS have sought to keep this process open to the public. The two agencies jointly published an advance notice of proposed rulemaking (ANPRM) (59 FR 12740) on March 17, 1994, seeking public comment on general policy and specific recommendations for voluntary and regulatory actions to address the impact of aircraft overflights of national parks. That same month, the two agencies hosted a workshop entitled, ''Finding a Balance'' at Flagstaff, Arizona for all interested parties. This meeting is a part of the commitment to continuing that open process.

The NPS report makes recommendations for changes to the SFAR, primarily related to achieving and maintaining the substantial restoration of natural quiet over time and in respect to a growing air tour industry. While the FAA evaluates the NPS recommendations, both agencies are seeking public comment on how the SFAR can be improved with respect to better achieving the congressional intent of ''providing for substantial restoration of natural quiet and experience of the park and protection of public health and safety * * *'' and how this can be done safely for the benefit of everyone involved.

The NPS report recommendations involved (1) expansion of flight-free zones, (2) introduction of quiet aircraft technology, and (3) other measures designed to minimize the impact of aircraft noise on the park. Based on these recommendations, public comment at the meeting is sought on the following specific questions:

- Can air tour operations be regulated differently, in ways that will better contribute to restoring or maintaining the substantial restoration of natural quiet while maintaining or improving safety? How? What are the implications of those changes?
- Should the future growth of the air tour industry be managed to maintain the natural quiet of the park? How?
- How effectively can quiet aircraft technology contribute to the substantial restoration of natural quiet at Grand Canyon? In what timeframe should this technology be considered? What would be the impact on tour operators to acquire and use quiet aircraft technology? How many tour operators currently use or have plans to use quiet aircraft technology? If beneficial, what incentives need to be considered?
- Given appropriate timeframes, can a viable air tour industry be maintained with the establishment of ''quiet aircraft'' routes? With the future closure of the Dragon Flight Corridor and rerouting of traffic on a new route to the east?
- How can enlargement of the flight-free zones effectively contribute to the restoration of natural quiet at the Grand Canyon? Are there any economic impacts associated with these types of actions?
- What, if any, impact would result from the imposition of one-way traffic on commercial tour routes in the flight corridors across the Grand Canyon (a measure recommended to mitigate noise in some corridors)?
- Would establishment of ''no fly'' periods impact air tour operators and other visitors to the park? What time periods should be considered?
- Would expanding the special flight rules area ceiling from 14,499 to 17,999 feet mean sea level effectively

contribute to aiding or maintaining a substantial restoration of natural quiet at Grand Canyon? Is there a more appropriate altitude? Are there safety concerns associated with this?

• What other actions can be taken to assist in maintaining safety and the ''natural quiet'' of the park environment?

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than August 24, 1995. Such requests should be submitted to Effie Upshaw as listed in the section titled **FOR FURTHER INFORMATION CONTACT**, and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if time is available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers who will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room. (Registration will open 30 minutes before the beginning of each session.)

(2) The meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

(3) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(4) The FAA/NPS will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA/NPS reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(5) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested at the above number 10 calendar days before the meeting.

(6) Representatives of the FAA and NPS will preside over the meeting. A panel of FAA and NPS personnel involved in this issue will be present.

(7) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(8) Position papers or material presenting views or information on airspace management over the Grand Canyon will be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA/NPS requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(9) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA/NPS.

(10) The meeting is designed to solicit public views and more complete information on the airspace management at the Grand Canyon. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC on June 16, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration.

Dr. Wesley R. Henry,

Overflight Issues Coordinator, National Park Service.

[FR Doc. 95–15897 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Charlottesville-Albermarle Airport, Charlottesville, VA

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 use the revenues from a PFC at Charlottesville-Albermarle 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 July 28, 1995.

ADDRESSES: Comments on the application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airport District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan Elliot, Director of Aviation, Charlottesville-Albermarle Airport Authority, at the following address: Charlottesville-Albermarle Airport Authority, 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albermarle Airport Authority under Section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church Virginia 22046. 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 use the revenue from a PFC at Charlottesville-Albermarle 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 April 26, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Charlottesville-Albermarle Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the

application, in whole or in part, no latter than July 26, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00.

Proposed charge effective date: April 1, 1995.

Proposed charge expiration date: June 15, 2001.

Total estimated PFC revenue: $2,697,646.

Brief description of proposed project(s): PFC will be use to fund the sponsor share of the following projects.

—Purchase Snow Blower and Broom
—Purchase Snow Loader/Plow
—Overlay Runway 3–21
—Purchase Aircraft Rescue and Firefighting Vehicle
—Purchase Runway Deicing Vehicle Device

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/commercial operators filing FAA Form 1800–31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York on June 16, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–15894 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Rhinelander—Oneida County Airport, Rhinelander, WI

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 use the revenue from a PFC at the Rhinelander—Oneida County Airport at the following address: Rhinelander—Oneida County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joseph Brauer, Manager of the Rhinelander—Oneida County Airport at the following address: Rhinelander—Oneida County Airport, 3375 Airport Road, Rhinelander, Wisconsin 54501.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhinelander—Oneida County Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, (612) 725–4221. 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 use the revenue from a PFC at the Rhinelander—Oneida County 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 June 13, 1995, the FAA determined that the application to use the revenue from a PFC submitted by the Rhinelander—Oneida County Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 14, 1995.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: January 1, 1994.

Estimated charge expiration date: March 30, 1996.

Total approved net PFC revenue: $200,451.

Brief description of proposed projects: Acquire snow removal vehicle, and install sanitary sewer and water to the terminal building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhinelander—Oneida County Airport.

Issued in Des Plaines, Illinois on June 19, 1995.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–15895 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenues From a Passenger Facility Charge (PFC) at Tri-State Airport, Huntington, WV

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 Tri-State 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 July 28, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Beckley Airports Field Office, Main Terminal Building—Room 101, 469 Airport Circle, Beaver, West Virginia 25813–9759.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry G. Salyers, Airport Manager for the Tri-State Airport Authority, at the following address: Tri-State Airport Authority, 1449 Airport Road, Unit 1, Box 12, Huntington, West Virginia 25704–9043.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-State Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Elonza Turner, Acting Manager, Beckley Airports Field Office, Main Terminal

Building—Room 101, 469 Airport Circle, Beaver, West Virginia 25813–9759. 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 Tri-State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tri-State Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 7, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1995.

Proposed charge expiration date: September 30, 1997.

Total estimated PFC revenue: $591,300

Brief description of proposed project(s):

—Modification to the existing terminal building and roadway system to provide handicap accessibility and passenger convenience. A canopy will be provided along the handicap accessibility curb front to offer covered drop-off and pick-up of passenger and baggage.

—Replace old engine generators (4 units) with one new engine generator to provide emergency power for the terminal facility and the ARFF building.

—Purchase a truck mounted sweeper unit to remove snow from Runways and Taxiways.

—Purchase snow blower to displace snow for the airport operational services.

—Reconstruct a section of the Taxiway (approx. 2,300′ x 50′) parallel to Runway 12/30 and widen Taxiway fillets.

—Reimburse Airport Authority for the preparation and coordination of PFC application.

Class or classes of air carriers which the public agency has requested not be required to collect PFC: Air Taxi/commercial operators filing FAA Form 1800–31 and Unscheduled Part 135 and Part 121 operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-State Airport Authority.

Issued in Jamaica, New York on June 20, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–15896 Filed 6–27–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 27–01]

Organization and Functions of the Office of the Assistant Secretary (Management) and Chief Financial Officer (CFO)

June 22, 1995.

1. *Purpose.* This Directive describes the organization of the Office of the Assistant Secretary (Management) and CFO.

2. *The Assistant Secretary (Management) and CFO.* The following are the functions of the Assistant Secretary (Management) and CFO (the ''Assistant Secretary'').

a. Serves as the CFO of the Department of the Treasury, with authorities and functions pursuant to the Chief Financial Officers Act of 1990, Pub. L. 101–576 (''the Act''), and, as CFO, is responsible for carrying out the following functions for the Department and all bureaus (described as Departmentwide in this Directive).

(1) Oversees Departmentwide financial management, accounting policy, internal controls, cash management, credit management, debt management, coordination of responses to General Accounting Office (GAO) activities relating to financial management, and corrective actions related to audit recommendations.

(2) Specifies the format, content and frequency of financial reports and statements, including overseeing the development of performance measurement indicators prepared by bureau program and financial components.

(3) Reviews and approves the development, implementation, and maintenance of an integrated agency and bureau financial management system(s), as defined by Office of Management and Budget (OMB) Circular A–127, to ensure that such systems produce information in compliance with generally accepted accounting principles, standards, and requirements for all Departmentwide administrative and program areas.

(4) Reviews and approves financial statements and reports prepared at the bureau or Departmental level prior to submission to external parties.

(5) Prepares and transmits to the Secretary and OMB an annual report which includes items specified in 31 U.S.C. 902(a)(6).

(a) Description and analysis of the status of financial management, Departmentwide.

(b) Annual financial statements and reports prepared and audited pursuant to the Act.

(c) Summary of the Federal Managers' Financial Integrity Act (FMFIA) Report.

(d) Other information that warrants communication to the President and Congress concerning Departmentwide financial management.

(6) Develops and manages the Department's budget for the Secretary and Deputy Secretary.

(7) Directs the biennial review of fees, royalties, rents and other charges imposed by the Department or a bureau and recommends changes.

(8) Reviews, in accordance with the procedures established in Treasury Directive (TD) 28–02, ''Legislative Procedures,'' all legislative items related to or concerning financial management matters subject to review and coordination pursuant to TD 28–02, to provide advice and comments on financial management issues, including costs and benefits.

(9) Provides direction and policy guidance to program managers on financial management matters.

(10) Develops Departmentwide policies and provides oversight related to qualifications, recruitment, training, selection and retention of financial management personnel.

(11) Chairs the Departmentwide Treasury Chief Financial Officers Council.

(12) Assumes any other function conferred upon the CFO by statute, governmentwide regulation, or Treasury Orders and Directives.

b. Serves as the principal policy adviser to the Secretary and Deputy Secretary on matters involving the internal management of the Department and its bureaus. The Assistant Secretary oversees the Department's management programs, which include: personnel and training; affirmative action and equal

employment opportunity; security; property management, procurement and contracting; strategic planning and organizational improvement; and program reviews of legislative proposals, in accordance with TD 28–02, to provide advice to the Secretary on cost and benefit estimates.

c. Oversees bureau proposals related to the development of budgetary resources for information systems.

d. Provides comprehensive administrative services to Departmental Offices and other components of the Department, as appropriate.

e. Provides Departmental oversight and supervision of the Treasurer of the United States.

f. Monitors financial execution of the budget and ensures the issuance of timely performance reports to management officials.

3. *Organization Structure.* The Assistant Secretary supervises the Treasurer of the United States, the Director, Office of Security, the Deputy CFO, and three Deputy Assistant Secretaries: (a) Departmental Finance and Management; (b) Information Systems; and (c) Administration. An organization chart is attached.

4. *The Treasurer of the United States* advises the Assistant Secretary, Deputy Secretary and the Secretary on matters relating to coinage, currency and the production of other instruments issued by the United States and serves as the National Honorary Director for the Savings Bond program; serves as the principal policy official on all matters concerning general coinage and currency policy; and provides Departmental oversight of the United States Mint and the Bureau of Engraving and Printing by monitoring key bureau operations and activities, identifying problem areas, and tracking corrective actions. In this capacity, the Treasurer represents the Department on major media programs and other public forums. The Treasurer reviews currency issues and redemptions and signs currency. The Treasurer's signature, along with the Secretary of the Treasury's, appears on all currency issued by the United States.

5. *The Deputy Chief Financial Officer* reports directly to the Assistant Secretary and has Departmentwide responsibility for implementing the provisions of the Chief Financial Officers Act of 1990 and the Government Management Reform Act of 1994. The Deputy CFO also has Departmentwide responsibility for accounting policy and procedures; management controls; financial management systems and reports; and financial execution of the budget. The Deputy CFO supervises the following offices.

a. *The Office of Accounting and Internal Controls* develops, implements and evaluates Departmentwide accounting policy, designs form and content guidelines which are used to prepare financial statements; develops and reviews financial performance measures; reviews and coordinates accounting policy guidance developed by the Federal Accounting Standards Advisory Board; oversees Departmentwide compliance with the Federal Managers' Financial Integrity Act, Prompt Payment Act, Cash Management Improvement Act, and Federal Debt Collection Act; monitors the resolution and implementation of audit findings and recommendations; provides centralized coordination and monitoring of all Treasury related GAO audit activities; prepares the Department's CFO Annual Report; provides policy direction and oversight of the travel management and advisory committee management programs; and coordinates all activities associated with Treasury's financial management oversight of the Institute of American Indian Art.

b. *The Office of Financial Systems and Reports* guides and develops policies, procedures, and standards for integrating financial management and revenue systems Departmentwide; provides for automated financial reporting; reviews Departmentwide financial reports and financial statements; provides technical advice to bureaus on financial and revenue systems design and implementation; reviews and provides advice on financial management and revenue systems proposals submitted by bureaus under TD 32–02, ''Approval of Financial Management Systems;'' serves as systems administrator for Departmental level financial management systems; codifies the process for financial systems reviews and documentation; coordinates Departmentwide committees, user groups, task forces, and project teams that focus attention on financial management systems; and coordinates with the Joint Financial Management Improvement Program on development of governmentwide financial management systems requirements and standard general ledger requirements.

c. *The Office of Financial and Budget Execution* provides advice, guidance, and instructions on budget execution matters; maintains the Treasury Budget Manual in coordination with the Office of Budget; issues budget execution reports on Full Time Equivalents, budget authority, outlays, and receipts; coordinates the status of funds reviews, reprogramming and fund transfers; monitors congressional and OMB directives; validates and reconciles appropriations and budgetary resources; and supports budget formulation.

d. *The CFO Liaison Officer* serves as liaison between the Assistant Secretary, Deputy CFO, and the fund directors responsible for the Working Capital Fund, the Treasury Forfeiture Fund, and the Departmental Offices' reimbursable programs (exchange accounts); reviews financial systems, management controls, and resource allocations of those funds; coordinates and provides advice related to financial plans; and oversees FMFIA corrective actions.

6. *The Deputy Assistant Secretary (Departmental Finance and Management)* has Departmentwide responsibility for the Treasury Reinvention Team; personnel policies; budget formulation; customer assistance; program evaluation; planning policy and Treasury organization; the Treasury Executive Institute; equal opportunity programs; Treasury integrated management information systems, including automated payroll/personnel systems; procurement program management; real and personal property; and supports the Assistant Secretary on legislative matters. The Deputy Assistant Secretary supervises the following offices.

a. *The Office of Personnel Policy* provides leadership in developing Departmentwide personnel management policies and procedures and in oversight, consultation and evaluation activities; develops, recommends and implements functional personnel programs such as: employment and staffing, including Senior Executive Service (SES); classification and compensation; employee development, appraisal, recognition and benefits; employee and labor relations; and drug-free workplace, including drug testing.

b. *The Office of Equal Opportunity Program* provides leadership in developing Departmentwide polices and procedures pertaining to equal employment opportunity; provides for the consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age and disability; oversees, evaluates, and sets standards for the operation of the four Treasury Regional Complaint Centers which process complaints of discrimination for all bureaus; and directs and administers Departmentwide affirmative employment and special emphasis programs, such as the Hispanic Employment Program, the Federal

Women's Program, the Historically Black Colleges and Universities Program, and the Individuals with Disabilities Program.

c. *The Office of Treasury Integrated Management Information Systems* manages, operates and maintains the payroll/personnel system for bureaus; develops, conducts and maintains a full curriculum of technical training for bureau payroll/personnel staff; provides continuing user support, including user assistance in problem resolution and Departmentwide reporting; and ensures that the system meets the technical requirements of the Treasury community through the identification and development of system requirements and the negotiation of system modifications.

d. *The Treasury Executive Institute* operates under the sponsorship of the Treasury Career Advisory Panel (TCAP), which assists the Assistant Secretary by advising on and recommending developmental, educational and recognition programs to enhance the performance and competency of members of the SES. The TCAP is comprised of the highest ranking career SES member in each Treasury bureau and Departmental Offices.

e. *The Office of Real and Personal Property Management* provides policy and technical guidance for space management, real and personal property, fleet management, energy and water conservation, environmental quality and pollution abatement, historic preservation, metrication, recycling, workers compensation, occupational safety and health, precious metals recovery and audiovisual management programs; and reviews and evaluates bureau operations within these program areas.

f. *The Office of Procurement* provides leadership and policy guidance for Departmentwide procurement programs and systems; evaluates bureau procurement operations; directs the use of streamlined, cost effective means of procurement, including the purchase card; implements the Federal Acquisition Streamlining Act of 1994; oversees the activities of the Departmental Advocate for Competition; administers a Departmentwide career management program; and implements an effective, Departmentwide contract administration program.

g. *The Office of Small and Disadvantaged Business Utilization* implements the statutory mandate that agencies award a fair proportion of their acquisitions to small business concerns; promotes the participation of small businesses, small disadvantaged businesses, minority business concerns, and women-owned small businesses in prime and subcontract opportunities; promotes increased contracting with non-profit agencies for advancement of people who are blind or severely disabled; and assists bureaus to implement their small and minority business programs.

h. *The Office of Strategic Planning* coordinates the Department's strategic planning process to forecast and prepare for future problems and opportunities; guides bureaus in developing long-range plans; establishes Departmental priorities and strategic objectives; analyzes current goals, objectives and activities in terms of the future; develops basic objectives about missions, assumptions, long-range goals, strategies and the general range of required resources; conducts studies of issues with long-term or strategic impact on Treasury operations; and maintains the Departmental planning process.

i. *Office of Organizational Improvement* develops customer service and management improvement plans; provides guidance and direction in the development of performance indicators; conducts program evaluations to improve Departmentwide operations and the allocation of resources by the Departmentwide budget process; promotes quality management and continuous process improvement efforts within the bureaus; reviews bureau reorganization proposals submitted to the Assistant Secretary for approval; supports the Assistant Secretary on matters relating to legislation; coordinates the Department's streamlining initiatives and provides staff support for studies conducted for the President's Council on Management Improvement; prepares and publishes Treasury Orders, Directives, and Handbooks.

j. *The Office of Treasury Reinvention* serves as a consultant group to the Department to assist in achieving reinvention goals and provides focus and guidance on reinvention goals to bureaus and Departmental Offices process owners; encourages bureau and Departmental process owners to formulate and implement long-term strategies for achieving results in accordance with those envisioned in the National Performance Review report; and assists senior officials in finding ways to improve work processes.

k. *The Office of Budget* analyzes bureau resource requests and completes financial analyses related to resource allocations; makes recommendations to policy officials concerning budget priorities and strategy; maintains the Treasury Budget Manual in coordination with the Office of Financial and Budget Execution; and represents the Department on budget matters in contacts with OMB, congressional committees and other Government agencies.

7. *The Deputy Assistant Secretary (Information Systems)* serves as the Department's Senior Official for Information Resources Management and has Departmentwide responsibility for policy, oversight, and improvement of information systems, including hardware and software, communications systems, and privacy and security issues relating to information systems. The Deputy Assistant Secretary (Information Systems) provides policy and program management for the development of the Treasury Information Infrastructure (applications, services, technology), promoting the efficient and effective use of information technology and resources to enhance mission and employee performance. The Deputy Assistant Secretary supervises the Office of Information Resources Management and the Office of Telecommunications Management.

a. *The Office of Information Resources Management* manages a broad range of information resources management functions specified in the Brooks Act and the Paperwork Reduction Act, except for management issues related to telecommunications; coordinates and makes recommendations for information systems planning and budgeting; develops and coordinates policy and standards; approves and coordinates acquisitions and systems management; conducts information management reviews; manages Treasury Information Infrastructure development; provides electronic Commerce/Electronic Data Interchange (EC/EDI) program management; coordinates disabled accommodation programs and systems; provides information dissemination; manages data integrity board activities; promotes business process reengineering; provides leadership to appropriate interagency, reinvention projects; administers provisions of the Computer Security Act; conducts inventories of bureau sensitive systems and reviews security plans; develops and reviews computer security awareness training guidelines; and reviews and approves public reporting requirements; and coordinates Treasury external directories, forms, reports, records, and mail management program activities.

b. *The Office of Telecommunications Management* develops and manages the Departmentwide telecommunications program for local and wide area communications systems and services;

develops policies for cost-effective utilization of telecommunications resources by bureaus; provides management and financial oversight on Executive Agent telecommunications programs implemented by Treasury bureaus; reviews and coordinates the acquisition of communications systems and services throughout the Department; establishes and oversees program offices for voice, data, video, and wireless communications, including radio frequency spectrum engineering and management, to meet Departmentwide requirements; manages participation in intergovernmental telecommunications programs; and represents the Department on telecommunications matters in contacts with OMB and other agencies.

8. *The Deputy Assistant Secretary (Administration)* has responsibility for the Departmental Offices' administrative and management operating programs which include: administrative services; automated systems; facilities; budget formulation and execution; accounting and internal controls; management advisory services; personnel, payroll, and equal employment opportunity; printing and graphics; and procurement. The Deputy Assistant Secretary (Administration) is responsible for managing the Departmentwide disclosure services program, Working Capital Fund, Gifts and Bequest Fund, printing program and reimbursable agreement operations, which cross bureau lines. The Deputy Assistant Secretary (Administration) also serves as the Departmental Offices' liaison for activities required to comply with the CFO Act. Unless another Treasury Order, Directive, or delegation specifically states otherwise with respect to a specific function, the Deputy Assistant Secretary (Administration) is the head of the Departmental Offices for all administrative and management functions. The Deputy Assistant Secretary supervises the following offices.

a. *The Administrative Operations Division* provides a range of administrative support services to the Departmental Offices to include: building access security; environmental and physical safety; parking facilities; dining room; library and information services; domestic and international travel; Secretarial delegation travel; and management coordination for special projects. The Division manages the Departmentwide disclosure services program.

b. *The Automated Systems Division* provides automated information system services to Departmental Offices including: security; office automation; data processing; user support; applications development; and telecommunications services.

c. *Office of the Curator* provides coordination and direction for the restoration of the Treasury Building; conservation and maintenance of its historic collections; historical research on the building and collections to facilitate the development of special exhibits and other educational activities; and administers the Treasury Building tour program for the general public, as well as VIP tours for guests of the Department. The Office of the Curator falls within the immediate office of the Deputy Assistant Secretary (Administration).

d. *The Facilities Management Division* directs and coordinates the management of the Main Treasury Building, Treasury Annex, and related grounds, including space management, construction, maintenance, custodial care, personal property, mail, messenger and motor pool services, and Departmental Offices rental space.

e. *The Financial Management Division* formulates, presents, executes and manages the Departmental Offices' budget; maintains a comprehensive integrated financial management and accounting system in support of the financial resources under the jurisdiction of the Deputy Assistant Secretary (Administration); develops and directs the internal controls activities of the Departmental Offices; and supports the Deputy Assistant Secretary (Administration) in providing information to comply with the CFO Act. In addition, the Division provides financial management for the Department's Working Capital Fund and reimbursable programs which cross bureau lines.

f. *Office of Management Advisory Services* provides centralized short-term management advisory assistance to Departmental Offices and bureaus on a broad range of issues having Departmentwide or bureauwide impact, as well as cross-functional management operational support for the implementation of critical initiatives.

g. *The Personnel Resources Division* formulates and administers the operating personnel management and training programs for the Departmental Offices, including the Equal Employment Opportunity Discrimination Complaint Program and the Multi-Year Affirmative Action Plan Program, and provides payroll liaison services for Departmental Office employees.

h. *The Printing and Graphics Division* provides Departmentwide printing, graphics and printing procurement services; develops printing and copy machine management policy; and represents the Department on oversight agencies and interagency committees.

i. *The Procurement Services Division* provides operational procurement support for the Departmental Offices and manages certain Departmentwide procurements.

9. *The Office of Security* develops and administers Departmentwide policies for personnel, physical, and systems security and for emergency preparedness. Physical security includes industrial and information security, and systems security includes the following functional areas: computer security, telecommunications security, operations security (threat/vulnerability assessments), emissions security (TEMPEST), certificate management, and electronic authentication. The DO Personnel Security Branch under the Office of Security performs the operating personnel security functions for the Departmental Offices, including initiating and adjudicating investigations and granting security clearances for access to classified information. The Office of Security also represents the Department on committees organized under the Security Policy Board and the Overseas Security Policy Board and consults and coordinates with other agencies to fulfill program responsibilities.

10. *Cancellation.* TD 27–01, ''Organization and Functions—Office of the Assistant Secretary (Management)/ Chief Financial Officer,'' dated January 19, 1993, is superseded.

11. *Expiration.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

12. *Office of Primary Interest.* Office of Organizational Improvement, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary (Management) & CFO.

George Muñoz,

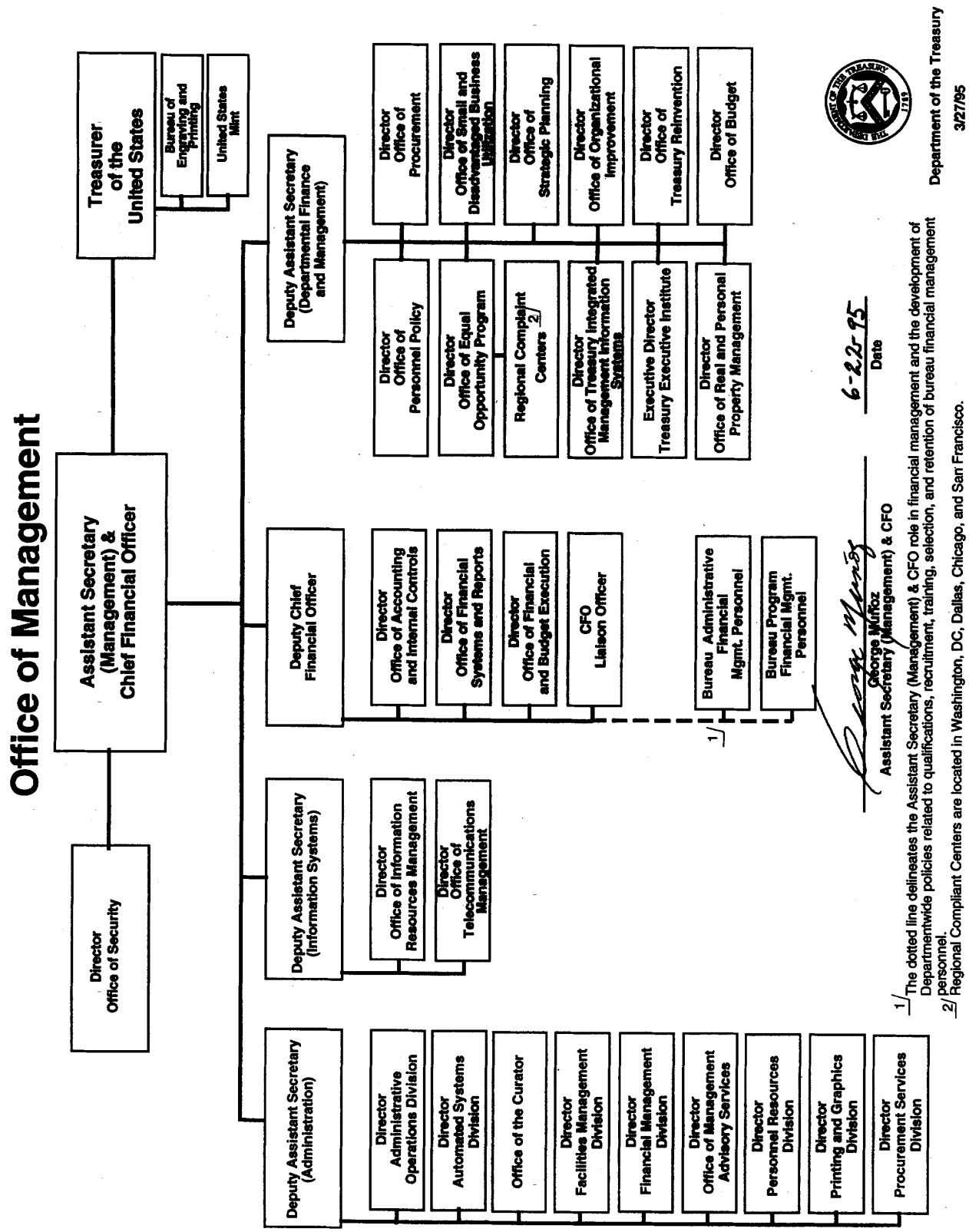
Assistant Secretary (Management) and CFO.

Attachment.

BILLING CODE 4810–25–P

TD 27-01
06-22-95

Attachment



1/ The dotted line delineates the Assistant Secretary (Management) & CFO role in financial management and the development of Departmentwide policies related to qualifications, recruitment, training, selection, and retention of bureau financial management personnel.

2/ Regional Compliant Centers are located in Washington, DC, Dallas, Chicago, and San Francisco.

[FR Doc. 95–15881 Filed 6–27–95; 8:45 am]
BILLING CODE 4810–25–C

Sunshine Act Meetings

Federal Register

Vol. 60, No. 124

Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COUNCIL ON DISABILITY

TYPE: Quarterly Meeting (Change of Venue)

SUMMARY: This notice announces a change of venue and sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of NCD. Notice of this meeting is required under Section 522b (e)(1) of the Government in the Sunshine Act, (P.L. 94–409).

DATES: July 24–26, 1995, 8:30 a.m. to 5:00 p.m.

LOCATION: President's Committee on Employment of People with Disabilities, Training Room, 1331 F Street NW, 3rd Floor, Washington, DC.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, NCD 1331 F Street, NW, Suite 1050, Washington, DC 20004–1107, Telephone: (202) 272–2004, (202) 272–2074 (TT).

AGENCY MISSION: NCD is an independent federal agency led by 15 members appointed by the President of the United States and confirmed by the U.S. Senate. The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify NCD by July 21, 1995.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of NCD shall be open to the public.

AGENDA: The proposed agenda includes:

Report from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
ADA Town Meeting Tour Update
ADA Fifth Anniversary
ADA Report
National Disability Summit
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all NCD proceedings and shall be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on June 26, 1995

Speed Davis,

Acting Executive Director.

[FR Doc. 95–16074 Filed 6–26–95; 3:42 pm]

BILLING CODE 6820–BS–M

NUCLEAR REGULATORY COMMISSION

DATE: Thursday, June 29, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, June 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on ''Clarification of Decommissioning Funding Assurance Requirements'' (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Note: Beginning July 2, 1995, the Nuclear Regulatory Commission will be operating under a delegation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it will be temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will continue to conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording) (301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: BILL HILL (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–16006 Filed 6–26–95; 1:06 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register

Vol. 60, No. 124

Wednesday, June 28, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

OMB Approval Numbers Under the Paperwork Reduction Act

Correction

In rule document 95–13790 appearing on page 29954 in the issue of Tuesday, June 6, 1995, make the following corrections:

§ 9.1 [Corrected]

On page 29954, in § 9.1, in the 3rd column, the 11 entries at the end of the table should read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Approval of State Underground Storage Tank Programs	
281.120(a)	2050–0068
281.120(g)	2050–0068
281.121	2050–0068
281.122	2050–0068
281.124	2050–0068
281.125	2050–0068
281.140	2050–0068
281.143(a)	2050–0068
281.150	2050–0068
281.152	2050–0068
281.161	2050–0068
* * * * *	

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

Correction

In rule document 95–14879 beginning on page 32218 in the issue of Tuesday, June 20, 1995, make the following corrections:

1. On page 32231, in Table IV, in the last column, ''108 reactors= $2,427,000 per reactor'' which now appears as the text of footnote 3 should have appeared as the last entry in the table.

§ 171.16 [Corrected]

2. On page 32245, in the second column, in § 171.16(c), in the table, in the first column, the first five lines should read ''Small businesses not engaged in manufacturing and small not-for-profit''.

BILLING CODE 1505–01–D

federal register

Wednesday
June 28, 1995

Part II

Department of Defense

48 CFR Parts 211, 227, and 252

Defense Federal Acquisition Regulation Supplement; Rights in Technical Data: Final Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 211, 227, and 252

[Defense Acquisition Circular (DAC) 91–8]

Defense Federal Acquisition Regulation Supplement; Rights in Technical Data

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: A proposed rule prescribing the final technical data regulations required by 10 U.S.C. 2320, Rights in Technical Data, was published in the **Federal Register** on June 20, 1994. Public comments were solicited. This final rule amends the Defense Federal Acquisition Regulation Supplement to prescribe those regulations. It includes changes to the proposed rule necessitated by the Federal Acquisition Streamlining Act of 1994 and changes made in response to public comments.

DATES: *Effective Date:* This rule is effective June 30, 1995.

Applicability Date: This rule is applicable for solicitations issued on or after September 29, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, OUSD(A&T)DDP/MPI, Room 3E144, The Pentagon, Washington, DC 20301–3060, Telephone 703–604–5875. Please cite DAR Case 91–312.

SUPPLEMENTARY INFORMATION:

A. Background

A total of 286 comments were received from 43 commentors. Each comment was analyzed and, in some cases, the comments are incorporated in this final rule. Approximately 75% of the comments fell into fourteen general topic areas. The analysis and disposition of those comments, and a description of other changes made as a result of law or public comment, follow (Note: The DFARS subparts numbered as 227.4 and 227.5 in the proposed rule published on June 20, 1994, have been renumbered to 227.71 and 227.72, respectively, in this final rule):

1. Government Purpose/Government Purpose Rights

Forty comments address these topics.

(a) Government Purpose

Several commentors suggested narrowing the definition of government purposes to U.S. Government contracts. One suggested expanding the definition to include the acquisition of replenishment parts, repair, and maintenance by third parties. These changes are not adopted. A more narrow definition of government purpose ignores U.S. Government international responsibilities and foreign government or international organization development contributions made under cooperative agreements. The suggested expanded definition inappropriately converts third party commercial transactions to government purposes.

(b) Government Purpose Rights

(i) *Time period.* Some commentors suggested the five year exclusivity period is too short, should be measured from contract or subcontract payment, closure, or completion rather than award, and there is no need for the government to obtain unlimited rights in mixed funded data upon expiration of the exclusivity period. One commentor suggested the final rule should require negotiations in mixed funded situations. Those comments are not adopted. As several commentors observed, the five year exclusivity period is not mandatory. Paragraphs 227.7103–5(b) and 227.7203–5(b) identify that period as a nominal period and describe the circumstances under which longer periods should be negotiated. A limited exclusivity period balances the private and public development contributions by providing the private developer the sole opportunity to use the data for commercial purposes for a private developer the sole opportunity to use the data for commercial purposes for a specified time while assuring that all persons will have the opportunity to use the data for commercial purposes within a reasonable time.

(ii) *Extent of development contribution.* Several commentors observed that a contractor could restrict the availability of data for commercial purposes by making a minimal development contribution. Some suggested requiring a 50% contractor contribution as the basis for a government purpose rights license. Conversely, one commentor observed that an insignificant government contribution would enable the government to obtain a government purpose rights license in an otherwise private expense development. A commentor proposed an incentive formula which would link the period of a government purpose rights license to the funding contributed by the developer. These comments are not accepted. Generally, the Government will obtain a government purpose license when the private and government development contributions cannot be segregated (when costs are segregable, the developer may provide data or software developed exclusively at private expense with appropriate restrictions). It would be unnecessarily burdensome and extremely impracticable to attempt to measure the exact contribution by each party when development costs cannot be segregated. The suggested incentive formula raises similar problems. Each government purpose rights license must display an expiration date after which any applicable restrictions do not apply. That marking must appear on the data or software when they are delivered. But, late charges or other accounting corrections reported after data delivery might change the expiration date derived by the proposed formula resulting in copies of the same data marked with different expiration dates.

2. Indirect Cost Treatment

Twenty-four comments addressed this topic. Several commentors expressed concern that developers will use creative techniques, manipulate accounting systems, or find ''loopholes'' to restrict the Government's ability to make technical data available for reprocurement purposes. Such cost accounting practices would be inconsistent with the cost principles in FAR Part 31 and the cost accounting standards in FAR Appendix B. Therefore, the proposed regulations have not been changed to accommodate those concerns. Two commentors suggested that developers might restrict the Government's rights in data and, consequently, the amount of data available to the developers' potential competitors, by charging manufacturing and production engineering costs to indirect cost accounts. Manufacturing and production engineering costs that can be identified with a particular final cost objective are direct costs and cannot be allocated to indirect cost accounts. Although FAR 31.202 permits an exception for a direct cost of minor dollar amount, that exception must be consistently applied to all final cost objectives and produce substantially the same result as treating the cost as a direct cost.

A commentor suggests all contracts have indirect cost allocations and, consequently, the Government's rights in data will be affected. The comment overlooks the fact that the definition of ''developed at private expense'' deals only with development costs. The allocation of officers' salaries, guard services, employee benefits, or similar expenses will not affect the allocation of data rights.

Another commentor suggests establishing a government participation threshold. Indirect development costs (excluding independent research and

development and bid or proposal costs) charged in excess of the threshold would be considered mixed funding. The suggestion is not practicable. There is no basis for equitably estimating the government participation threshold prior to contract award. Burdensome accounting and audit surveillance procedures would be required to determine which item or items, and consequently data rights, were affected by the over threshold contribution.

3. Commercial Items

Twenty-two comments addressed this topic. A commentor suggests the proposed ''Technical Data—Commercial Items'' clause (252.227–7015) limits the data that DoD can acquire for commercial items and presumes that commercial items were developed at private expense. The clause in the proposed rule did neither but has been modified to provide that presumption as required by the Federal Acquisition Streamlining Act of 1994.

A commentor suggests modifying the clause to permit disclosure of commercial data to third parties so that those persons might operate or maintain the commercial item and contends that 227.7102–1(a)(1) prohibits DoD from acquiring technical data needed for rework and spare parts replacement. The suggestion and comment are not adopted. Paragraph 227.7102–1(a)(1) does not prohibit the acquisition of rework data. Disclosure to third parties might jeopardize a contractor's financial interest in its product and, therefore, is inconsistent with DoD policy to encourage contractors to offer commercial products to satisfy DoD requirements. However, DoD may negotiate to acquire the rights to do so under 252.227–7015(c). The commentor also suggests the definition of commercial items is too broad. The definition of commercial items has been modified to reflect the definition contained in the Federal Acquisition Streamlining Act of 1994. Several commentors suggest modifying 227.7102 to clarify that the restrictions in paragraph 227.7102–2(a) do not apply when the Government's data rights are not restricted. They also suggest modifying 252.227–7015(b)(1) to conform with 10 U.S.C. 2320 which does not permit a contractor to restrict the Government's rights in data necessary for operation, maintenance, installation, or training. The suggestions are adopted.

One commentor suggests the license rights granted the Government by the clause at 252.227–7015 are inconsistent with those granted to commercial customers. The suggestion is not adopted. Rights under that clause are consistent with 10 U.S.C. 2320.

A commentor suggests substituting ''written'' for ''express'' in 227.7102–2(a) to provide a substantive record. The suggestion is adopted. The commentor's suggestion to conform the last sentence in 227.7102–2(b) with corresponding language in the clause at 252.227–7015 is partially adopted. That commentor's suggestions to: (i) add a new paragraph 227.7102–2(c) to require contractors subject to the clause at 252.227–7013 to use the clause at 252.227–7015 in its contracts with subcontractors or suppliers furnishing technical data for commercial items is partially adopted by modifying 252.227–7013(k); (ii) include ''components'' in 227.7102–3 and make editorial changes to 252.227–7015(a)(1) and (b)(1)(i) are adopted; (iii) expand the restriction in 252.227–7015(b)(2)(i) is partially adopted; (iv) limit form, fit, and function data to data describing the commercial end unit is inconsistent with the commentor's suggestion to include ''components'' in 227.7102–3 and consequently not adopted; (v) require written permission prior to a release, disclosure, or authorized use of technical data for emergency repair or overhaul is not adopted because it is impracticable in emergency situations; and, (vi) delete 252.227–7015(c) is not adopted because the paragraph, which permits the parties to negotiate suitable license rights, is consistent with commercial practice.

4. Markings

Eighteen comments addressed this topic. Several commenters suggested that the marking provisions at 252.227–7013 and 252.227–7014 are mandatory, overly complex, and burdensome. One commentor recommended replacing the prescribed markings with a single, simplified marking that would appear only on the ''first page of the technical data or computer software.'' Other commentors also questioned the need to mark the portions of a page of printed material containing technical data or computer software for which restrictions are asserted.

Marking is not mandatory but contractors must mark when they desire to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose data or software. Such markings are commonly used in commercial practice to protract proprietary data or trade secrets. The suggested simplified marking, which would be placed only on the first page of printed material is not practicable because it would unnecessarily restrict release or disclosure of unrestricted information submitted with the restricted information.

A commentor suggests the clause at 252.227–7014 will require commercial software manufacturers to place government markings on such software and 227.7203–10(c) will result in the Government's obtaining unlimited rights in unmarked commercial computer software. Neither the clause at 252.227–7014 nor paragraph 227.7203–10(c) apply to commercial computer software. However, if a contractor intends to satisfy a government requirement for noncommercial computer software with derivative software created by integrating commercial computer software with computer software developed with Government funds under a contract that contains the clause at 252.227–7014, the contractor might consider using a marking authorized by 252.227–7014, or a marking agreed to by the contracting officer, to protect its commercial interests in the derivative software.

One commentor suggests the requirement to mark each page of technical data deliverable with less than unlimited rights will reduce the amount of useful information that might be displayed on a page. Marking each page enhances protection of the contractor's data. That commentor also suggests that the prohibition on marking non-commercial computer software with legends that might interfere with or delay the operation of the software places the contractor in an untenable position regarding protection of its software rights. As expressed in 227.7203–10(b)(1), the prohibition was intended only for non-commercial computer software that will or might be used in combat situations or under conditions that simulate combat situations. Therefore, 252.227–701(f)(1) has been modified accordingly.

Two commentors suggest the marking procedures will be unworkable in digital environments. They also suggest that data might not be protected adequately in a digital environment because the markings might be extracted from the data or not seen by the user. Those comments are not accepted. However, 252.227–7013(f)(1) and 252.227–7014(f)(1) have been changed to clarify markings when such data are transmitted. Extractable markings are not unique to the digital environment and contractors have appropriate forums for redress if their data or software are improperly used, released, or disclosed.

A suggestion to add ''subcontractor/supplier'' to each legend is not adopted. The first sentence of 252.227–7013(f) clearly covers subcontractors and suppliers.

A commentor suggests changing the phrase ''correction or cancel'' in 252.227–7013(h)(1) to ''correct or strike''. That suggestion is adopted. The commentor's suggestion to modify that paragraph by providing the Government the unilateral right to correct or strike nonconforming markings when it is impracticable to return technical data to the contractor is not adopted. The Government has that right under (h)(1) for unjustified markings and (h)(2) for nonconforming markings.

A commentor suggests modifying 227.7103–12(a)(2) to require contracting officers to go through the validation process before striking a nonconforming markings. The suggestion is not adopted. The validation procedures in 252.227–7037 are intended to resolve questions concerning asserted restrictions. The nonconforming marking procedures address only the proper format for a marking.

A commentor's suggested editorial changes to 227.7103–10(b)(2) and 227.7203–10(b) are considered unnecessary.

5. Competition

Sixteen comments addressed competition. Most did not comment on specific portions of the regulations. One commentor recommended retaining the 1988 interim rule. That recommendation is not adopted. One commentor suggests that 227.7103–1(e) conflicts with 227.7103–2(b)(1) and the Competition in contracting Act (CICA). The suggestion is not adopted. The policy in 227.7103–1(e) expresses requirements under 10 U.S.C. 2305 for major weapon systems and generally protects private expense development. It does not conflict with either 227.7103–2(b)(1) or CICA.

6. License Rights

Fifteen comments addressed license rights generally. A commentor suggests including ''release'' or ''disclose'' in 227.7102–2 is confusing because those terms were traditionally used in connection with persons outside the government. The context in which the terms are used is clear and changes are not necessary.

A commentor suggests requiring a written justification requiring approval at a level above the contracting officer if the Government wants to acquire rights not conveyed under licenses customarily provided to the public. The suggestion is not adopted. Existing procedures for determining the Government's needs are adequate.

A commentor suggests all technical data and computer software should be delivered under a license that provides government purpose rights for 5 years after which the data or software would be available with unlimited, government purpose, limited, or restricted rights as applicable. The suggestion is inconsistent with statutory requirements and not adopted.

A commentor suggests the provisions permitting negotiated licenses might preclude award without discussions, reduce opportunities to use sealed bidding procedures, and extend acquisition lead times. The comments are not adopted. If the Government knows it will require nonstandard license rights it might not be in a position to use sealed bidding procedures. When using other contracting methods, award without discussions is not precluded if the Government's requirements are articulated in the solicitation and responsive offers are received from responsible offerors.

A commentor suggests the basis for allocating data rights is acceptable if it is clear that government rights are conveyed by a license granted by the data creator. No change is required.

A commentor suggests that, although not improper, permitting third parties to have access to and modify noncommercial computer software will act as a disincentive to the private development of software intended only for the Government. The comment is not adopted. The clause at 252.227–7014 permits the Government, in a narrow range of circumstances and subject to considerable constraints, to have support service contractors modify computer software delivered with restricted rights. Two of the permitted circumstances deal with military exigencies. The other two circumstances reflect maintenance needs when the Government's rights are restricted in only a portion of the deliverable software.

A commentor suggests two changes to 227.7103–5(d)(1) that are intended to clarify the role of subcontractors when special license rights are negotiated and a change to 227.7103–5(d)(2) to identify the negotiation of long term reprocurement spare parts pricing agreements as an alternative to negotiating for additional rights in limited rights data. The clarifications are not necessary. The term ''contractor'' is defined to include subcontractors and suppliers at any tier and 227.7103–5 and the clause at 252.227–7013 make it clear that the prime contractor might not be the data owner or licensor. The suggested change to 227.7103–5(d)(2) is inconsistent with the circumstances under which negotiations for additional rights are permitted. The commentor also suggests modifying 252.227–7013(b)(4) to clarify the role of subcontractors when negotiating special license rights. For the reasons discussed above, the comment is not adopted.

A commentor suggests modifying 227.7103–4(a)(1) to include the full listing of government rights. The modification is not necessary. The commentor also suggests expanding 227.7103–4(a)(2) to match the scope of 252.227–7013(b)(1)(ii) and (iii). The suggestion is not adopted. The situation covered in 252.227–7013(b)(1)(ii) is addressed in 227.7103–4(a)(1). The example in 227.7103–4(a)(2) applies to 252.227–7013(b)(1)(iii) only.

7. Elimination of the ''Required for Performance Criterion''

Fourteen comments addressed elimination of the required for performance criterion. DoD's 1988 regulations grant the Government unlimited rights in technical data pertaining to items, components, or processes developed at private expense if development was required for the performance of a government contract or subcontract. Seven commentors, submitted essentially identical comments suggesting that data resulting from development of a defense end product should not be the property of an original equipment manufacturer. Two commentors suggest eliminating the required for performance criterion will result in less data available without restrictions. In a similar comment, a commentor suggests that eliminating the ''required for performance'' criterion will reduce competition. Four comments were received from the American Bar Association, the Council of Government Relations, the Integrated Dual-Use Commercial companies, and a large manufacturer supporting the policies contained in the proposed rule. The suggestions to retain the criterion are not adopted. DoD believes that the criterion should be eliminated to protect private expense development, encourage developers of new technologies or products, many of whom are small businesses, to offer their products to the Government, encourage dual use development, and balance the interests of data users and data developers.

8. Computer Software

Thirteen comments addressed computer software. Three commentors suggest the definition of ''commercial computer software'' is too broad. One also suggests that the definition's broad scope will make it difficult to understand and interpret and contractors will be able to restrict the

Government's rights in software developed exclusively at Government expense by satisfying one of the criteria that define commercial computer software. Those suggestions are not adopted. The definition of commercial computer software has been modified to reflect requirements in the Federal Acquisition Streamlining Act of 1994. The Government will not lose rights obtained in software developed at government expense if that software subsequently qualifies as commercial computer software. That situation is covered by 252.227–7014(b)(5) and (c).

Two commentors suggest GSA should amend its rules to permit these regulations to apply to DoD procurements under GSA schedule contracts. That suggestion cannot be accommodated in these DoD specific regulations.

Two commentors suggest the criterion for determining whether software is commercial should be the source of development funds rather than the market for which the software was developed. That suggestion is not consistent with the thrust of the Federal Acquisition Streamlining Act of 1994.

A commentor suggests there may be a conflict between the definition of commercial computer software, which might include software developed with Government funds, and the policy in 227.7202–1(a) to acquire commercial computer software and documentation under the licenses customarily provided to the public. If Government funds are used to develop software or documentation, the development contract will determine the Government's rights in that software or documentation. Those rights are protected if the software subsequently qualifies as commercial software. The commentor expresses concern that when both commercial and noncommercial software are deliverable under a contract, the requirements in 252.227–7014 will be applied to the commercial software. That result is not intended. The clause title, ''Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation'', clearly indicates that the clause is not applicable to commercial software or documentation. The commentor's suggestion to define commercial computer software documentation in terms of development at private expense is unnecessary and not adopted. The commentor also suggest modifying 227.7202–1(c)(1) to limit the paragraph's scope to modifications made at Government expense. The suggestion is partially adopted and a corresponding change made to 227.7102–1(a)(3). The commentor observes that throughout 227.7203 the terms computer software and computer software documentation are used without the modifier ''noncommercial.'' Generally, the modifier is not necessary because that paragraph only applies to noncommercial software or documentation. Where it is used, it is intended to provide additional, specific emphasis.

Two commentors suggest it might be inappropriate for the Government to obtain unlimited rights in all noncommercial computer software documentation required to be delivered under a contract. Computer software documentation is technical data. It is defined narrowly to include only owner's manuals, user's manuals, installation instructions, operating instructions, and similar items that explain the capabilities of computer software or provide instructions for using the software. Such data is necessary for operation, maintenance, installation, or training. Consequently, under 10 U.S.C. 2320, a contractor may not restrict the Government's rights to release or disclose such data or to permit others to use the data.

A commentor states that the definition of restricted rights in 252.227–7014(a)(14)(i) might not provide sufficient latitude to use software programs in military situations such as ''the engine control aboard a fleet of aircraft.'' When the Government has a requirement to time share a program or have the program accessed by more than one terminal or central processing unit at a time, the requirement must be identified in the acquisition contract to permit proper program design and pricing. Therefore, the comment is not adopted.

A commentor suggests revising the definition of computer software in 252.211–7012 and 252.227–7013 by substituting ''computer program'' for ''software'' in the phrase ''...and related material that would enable the software to be reproduced, recreated, or recompiled.'' The suggestion is not adopted. Computer programs are not the only software that can be reproduced, recreated, or recompiled.

9. Identification of Asserted Restrictions

Tweleve comments dealt with this topic. A commentor suggests modifying 252.227–7013(e) to make it clear that a failure to identify data that will be delivered with restricted rights does not prevent a contractor from asserting restrictions relevant to that data and contracting officers should be required to add data items to the list of data in which restrictions are asserted until the Government has successfully challenged an assertion. Another contractor also suggested the mandatory listing of subsequent assertions. The suggestions are not adopted. The paragraph prevents delivery of such data but does not affect a contractor's right to assert restrictions. The constraints in 252.227–7013(e) are intended to discourage deliberate commissions that might affect source selection decisions.

A commentor suggests not requiring an identification of the item, component, or process. The suggestion is not adopted because the source of funds used to develop an item, component, or process generally determines whether a contractor may assert restrictions on the Government's rights in the data pertaining to the it4ems, components, or processes.

A commentor suggests deleting the statement in 227.7103–10(a)(5) that information provided in response to the provision at 252.227–7017 may be used in the source selection processes because it is inconsistent with the portions of the regulation prohibiting the Government from requiring contractors to relinquish data rights in order to obtain a contract and modifying the solicitation provision accordingly. Another commentor suggested modifying 252.227–7013(e)(3) because the source selection constraint is inconsistent with 10 U.S.C. 2320(a)(2)(F). Those suggestions are not adopted. Considering data rights during the source selection process is neither inconsistent with the policy expressed in the regulations nor the requirements of 10 U.S.C. 2320(a).

A commentor suggested editorial changes in the format of the Attachment including a statement that the explanatory notes need not be repeated on the attachment. The suggestions are not adopted. Paragraph (e)(3) requires only an identification of the technical data.

A commentor suggests modifying 252.227–7017(b) by replacing ''notification and identification'' with ''identification and assertion.'' The suggestion is adopted. The commentor also suggests adding the phrase ''and after request by the contracting officer'' following the word ''offer'' in 252.227–7017(e) and adding a new paragraph at the end of 252.227–7017 that would provide for post award assertions. The suggestions are not adopted. The addition to 252.227–7017(e) is not necessary and post award assertions are addressed in the clause at 252.227–7013.

10. Unlimited Rights

Eleven comments dealt with this topic. A commentor suggests the Government have unlimited rights in technical data only when work was exclusively funded with direct Government contract funds. The suggestion is inconsistent with 10 U.S.C. 2320 and not adopted.

A commentor suggests that the term ''publicly available'' in 252.227–7014(b)(1)(iv) and 227.7203–5(a)(4) might provide the Government unlimited rights in commercial computer software. The suggestion is not adopted. Those portions of the regulations only apply to non-commercial computer software.

A commentor expresses concern that 252.227–7013(b)(1)(ii) might provide the Government unlimited rights in third party material. The third party copyright owner is not required to grant a license. Paragraph 252.227–7013(d) prohibits the use of third party copyrighted data in deliverable technical data unless the contracting officer's approval to do so has been obtained and the contractor has obtained from the copyright owner a license of appropriate scope.

A commentor suggests expanding 227.7103–5(a)(3) to provide unlimited rights in all data created exclusively with government funds whether or not the contract requires development, manufacture, construction, or production of items, components, or processes. For technical data that pertain to items or processes, the suggestion is inconsistent with 10 U.S.C. 2320 and, consequently, not adopted.

A commentor suggests that government purpose rights convey all rights needed by the Government and unlimited rights should be eliminated because they have an adverse affect on businesses, including small businesses, that are data or software creators. The suggestion is not adopted. When the taxpayer exclusively funds development of an item or process, it is difficult to appreciate the suggested adverse affect on data or software creators.

A commentor suggests that there is no affirmative guidance encouraging contractors to commercialize technology it develops with federal funds. The contractor also suggests that when the Government has unlimited rights in technical data or computer software, the data or software might be lost to foreign competition. The suggestions are not adopted. Many other commentors observed that opportunities to commercialize federally funded technologies are maximized when the Government has unlimited rights in technical data. The fact that data or software might be available, if otherwise properly releasable, to foreign governments, foreign nationals, or international organizations does not diminish domestic commercialization opportunities.

A commentor suggests modifying 227.7103–5(a)(2) and 252.227–7013(b)(1)(ii) to permit the Government to obtain unlimited rights in the identified data only when the data will be developed exclusively with Government funds. The suggestions are not adopted. Those paragraphs provide the Government unlimited rights in studies, analyses, test data, or similar data produced in the performance of a contract and specified as an element of performance. The ''produced in'' and ''specified as'' criteria clearly indicate that the Government intends to exclusively fund development of the data. The commenter suggests 227.7103–5(a)(3) and 227.7103–5(b)(1)(ii) are not clear because they convey rights based upon specific contractual situations. The suggestion is not adopted. Except for 227.7103–5(a)(1) and 227.7103(b)(1)(i), all other circumstances in which the Government will be granted unlimited or government purpose rights address specific situations or types of data. The commentor also recommends deleting 227.7103–5(a)(9). The recommendation is not adopted. When restrictions on the Government's rights have expired, the Government has unlimited rights in the data.

A commentor recommends changing 227.7103–4(b) to permit a contractor to assert limited rights in data that otherwise qualify for unlimited rights. The recommendation is not adopted. It is inconsistent with 10 U.S.C. 2320 and would result in unnecessary, burdensome, and costly data challenges.

11. Use and Non-disclosure Agreements

Ten comments were received in this area. A commentor suggests the indemnification liabilities under 252.227–7025 should be shifted from the contractor who has been provided the information to the third party who has improperly used, released, or disclosed the information. The suggestion is not adopted. The contractor faces similar liabilities in nongovernmental transactions.

A commentor suggests: (i) The requirement at 227.7103–5(b)(4)(i) to provide prior notification, other than in emergency situations, of an intended release or disclosure of its limited rights data is not necessary; (ii) the format prescribed at 227.7103–7(c) for non-disclosure agreements is not appropriate for foreign governments; (iii) a contractor's permission should not be required to release or disclose limited rights data; (iv) deleting the requirements at 227.7103–16 and 227.7203–16 for foreign governments, foreign contractors, and international organizations to have executed a use and non-disclosure agreement containing the provisions included in 227.7103–7(c), and the requirements in 252.227–7013 satisfied, prior to a release or disclosure to a foreign entity; (v) it is impossible for contractors needing access to the major data bases to notify all persons asserting restrictions; (vi) in 227.7103–7(c)(8), the specific ending date for the non-disclosure agreement should be replaced with ''at such time as the data are no longer required for the performance of work under the contract, the contract is completed or terminated, or access is terminated for cause.''; and, (vii) the clause at 252.227–7025 should be expanded to require contractors to sign any non-disclosure agreement that is required by a Government agency. The suggestions are not adopted. The reasons are keyed to the comment number: (i) The Government, with two exceptions, is required by 10 U.S.C. 2320 to obtain a contractor's permission prior to releasing or disclosing the contractor's limited rights data. Except in emergency situations, there is no logical reason to not provide prior notification of an intended release of limited rights data; (ii) 227.7103–16 permits the use of the non-disclosure agreements with foreign governments, foreign contractors, or international organizations that are not in the prescribed format; (iii) The suggestion is inconsistent with 10 U.S.C. 2320; (iv) The suggested revisions to 227.7103–16(b) and 227.7203–16(b) do not adequately address constraints on the recipient regarding further release or disclosure of information in which the U.S. Government has limited rights in data or restricted rights in software; (v) Paragraph (a) of the prescribed non-disclosure agreement requires a contractor to specifically identify the data it needs. If the Government agrees to provide that data, it is listed in an attachment to the agreement. Therefor, the notification requirements in paragraphs (b) and (c) should not be difficult to comply with. Furthermore, information provided to the Government with asserted restrictions should not be included in a generally accessible database. Such data must be protected in accordance with 252.227–7013, 252.227–7014, and 252.227–7018; (vi) The prescribed non-disclosure

agreement is not limited to contracts but covers all requests for data or software in which restrictions have been asserted; and, (vii) The clause at 252.227–7025 addresses government furnished information that will be provided to a contractor for performance of a specific contract. These regulations should not address agency peculiar requirements or technical data that does not pertain to items, components, or processes developed for the U.S. Government.

A commentor suggests the requirement at 227.7103–7(c)(8) to destroy the data covered by a non-disclosure agreement does not provide adequate flexibility. The comment is not adopted. Destroying the data avoids packaging and shipping costs and significantly reduces the possibility of an inadvertent unauthorized release or disclosure.

A commentor suggests that the notification requirement in 227.7103–7(c)(1) gives the item manufacturer a competitive advantage by making the manufacturer aware of competitive requirements and its potential competitor's identity. The suggestion is not adopted. The notification requirement applies only to limited rights data. Such data cannot be used for competitive purposes without the owner's or licensor's permission.

A commentor suggests modifying 227.7103–7(c)(1)(b) by replacing ''Contractor'' with ''owner of the data'' and making the Government rather than the recipient responsible for notification. The suggestions are not adopted. The term ''owner'' does not include a licensor. As used in the agreement, 227.7103–7(c)(1)(a), the term ''Contractor'' refers to the person whose name appears on the restrictive legend. The recipient's notification supplements the Government's notification. It gives the person asserting limited rights additional information that person might need to monitor the subsequent use, release, or disclosure of its data.

12. Effect on Older Systems Through Upgrades

Eight commentors addressed this topic. Seven submitted essentially identical suggestions that the spare parts market might be affected because these regulations will apply to upgrades or enhancements of existing systems. One suggested that minor revisions to manufacturing processes charged as indirect expense would prevent alternate sources from competing. The suggestions are not adopted. Contractors are required to allocate expenses in a consistent manner. FAR 31.203(a) does not permit an indirect cost allocation ''* * * if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.''

13. Policy

Nine comments addressed this topic. A commentor suggests modifying 227.7102–1(a) to permit the acquisition of the data and rights necessary to satisfy agency needs. The suggestion is not adopted. The concept is covered in 252.227–7015(c) and 227.7102–2(b). The commentor also suggests modifying 227.7103–1(e) to indicate that the Government may request a contractor to sell data rights. The suggestion is not adopted. The concept is addressed in 252.227–7013(b)(3)(iii), (b)(4), 227.7103–5, and 227.7103–5(d)(2).

A commentor suggests modifying 227.7103–1 and 227.7203–1 to encourage contractors to identify more cost efficient alternatives to the Government's proposed data rights requirements, require solicitations to include as much information regarding the Government's needs for technical data rights as is practicable, and require resolution of all requirements, restrictions, and limitations prior to contract award. Most of the suggestions are embodied in this final rule. If the Government needs data rights that differ from the standard license rights conveyed by the contract, it must negotiate for those rights. But, it often is impracticable to require a resolution of all restrictions on the Government's right prior to contract award. Most items, processes, or software will not be developed at that time and, consequently, rights in the pertinent technical data or computer software are not determinable completely. The justification and challenge process required by 10 U.S.C. 2321 will, in many cases, preclude an early resolution of restrictions.

Two commentors, in essentially identical comments, contend the requirement in 227.7103–1(b)(2) is vague and suggest an alternative. The suggestion is not adopted. The requirement is clear. But, procedures and specific criteria must vary to accommodate the particular contracting situation. Consequently, the regulations should not provide greater specificity.

A commentor suggests modifying 227.7103–1(e) because it believes the paragraph conflicts with 227.7103–2(b)(1) and adding ''and associated life cycle costs'' at the end of the first sentence in 227.7103–2(b)(1). The paragraphs do not conflict and the comment is not adopted. Proposals that would enable the Government to acquire competitively items identical to items developed at private expense would entail significantly more detailed information than form, fit, or function data. Generally, form, fit, or function data will produce functionally equivalent but not identical items. The suggested additional language is not necessary. The concept is addressed within the paragraph. The commentor also suggests that these regulations do not address the Government's ability to evaluate data rights during the source selection process. The suggestion is not adopted. The concept is addressed at 227.7103–10(a)(5).

14. Validation of Asserted Restrictions

Eight comments addressed this topic. A commentor objects to the requirement to issue a contracting officer's final decision when an asserted restriction has been justified. Section 2321(f)(1) of Title 10 U.S.C. requires contracting officers to issue a decision when a contractor fails to submit a justification for an asserted restriction. Section (f)(2) requires a contracting officer's decision within sixty days following receipt of any submitted justification.

A commentor suggests modifying 227.7103–13(a) and 227.7203–13(a) to require contracting officers, when using provisioning procedures to acquire replenishment parts, to carefully examine during the challenge period the need to initiate challenge and validation procedures. The suggestion is not adopted. Adequate procedures are contained in 227.7103–13(c) and 227.7203–13(d).

A commentor's suggestions to modify 227.7103–13(c)(2)(i) by replacing the phrase ''determine the validity of the assertion'' with ''ascertain the basis of the restrictive markings'' and modify 227.7103–13(c)(2)(ii) by adding ''any other available information pertaining to the validity of a restrictive marking'' are adopted.

15. Typographical and Editorial Comments

A commentor identified several typographical errors and recommended some minor editorial changes. The typographical errors have been corrected and some of the editorial recommendations adopted. The recommended change to 227.7103–10(a) is not adopted because there might be more than one successful offer. The recommendation to reverse the order of the second and third sentences in 227.7103–12(a)(1) is not adopted. The existing second sentence conveys emphasis the recommendation lacks. The comment regarding the reference to 227.7103–13 within 227.7203–13(d)(2) ignores the fact that computer software

documentation is technical data. The reference is appropriate because technical data challenge and validation procedures are in 227.7103–13.

16. Changes Required by Statute

(a) Subpart 227.71

The Federal Acquisition Streamlining Act of 1994 defines commercial items, modifies 10 U.S.C. 2320(b) to provide a presumption of development at private expense for commercial items, and adds a new subsection (f) to 10 U.S.C. 2321 that, under contracts for commercial items, requires a contracting officer to presume private expense development whether or not the contractor submits a justification in response to a challenge notice. The subsection also provides that challenges under contracts for commercial can be sustained only if information provided by the Department of Defense demonstrates that the item was not developed exclusively at private expense. The clause at 252.227–7037 has been modified accordingly and corresponding changes made to 227.7102–2.

(b) Subpart 211.70

A process action team has been formed to draft FAR implementation of the Federal Acquisition Streamlining Act's commercial products provisions. Therefore, the changes to Subpart 211.70 contemplated by the proposed rule, other than deletion of the DFARS 211 technical data provisions, will not be made.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from Ms. Angelena Moy, OUSD(A&T)DDP/MPI, Room 3E144, The Pentagon, Washington, DC 20301–3060 (telephone 703–604–5875, facsimile 703–604–6709).

C. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements associated with Subparts 227.71 and 227.72 through September 30, 1995 (OMB Control Number 0704–0369).

Defense Acquisition Circular (DAC) 91–8 amends the Defense FAR Supplement (DFARS) 1991 edition. The amendments are summarized as follows:

Item I—Rights In Technical Data And Computer Software

This final rule revises the existing DFARS guidance on rights in technical data, and adds new guidance on rights in computer software and computer software documentation. The following is a summary and explanation of the regulatory changes contained in this final rule.

1. Rights in Technical Data

a. General

DFARS Subpart 227.4, Rights in Data and Copyrights, is deleted and replaced with Subpart 227.71, Rights in Technical Data. The Government's rights are identified as specific, non-exclusive license rights. All rights not granted the Government are retained by the contractor.

b. Commercial Items or Processes

(1) Section 227.7102 provides guidance on the acquisition of technical data pertaining to commercial items, components, or processes. For data rights purposes, the term ''commercial item'' is defined in the clause at 252.227–7015, Technical Data—Commercial Items. The definition is consistent with Section 8001 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), but specifically excludes computer software. Under 10 U.S.C. 2320, contractors may not restrict the Government's rights in certain technical data pertaining to items or processes developed at private expense. However, 10 U.S.C. 2320 does not apply to computer software. The modified definition of ''commercial item'' is intended to prevent misapplication of the technical data provisions to computer software.

(2) The clause at 252.227–7015 provides the Government specific license rights in technical data pertaining to commercial items, components, or processes. Generally, such data may be used, modified, reproduced, released, performed, displayed, or disclosed only within the Government, may not be used to manufacture additional quantities of the commercial items, and, except for emergency repair or overhaul, may not be released or disclosed to third parties without the contractor's written permission. In accordance with 10 U.S.C. 2320, these restrictions do not apply to publicly available data, form, fit, or function data, data necessary for operation, maintenance, installation, or training, or changes or corrections to Government-furnished data. The Government must negotiate to obtain additional license rights and may not require contractors to relinquish or provide additional rights except under mutually acceptable terms.

c. Noncommercial Items or Processes

(1) Section 227.7103 provides guidance on the acquisition of technical data pertaining to noncommercial items, components, or processes. Standard license rights (unlimited, government purpose, or limited rights) are based upon the source of development funds for the item, component, or process. When data are created during performance of a contract for a conceptual design or similar effort that does not require manufacture, construction, or production of items, components, or processes, the Government's license rights are determined by the source of funds used to create the data.

(2) When the standard license rights are not appropriate for a particular procurement, the parties can negotiate non-standard license rights. Rights in copyrighted material are contained within the data rights licenses. The final rule eliminates the requirement for the Government to obtain unlimited rights in technical data if development of the data was required for the performance of a Government contract or subcontract. The treatment of indirect costs is revised to identify all indirect development costs as private expenses. Other indirect costs do not affect the determination that an item, component, or process was developed at Government, private, or mixed expense. Technical data provided to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be released to other persons unless, prior to receipt, the recipient has completed a use and non-disclosure agreement or is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

2. Rights in Computer Software and Computer Software Documentation

a. General

A new subpart is added at DFARS 227.72 to provide separate guidance for computer software and computer software documentation, notwithstanding that such documentation is considered technical data. The definition of ''computer software documentation'' is limited to manuals, instructions, and similar items. The definitions of ''commercial computer software,'' ''computer data base,'' ''computer program,'' ''computer software,'' and ''computer software

documentation'' are substantially different from those previously contained in DFARS Subpart 227.4, and the definition of ''computer'' is deleted.

b. Commercial Computer Software and Computer Software Documentation

The guidance at 227.7202 is intended to replicate commercial practice. Commercial computer software and commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs. In those situations, contracting officers may negotiate licenses of an appropriate scope. However, offerors and contractors are not required to relinquish rights to the Government or provide the Government with rights to use, modify, reproduce, release, or disclose commercial software or documentation that is not customarily provided to the public unless a transfer of such rights is mutually agreed upon. A specific contract clause is not prescribed because the Government's rights will be specified in a license.

c. Noncommercial Computer Software and Computer Software Documentation

(1) The guidance at 227.7203 parallels the non-commercial technical data guidance at 227.7103. Any Government rights in software or documentation are license rights. The contractor or licensor retains all rights not granted to the Government. The scope of the Government's software license generally depends upon the source of funds used to develop the software. Standard license rights are unlimited rights (developed exclusively at Government expense), restricted rights (developed exclusively at private expense), and government purpose rights (mixed development). Computer software documentation is defined as manuals, operating instructions, and similar items. The Government's rights in such technical data may not be restricted under 10 U.S.C. 2320 regardless of the source of development funds. Therefore, documentation licenses generally provide unlimited rights. When the standard license rights are not appropriate for a particular procurement, special licenses can be negotiated.

(2) The clause at 252.227–7014 defines ''developed'' for computer programs, computer software, and computer software documentation; ''minor modification''; and ''noncommercial computer software.'' The definition of ''restricted rights'' is substantially revised. The link between software and a particular computer is replaced with the common commercial practice of permitting a computer program to be used with one computer at a time. The Government is permitted to modify restricted rights software and, under certain conditions which include tactical situations and emergency repairs or overhauls, have contractors or subcontractors performing service contracts in support of a procurement use or modify the software. The third-party use and modification rights are intended to balance protection for privately developed portions of noncommercial software with the Government's need to use the software as a complete item for its intended purpose, particularly in military situations.

3. Contracting for Commercial Items

DFARS Subpart 211.70 is amended for consistency with the technical data requirements in Subparts 227.71 and 227.72.

4. Solicitation Provisions and Contract Clauses

New provisions/clauses are added at 252.227–7014, 252.227–7015, 252.227–7016, 252.227–7017, and 252.227–7025. Revisions are made in the provisions/clauses at 252.211–7021, 252.227–7013, 252.227–7018, 252.227–7019, 252.227–7020, 252.227–7028, and 252.227–7037. The following clauses are deleted: 252.211–7015, 252.211–7016, 252.211–7017, 252.227–7029, and 252.227–7031.

List of Subjects in 48 CFR Parts 211, 227 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Amendments to 48 CFR Chapter 2 (Defense FAR Supplement)

48 CFR Chapter 2 (the Defense FAR Supplement) is amended as set forth below.

1. The authority citation for 48 CFR Parts 211, 227, 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

211.7004–1 [Amended]

2. Section 211.7004–1 is amended by removing and reserving paragraph (h); and by revising in paragraph (p)(2)(ii) in the title in the clause list under the clause number FAR 52.223–1 the word ''Clear'' to read ''Clean.''

211.7004–6 [Amended]

3. Section 211.7004–6(a)(3) is amended to revise the word ''parts'' to read ''part.''

211.7005 [Amended]

4. Section 211.7005 is amended by removing paragraph (a)(29) and by redesignating paragraphs (a)(30) through (a)(33) as paragraphs (a)(29) through (32), respectively; by revising in paragraph (b)(18) the name ''Healy'' to read ''Healey;'' by removing paragraphs (b)(34 and (35); by redesignating paragraphs (b)(36) through (51) as paragraphs (b)34) through (49), respectively; by redesignating paragraphs (b)(52) through (54) as paragraphs (b)(51) through (53), respectively; by adding a new paragraph (b)(50); and by revising in paragraph (c)(6) the name ''Healy'' to read ''Healey;'' and by revising in paragraph (c)(10) the word ''Clear'' to read ''Clean'' to read as follows:

211.7005 Contract clauses

(a) * * *

(b) * * *

(50) 252.227–7015 Technical Data—Commercial Items.

* * * * *

PART 227—PATENTS, DATA, AND COPYRIGHTS

5. Subpart 227.4 is revised to read as follows:

Subpart 227.4—Rights in Data and Copyrights

227.400 Scope of subpart.

DoD activities shall use the guidance in subparts 227.71 and 227.72 instead of the guidance in FAR subpart 27.4.

6. Subpart 227.71 is added to read as follows:

Subpart 227.71—Rights in Technical Data

Sec.

227.7100 Scope of subpart.
227.7101 Definitions.
227.7102 Commercial items, components, or processes.
227.7102–1 Policy.
227.7102–2 Rights in technical data.
227.7102–3 Contract clause.
227.7103 Noncommercial items or processes.
227.7103–1 Policy.
227.7103–2 Acquisition of technical data.
227.7103–3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.
227.7103–4 License rights.
227.7103–5 Government rights.
227.7103–6 Contract clauses.
227.7103–7 Use and non-disclosure agreement.
227.7103–8 Deferred delivery and deferred ordering of technical data.

227.7103–9 Copyright.
227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.
227.7103–11 Contractor procedures and records.
227.7103–12 Government right to establish conformity of markings.
227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.
227.7103–14 Conformity, acceptance, and warranty of technical data.
227.7103–15 Subcontractor rights in technical data.
227.7103–16 Providing technical data to foreign governments, foreign contractors, or international organizations.
227.7103–17 Overseas contracts with foreign sources.
227.7104 Contracts under the Small Business Innovative Research (SBIR) Program.
227.7105 Contracts for the acquisition of existing works.
227.7105–1 General.
227.7105–2 Acquisition of existing works without modification.
227.7105–3 Acquisition of modified existing works.
227.7106 Contracts for special works.
227.7107 Contracts for architect-engineer services.
227.7107–1 Architectural designs and data clauses for architect-engineer or construction contracts.
227.7107–2 Contracts for construction supplies and research and development work.
227.7107–3 Approval of restricted designs.
227.7108 Contractor data repositories.

Subpart 227.71—Rights in Technical Data

227.7100 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce, release, perform, display, or disclose technical data. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).

(2) 10 U.S.C. 2305 (subsection (d)(4)).

(3) 10 U.S.C. 2320.

(4) 10 U.S.C. 2321.

(5) 10 U.S.C. 2325.

(6) Pub. L. 103–355.

(7) Executive Order 12591 (Subsection 1(b)(6)).

(b) Does not apply to computer software or technical data that is computer software documentation (see subpart 227.72).

227.7101 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms ''offeror'' and ''contractor'' include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) The terms ''commercial items'' and ''minor modification,'' as those terms are used with commercial items, are defined in the clause at 252.227–7015, Technical Data—Commercial Items.

(c) Other terms used in this subpart are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

227.7102 Commercial items, components, or processes.

Section 2320(b)(1) of Title 10 U.S.C. establishes a presumption that commercial items are developed at private expense whether or not a contractor submits a justification in response to a challenge notice. Therefore, do not challenge a contractor's assertion that a commercial item, component, or process was developed at private expense unless the Government can demonstrate that it contributed to development of the item, component or process. Follow the procedures in 227.7103–13 and the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, when information provided by the Department of Defense demonstrates that an item, component, or process was not developed exclusively at private expense. However, when a challenge is warranted, a contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

227.7102–1 Policy.

(a) DoD shall acquire only the technical data customarily provided to the public with a commercial item or process, except technical data that—

(1) Are form, fit, or function data;

(2) Are required for repair or maintenance of commercial items or processes, or for the proper installation, operating, or handling of a commercial item, either as a stand alone unit or as a part of a military system, when such data are not customarily provided to commercial users or the data provided to commercial users is not sufficient for military purposes; or

(3) Describe the modifications made at Government expense to a commercial item or process in order to meet the requirements of a Government solicitation.

(b) To encourage offerors and contractors to offer or use commercial products to satisfy military requirements, offerors, and contractors shall not be required, except for the technical data described in paragraph (a) of this subsection, to—

(1) Furnish technical information related to commercial items or processes that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose technical data pertaining to commercial items or processes except for a transfer of rights mutually agreed upon.

227.7102–2 Rights in technical data.

(a) The clause at 252.227–7015, Technical Data—Commercial Items, provides the Government specific license rights in technical data pertaining to commercial items or processes. DoD may use, modify, reproduce, release, perform, display, or disclose data only within the Government. The data may not be used to manufacture additional quantities of the commercial items and, except for emergency repair or overhaul, may not be released or disclosed to, or used by, third parties without the contractor's written permission. Those restrictions do not apply to the technical data described in 227.7102–1(a).

(b) If additional rights are needed, contracting activities must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific additional rights granted to the Government shall be enumerated in a license agreement made part of the contract.

227.7102–3 Contract clause.

(a) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data—Commercial Items, in all solicitations and contracts when the contractor will be required to deliver technical data pertaining to commercial items, components, or processes.

(b) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in lieu of the clause at 252.227–7015 if the Government will pay any portion of the development costs.

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts for commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013.

227.7103 Noncommercial items or processes.

227.7103–1 Policy.

(a) DoD policy is to acquire only the technical data, and the rights in that data, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the technical data to be delivered under a contract and delivery schedules for the data;

(2) Establish or reference procedures for determining the acceptability of technical data;

(3) Establish separate contract line items, to the extent practicable, for the technical data to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, technical data to be furnished with restrictions on the Government's rights and require contractors to identify technical data to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in technical data related to items, components or processes developed at private expense except for the data identified at 227.7103–5(a)(2) and (a)(4) through (9).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish items, components, or processes developed at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose technical data pertaining to those items may be restricted.

(e) As provided in 10 U.S.C. 2305, solicitations for major systems development contracts shall not require offerors to submit proposals that would permit the Government to acquire competitively items identical to items developed at private expense unless a determination is made at a level above the contracting officer that—

(1) The offeror will not be able to satisfy program schedule or delivery requirements; or (2) The offeror's proposal to meet mobilization requirements does not satisfy mobilization needs.

227.7103–2 Acquisition of technical data.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that data requirements included in solicitations are consistent with the policy expressed in 227.7103–1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs for technical data. Data needs must be established giving consideration to the contractor's economic interests in data pertaining to items, components, or processes that have been developed at private expense; the Government's costs to acquire, maintain, store, retrieve, and protect the data; reprocurement needs; repair, maintenance and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit and function data, or when there are a sufficient number of alternate sources which can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.

(2) When reviewing offers received in response to a solicitation or other request for data, data managers must balance the original assessment of the Government's data needs with data prices contained in the offer.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the type and quantity of the technical data to be delivered under the contract and the format and media in which the data will be delivered;

(2) Establish each deliverable data item as a separate contract line item (this requirement may be satisfied by listing each deliverable data item on an exhibit to the contract);

(3) Identify the prices established for each deliverable data item under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable data item; and

(5) Specifically identify the place of delivery for each deliverable item of technical data.

227.7103–3 Early identification of technical data to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) 10 U.S.C. 2320 requires, to the maximum extent practicable, an identification prior to delivery of any technical data to be delivered to the Government with restrictions on use.

(b) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitations that include the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. The provision requires offerors to identify any technical data for which restrictions, other than copyright, on use, release, or disclosure are asserted and to attach the identification and assertions to the offer.

(c) Subsequent to contract award, the clause at 252.277–7013 permits a contractor, under certain conditions, to make additional assertions of use, release, or disclosure restrictions. The prescription for the use of that clause and its alternate is at 227.7103–6 (a) and (b).

227.7103–4 License rights.

(a) *Grant of license.* The Government obtains rights in technical data, including a copyright license, under and irrevocable license granted or obtained for the Government by the contractor. The contractor or licensor retains all rights in the data not granted to the Government. For technical data that pertain to items, components, or processes, the scope of the license is generally determined by the source of funds used to develop the item, component, or process. When the technical data do not pertain to items, components, or processes, the scope of the license is determined by the source of funds used to create the data.

(1) *Techical data pertaining to items, components, or processes.* Contractors or licensors may, with some exceptions (see 227.7103–5(a)(2) and (a)(4) through (9)), restrict the Government's rights to use, modify, release, reproduce, perform, display or disclose technical data pertaining to items, components, or processes developed exclusively at private expense (limited rights). They may not restrict the Government's rights in items, components, or processes developed exclusively at Government expense (unlimited rights) without the Government's approval. When an item, component, or process is developed with mixed funding, the Government may use, modify, release, reproduce, perform, display or disclose the data pertaining to such items, components, or processes within the Government without restriction but may release or disclose the data outside the Government only for government purposes (government purpose rights).

(2) *Technical data that do not pertain to items, components, or processes.* Technical data may be created during the performance of a contract for a conceptual design or similar effort that does not require the development, manufacture, construction, or production of items, components or processes. The Government generally obtains unlimited rights in such data when the data were created exclusively with Government funds, government purpose rights when the data were created with mixed funding, and limited

rights when the data were created exclusively at private expense.

(b) *Source of funds determination.* The determination of the source of development funds for technical data pertaining to items, components, or processes should be made at any practical sub-item or subcomponent level or for any segregable portion of a process. Contractors may assert limited rights in a segregable sub-item, sub-component, or portion of a process which otherwise qualifies for limited rights under the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items.

227.7103–5 Government rights.

The standard license rights that a licensor grants to the Government are unlimited rights, government purpose rights, or limited rights. Those rights are defined in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. In unusual situations, the standards rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in data in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains unlimited rights in technical data that are—

(1) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(2) Studies, analyses, test data, or similar data produced in the performance of a contract when the study, analysis, test, or similar work was specified as an element of performance;

(3) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(4) Form, fit, and function data;

(5) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(6) Corrections or changes to technical data furnished to the contractor by the Government;

(7) Publicly available or have been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(8) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(9) Data furnished to the Government, under a Government contract or subcontract thereunder, with—

(i) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such data for commercial purposes has expired.

(b) *Government purpose rights.* (1) The Government obtains government purpose rights in technical data—

(i) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7013 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the technical data without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to apply the data for commercial purposes or when necessary to recognize subcontractors' interests in the data.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required the development. Upon expiration of the Government rights period, the Government has unlimited rights in the data including the right to authorize others to use the data for commercial purposes.

(4) During the government purpose rights period, the government may not use, or authorize other persons to use, technical data marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose data in which it has government purpose rights to any person, or authorize others to do so, unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When technical data marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252–227–7025, the contract may be modified, prior to release or disclosure, to include that clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that technical data marked with government purpose rights legends are released or disclosed, including a release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights data. Documents transmitting government purpose rights data to persons under class agreements shall identify the technical data subject to government purpose rights and the class agreement under which such data are provided.

(c) *Limited rights.* (1) The Government obtains limited rights in technical data—

(i) That pertain to items, components, or processes developed exclusively at private expense except when the Government is entitled to unlimited rights as provided in paragraphs (a)(2) and (a)(4) through (9) of this subsection; or

(ii) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(2) Data in which the Government has limited rights may not be used, released, or disclosed outside the Government without the permission of the contractor

asserting the restriction except for a use, release or disclosure that is—

(i) Necessary for emergency repair and overhaul; or

(ii) To a foreign government, other than detailed manufacturing or process data, when use, release, or disclosure is in the interest of the United States and is required for evaluation or informational purposes.

(3) The person asserting limited rights must be notified of the Government's intent to release, disclose, or authorize others to use such data prior to release or disclosure of the data except notification of an intended release, disclosure, or use for emergency repair or overhaul which shall be made as soon as practicable.

(4) When the person asserting limited rights permits the Government to release, disclose, or have others use the data subject to restrictions on further use, release, or disclosure, or for a release under paragraph (c)(2)(i) or (ii) of this subsection, the intended recipient must complete the use and non-disclosure agreement at 227.7103–7 prior to release or disclosure of the limited rights data.

(d) *Specifically negotiated license rights.* (1) Negotiate specific licenses when the parties agree to modify the standard license rights granted to the government or when the government wants to obtain rights in data in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in technical data, consider the acquisition strategy for the item, component, or process, including logistics support and other factors which may have relevance for a particular procurement. The Government may accept lesser rights when it has unlimited or government purpose rights in data but may not accept less than limited rights in such data. The negotiated license rights must stipulate what rights the Government has to release or disclose the data to other persons or to authorize others to use the data. Identify all negotiated rights in a license agreement made part of the contract.

(2) When the Government needs additional rights in data acquired with government purpose or limited rights, the contracting officer must negotiate with the contractor to determine whether there are acceptable terms for transferring such rights. Generally, such negotiations should be conducted only when there is a need to disclose the data outside the Government or if the additional rights are required for competitive reprocurement and the anticipated savings expected to be obtained through competition are estimated to exceed the acquisition cost of the additional rights. Prior to negotiating for additional rights in limited rights data, consider alternatives such as—

(i) Using performance specifications and form, fit, and function data to acquire or develop functionally equivalent items, components, or processes;

(ii) Obtaining a contractor's contractual commitment to qualify additional sources and maintain adequate competition among the sources; or

(iii) Reverse engineering, or providing items from Government inventories to contractors who request the items to facilitate the development of equivalent items through reverse engineering.

227.7103–6 Contract clauses.

(a) Use the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts when the successful offeror(s) will be required to deliver technical data to the Government. Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items (see 227.7102–3), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovative Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(b) Use the clause at 252.227–7013 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the government; and

(2) Facilitated by the Government; and

Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(c) Use the clause at 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, technical data marked with another contractor's restrictive legend(s).

(d) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver technical data. The provision requires offerors to identify any technical data specified in the solicitations as deliverable data items that are the same or substantially the same as data items the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(e) Use the following clauses in solicitations and contracts that include the clause at 252.227–7013:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7030, Technical Data—Withholding of Payment;

(3) 252.227–7036, Certification of Technical Data Conformity; and

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

227.7103–7 Use and non-disclosure agreement.

(a) Except as provided in paragraph (b) of this subsection, technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this subsection prior to release, or disclosure of the data.

(1) The specific conditions under which an intended recipient will be authorized to use, modify, reproduce, release, perform, display, or disclose technical data subject to limited rights or computer software subject to restricted rights must be stipulated in an attachment to the use and non-disclosure agreement.

(2) For an intended release, disclosure, or authorized use of technical data or computer software subject to special license rights, modify paragraph (1)(d) of the use and non-disclosure agreement to enter the conditions, consistent with the license requirements, governing the recipient's obligations regarding use, modification, reproduction, release, performance, display or disclosure of the data or software.

(b) The requirement for use and non-disclosure agreements does not apply to Government contractors which require access to a third party's data or software for the performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished

Information Marked with Restrictive Legends.

(c) The prescribed use and non-disclosure agreement is:

Use and Non-Disclosure Agreement

The undersigned, _____ (Insert Name) _____, an authorized representative of the _____ (Insert Company Name) _____, (which is hereinafter referred to as the ''Recipient'') requests the Government to provide the Recipient with technical data or computer software (hereinafter referred to as ''Data'') in which the Government's use, modification, reproduction, release, performance, display or disclosure rights are restricted. Those Data are identified in an attachment to this Agreement. In consideration for receiving such Data, the Recipient agrees to use the Data strictly in accordance with this Agreement:

(1) The Recipient shall—

(a) Use, modify, reproduce, release, perform, display, or disclose Data marked with government purpose rights or SBIR data rights legends only for government purposes and shall not do so for any commercial purpose. The Recipient shall not release, perform, display, or disclose these Data, without the express written permission of the contractor whose name appears in the restrictive legend (the ''Contractor''), to any person other than its subcontractors or suppliers, or prospective subcontractors or suppliers, who require these Data to submit offers for, or perform, contracts with the Recipient. The Recipient shall require its subcontractors or suppliers, or prospective subcontractors or suppliers, to sign a use and non-disclosure agreement prior to disclosing or releasing these Data to such persons. Such agreement must be consistent with the terms of this agreement.

(b) Use, modify, reproduce, release, perform, display, or disclose technical data marked with limited rights legends only as specified in the attachment to this Agreement. Release, performance, display, or disclosure to other persons is not authorized unless specified in the attachment to this Agreement or expressly permitted in writing by the Contractor. The Recipient shall promptly notify the Contractor of the execution of this Agreement and identify the Contractor's Data that has been or will be provided to the Recipient, the date and place the Data were or will be received, and the name and address of the Government office that has provided or will provide the Data.

(c) Use computer software marked with restricted rights legends only in performance of Contract Number _____ (insert contract number(s)) _____. The recipient shall not, for example, enhance, decompile, disassemble, or reverse engineer the software; time share, or use a computer program with more than one computer at a time. The recipient may not release, perform, display, or disclose such software to others unless expressly permitted in writing by the licensor whose name appears in the restrictive legend. The Recipient shall promptly notify the software licensor of the execution of this Agreement and identify the software that has been or will be provided to the Recipient, the date and place the software were or will be received, and the name and address of the Government office that has provided or will provide the software.

(d) Use, modify, reproduce, release, perform, display, or disclose Data marked with special license rights legends (To be completed by the contracting officer. See 227.7103–7(a)(2). Omit if none of the Data requested is marked with special license rights legends).

(2) The Recipient agrees to adopt or establish operating procedures and physical security measures designed to protect these Data from inadvertent release or disclosure to unauthorized third parties.

(3) The Recipient agrees to accept these Data ''as is'' without any Government representation as to suitability for intended use or warranty whatsoever. This disclaimer does not affect any obligation the Government may have regarding Data specified in a contract for the performance of that contract.

(4) The Recipient may enter into any agreement directly with the Contractor with respect to the use, modification, reproduction, release, performance, display, or disclosure of these Data.

(5) The Recipient agrees to indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of Data received from the Government with restrictive legends by the Recipient or any person to whom the Recipient has released or disclosed the Data.

(6) The Recipient is executing this Agreement for the benefit of the Contractor. The Contractor is a third party beneficiary of this Agreement who, in addition to any other rights it may have, is intended to have the rights of direct action against the Recipient or any other person to whom the Recipient has released or disclosed the Data, to seek damages from any breach of this Agreement or to otherwise enforce this Agreement.

(7) The Recipient agrees to destroy these Data, and all copies of the Data in its possession, no later than 30 days after the date shown in paragraph (8) of this Agreement, to have all persons to whom it released the Data do so by that date, and to notify the Contractor that the Data have been destroyed.

(8) This Agreement shall be effective for the period commencing with the Recipient's execution of this Agreement and ending upon _____ (Insert Date) _____. The obligations imposed by this Agreement shall survive the expiration or termination of the Agreement.

Recipient's Business Name _____

By _____

Authorized Representative

_____

Date

Representative's Typed Name _____

and Title _____

(End of use and non-disclosure agreement)

227.7103–8 Deferred delivery and deferred ordering of technical data.

(a) *Deferred delivery.* Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of technical data. The clause permits the contracting officer to require the delivery of technical data identified as ''deferred delivery'' data at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify which technical data is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such data to permit timely delivery.

(b) *Deferred ordering.* Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for a particular data item(s) has not been established prior to contract award but there is a potential need for the data. Under this clause, the contracting officer may order any data that has been generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such data expires three years after the date the contractor accepts the last item under the subcontract. When the data are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the data into the prescribed form, reproduction costs, and delivery costs.

227.7103–9 Copyright.

(a) *Copyright license.* (1) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor to grant or obtain for the Government license rights which permit the Government to reproduce data, distribute copies of the data, publicly perform or display the data or, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in

technical data will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate a copyright license that provides less rights than the standard limited rights license in technical data.

(2) The clause at 252.227–7013 does not permit a contractor to incorporate a third party's copyrighted data into a deliverable data item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted data in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—acquisition of existing and special works.* See 227.7105 or 227.7106 for copyright considerations when acquiring existing or special works.

227.7103–10 Contractor identification and marking of technical data to be furnished with restrictive markings.

(a) *Identification requirements.* (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify to the contracting officer, prior to contract award, any technical data that the offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror's failure to correct the informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7103–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7103–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the technical data, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, permits the contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor, nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7103–13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose technical data. However, offerors shall not be prohibited from offering products for which the offeror is entitled to provide the Government limited rights in the technical data pertaining to such products and offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish any greater rights in technical data when the offeror is entitled to provide the technical data with limited rights.

(b) *Contractor marking requirements.* The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items—

(1) Requires a contractor that desires to restrict the Government's rights in technical data to place restrictive markings on the data, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any technical data in which the Government has previously obtained rights with the Government's pre-existing rights in that data unless the parties have agreed otherwise or restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired. When restrictions are still applicable, the contractor is permitted to mark the data with the appropriate restrictive legend for which the data qualified.

(c) *Unmarked technical data.* (1) Technical data delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the technical data pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked technical data at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such data, or any extension of that time approved by the contracting officer. The person making the request must:

(i) Identify the technical data that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of technical data contained in the clause at 252.227–7013; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the technical data made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the technical data were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7103–11 Contractor procedures and records.

(a) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, requires a contractor, and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of asserted restrictions on delivered data.

(b) The clause at 252.227–7037, Validation of Restrictive Markings on Technical Data requires contractors and their subcontractors at any tier to maintain records sufficient to justify the validity of restrictive markings on technical data delivered or to be delivered under a Government contract.

227.7103–12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7013 is also a nonconforming marking.

(2) The correction of nonconforming markings on technical data is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return technical data bearing nonconforming markings to the person who has placed the nonconforming markings on such data to provide that person an opportunity to correct or strike the nonconforming marking at that person's expense. If that person fails to correct the nonconformity and return the corrected data within 60 days following the person's receipt of the data, the contracting officer may correct or strike the nonconformity at that person's expense. When it is impracticable to return technical data for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the data may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, performance, display, or disclosure of the marked technical data. For example, a limited rights legend placed on technical data pertaining to items, components, or processes that were developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either—

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the technical data to the person asserting the restriction for correction at that person's expense. If the data are returned and that person fails to correct or strike the unjustified restriction and return the corrected data to the contracting officer within 60 days following receipt of the data, the unjustified marking shall be corrected or stricken at that person's expense.

227.7103–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) *General.* An offeror's assertion(s) of restrictions on the Government's rights to use, modify, reproduce, release, or disclose technical data do not, by themselves, determine the extent of the Government's rights in the technical data. Under 10 U.S.C. 2321, the Government has the right to challenge asserted restrictions when there are reasonable grounds to question the validity of the assertion and continued adherence to the assertion would make it impractical to later procure competitively the item to which the data pertain.

(b) *Pre-award considerations.* The challenge procedures required by 10 U.S.C. 2321 could significantly delay awards under competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(c) *Challenge and validation.* Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion. All challenges must be made in accordance with the provisions of the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data.

(1) *Challenge period.* Asserted restrictions should be reviewed before acceptance of technical data deliverable under the contract. Assertions must be challenged within three years after final payment under the contract or three years after delivery of the data, whichever is later. However, restrictive markings may be challenged at any time if the technical data—

(i) Are publicly available without restrictions;

(ii) Have been provided to the United States without restriction; or

(iii) Have been otherwise made available without restriction other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(2) *Pre-challenge requests for information.* (i) After consideration of the situation described in paragraph (c)(3) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to ascertain the basis of the restrictive markings. Additional supporting documentation may be requested when the explanation provided by the person making the assertion does not, in the contracting officer's opinion, establish the validity of the assertion.

(ii) If the person asserting the restriction fails to respond to the contracting officer's request for information or additional supporting documentation, or if the information submitted or any other available information pertaining to the validity of a restrictive marking does not justify the asserted restriction, a challenge should be considered.

(3)*Transacting matters directly with subcontracts.* The clause at 252.227–7037 obtains the contractor's agreement that the Government may transact matters under the clause directly with a subcontractor, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(i) A subcontractor's or supplier's business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor;

(ii) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor's or suppliers right to assert restrictions; or

(iii) Requested to do so by a subcontractor or supplier.

(4) *Challenge notice.* Do not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. Assertions may be challenged whether or not supporting documentation was requested from the person asserting the restriction.

Challenge notices must be in writing and issued to the contractor or, after consideration of the situations described in paragraph (c)(3) of this subsection, the person asserting the restriction. The challenge notice must include the information in paragraph (e) of the clause at 252.227–7037.

(5) *Extension of response time.* The contracting officer, at his or her discretion, may extend the time for response contained in a challenge notice, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(6) *Contracting officer's final decision.* Contracting officers must issue a final decision for each challenged assertion, whether or not the assertion has been justified.

(i) A contracting officer's final decision that an assertion is not justified must be issued a soon as practicable following the failure of the person asserting the restriction to respond to the contracting officer's challenge within 60 days, or any extension to that time granted by the contracting officer.

(ii) A contracting officer who, following a challenge and response by the person asserting the restriction, determines that an asserted restriction is justified, shall issue a final decision sustaining the validity of the asserted restriction. If the asserted restriction was made subsequent to submission of the contractor's offer, add the asserted restriction to the contract attachment.

(iii) A contracting officer who determine that the validity of an asserted restriction has not been justified shall issue a contracting officer's final decision within the time frames prescribed in 252.227–7037. As provided in paragraph (g) of that clause, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction.

(7) *Multiple challenges to an asserted restriction.* When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

(8) *Validation.* Only a contracting officer's final decision, or actions of an agency board of contract appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the asserted restriction.

227.7103–14 Conformity, acceptance, and warranty of technical data.

(a) *Statutory requirements.* 10 U.S.C. 2320—

(1) Requires contractors to furnish written assurance, at the time technical data are delivered or are made available to the Government, that the technical data are complete, accurate, and satisfy the requirements of the contract concerning such data;

(2) Provides for the establishment of remedies applicable to technical data found to be incomplete, inadequate, or not to satisfy the requirements of the contract concerning such data; and

(3) Authorizes agency heads to withhold payments (or exercise such other remedies an agency head considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(b) *Conformity and acceptance.* (1) Solicitations and contracts requiring the delivery of technical data shall specify the requirements the data must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether technical data tendered for acceptance conform to the contractual requirements.

(2) The clause at 252.227–7030, Technical Data—Withholding of Payment, provides for withholding up to 10 percent of the contract price pending correction or replacement of the nonconforming technical data or negotiation of an equitable reduction in contract price. The amount subject to withholding may be expressed as a fixed dollar amount or as a percentage of the contract price. In either case, the amount shall be determined giving consideration to the relative value and importance of the data. For example—

(i) When the sole purpose of a contract is to produce the data, the relative value of that data may be considerably higher than the value of data produced under a contract where the production of the data is a secondary objective; or

(ii) When the Government will maintain or repair items, repair and maintenance data may have a considerably higher relative value than data that merely describe the item or provide performance characteristics.

(3) Do not accept technical data that do not conform to the contractual requirements in all respects. Except for nonconforming restrictive markings (see paragraph (b)(4) of this subsection), correction or replacement of nonconforming data or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing remedies for nonconforming deliverables.

(4) Follow the procedures at 227.7103–12(a)(2) if nonconforming markings are the sole reason technical data fail to conform to contractual requirements. The clause at 252.227–7030 may be used to withhold an amount for payment, consistent with the terms of the clause, pending correction of the nonconforming markings.

(c) *Warranty.* (1) The intended use of the technical data and the cost, if any, to obtain the warranty should be considered before deciding to obtain a data warranty (see FAR 46.703). The fact that a particular item, component, or process is or is not warranted is not a consideration in determining whether or not to obtain a warranty for the technical data that pertain to the item, component, or process. For example, a data warranty should be considered if the Government intends to repair or maintain an item and defective repair or maintenance data would impair the Government's effective use of the item or result in increased costs to the Government.

(2) As prescribed in 246.710, use the clause at 252.246–7001, Warranty of Data, and its alternates, or a substantially similar clause when the Government needs a specific warranty of technical data.

227.7103–15 Subcontractor rights in technical data.

(a) 10 U.S.C. 2320 provides subcontractors at all tiers the same protection for their rights in data as is provided to prime contractors. The clauses at 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7037, Validation of Restrictive Markings on Technical Data, implement the statutory requirements.

(b) 10 U.S.C. 2321 permits a subcontractor to transact directly with the Government matters relating to the validation of its asserted restrictions on the Government's rights to use or disclose technical data. The clause at 252.227–7037 obtains a contractor's agreement that the direct transaction of validation or challenge matters with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercise its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7103–13(c)(3).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers, at all tiers, who will be furnishing technical data in response to a Government requirement:

(1) 252.227–7013, Rights in Technical Data—Noncommercial Items;

(2) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(3) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government; and

(4) 252.227–7037, Validation of Restrictive Markings on Technical Data.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the Rights in Technical Data—Noncommercial Items clause contained in the contractor's contract with the Government.

227.7103–16 Providing technical data to foreign governments, foreign contractors, or international organizations.

Technical data may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose technical data in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose technical data for which restrictions on use, release, or disclosure have been asserted to foreign entities, or authorize the use of technical data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7103, Rights in Technical Data—Noncommercial Items, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7103–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection), in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, when the Government requires the unrestricted right to use, modify, reproduce, perform, display, release or disclose all technical data to be delivered under the contract. Do not use the clause in contracts for existing or special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights in the technical data that are not less than the rights the Government would have obtained under the data rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate data rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7104 Contracts under the Small Business Innovative Research (SBIR) Program.

(a) Use the clause at 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program, when technical data or computer software will be generated during performance of contracts under the SBIR program.

(b) Under the clause at 252.227–7018, the Government obtains a royalty-free license to use technical data marked with an SBIR data rights legend only for government purposes during the period commencing with contract award and ending five years after completion of the project under which the data were generated. Upon expiration of the five-year restrictive license, the Government has unlimited rights in the SBIR data. During the license period, the Government may not release or disclose SBIR data to any person other than its support services contractors except—

(1) For evaluational purposes;

(2) As expressly permitted by the contractor; or

(3) A use, release, or disclosure that is necessary for emergency repair or overhaul of items operated by the Government.

(c) Do not make any release or disclosure permitted by paragraph (b) of this section unless, prior to release or disclosure, the intended recipient is subject to the use and nondisclosure agreement at 227.7103–7.

(d) Use the clause at 252.227–7018 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(1) In the interest of the Government; and

(2) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(e) Use the following provision and clauses in SBIR solicitations and contracts that include the clause at 252.227–7018:

(1) 252.227–7016, Rights in Bid or Proposal Information;

(2) 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions;

(3) 252.227–7019, Validation of Asserted Restrictions—Computer Software;

(4) 252.227–7030, Technical Data—Withholding of Payment;

(5) 252.227–7036, Certification of Technical Data Conformity; and

(6) 252.227–7037, Validation of Restrictive Markings on Technical Data (paragraph (e) of the clause contains information that must be included in a challenge).

(f) Use the following clauses and provision in SBIR solicitations and contracts in accordance with the guidance at 227.7103–6 (c) and (d):

(1) 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(2) 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government.

227.7105 Contracts for the acquisition of existing works.

227.7105–1 General.

(a) Existing works include motion pictures, television recordings, video recordings, and other audiovisual works in any medium; sound recordings in any medium; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. Usually, these or similar works were not first created, developed, generated, originated, prepared, or produced under a Government contract. Therefore, the Government must obtain a license in the work if it intends to reproduce the work, distribute copies of the work, prepare derivative works, or perform or display the work publicly. When the Government is not responsible for the content of an existing work, it should require the copyright owner to indemnify the Government for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) Follow the procedures at 227.7106 for works which will be first created, developed, generated, originated, prepared, or produced under a Government contract and the Government needs to control distribution of the work or has a specific need to obtain indemnity for liabilities that may arise out of the creation, content, performance, use, or disclosure of the work or from libelous or other unlawful material contained in the work. Follow the procedures at 227.7103 when the Government does not need to control distribution of such works or obtain such indemnities.

227.7105–2 Acquisition of existing works without modification

(a) Use the clause at 252.227–7021, Rights in Data—Existing Works, in lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, in solicitations and contracts exclusively for existing works when—

(1) The existing works will be acquired without modification; and

(2) The Government requires the right to reproduce, prepare derivative works, or publicly perform or display the existing works; or

(3) The Government has a specific need to obtain indemnity for liabilities that may arise out of the content, performance, use, or disclosure of such data.

(b) The clause at 252.227–7021 provides the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, world-wide license to reproduce, prepare derivative works and publicly perform or display the works called for by a contract and to authorize others to do so for government purposes.

(c) A contract clause is not required to acquire existing works such as books, magazines and periodicals, in any storage or retrieval medium, when the Government will not reproduce the books, magazines or periodicals, or prepare derivative works.

227.7105–3 Acquisition of modified existing works.

Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts for modified existing works in lieu of the clause at 252.227–7021, Rights in Data—Existing Works.

227.7106 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of works first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such works. Use the clause—

(1) In lieu of the clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, when the Government must own or control copyright in all works first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7013 when the Government must own or control copyright in a portion of a work first produced, created, or generated and required to be delivered under a contract. The specific portion in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that work. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any works copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display publicly any portion of the work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of works which may be procured under the Rights in Special Works clause include, but are not limited, to audiovisual works, computer data bases, computer software documentation, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7101 Contracts for architect-engineer services.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.7101–1 Architectural designs and data clauses for architect-engineer or construction contracts.

(a) Except as provided in paragraph (b) of this subsection and in 227.7107–2, use the clause at 252.227–7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(b) When the purpose of a contract for architect-engineer services, or for construction involving architect-engineer services, is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to the design by including the clause at 252.227–7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(c) The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227–7033, Rights in Shop Drawings.

227.7102–2 Contracts for construction supplies and research and development work.

Use the provisions and clauses required by 227–7103–6 and 227.7203–6 when the acquisition is limited to—

(a) Construction supplies or materials;

(b) Experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or

(c) Both.

227.7107–3 Approval of restricted designs.

The clause at 252.227–7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.7108 Contractor data repositories.

(a) Contractor data repositories may be established when permitted by agency procedures. The contractual instrument establishing the data repository must require, as a minimum, the data repository management contractor to—

(1) Establish and maintain adequate procedures for protecting technical data delivered to or stored at the repository from unauthorized release or disclosure;

(2) Establish and maintain adequate procedures for controlling the release or disclosure of technical data from the repository to third parties consistent with the Government's rights in such data;

(3) When required by the contracting officer, deliver data to the Government on paper or in other specified media;

(4) Be responsible for maintaining the currency of data delivered directly by Government contractors or subcontractors to the repository;

(5) Obtain use and non-disclosure agreements (see 227.7103–7) from all persons to whom government purpose rights data is released or disclosed; and

(6) Indemnify the Government from any liability to data owners or licensors resulting from, or as a consequence of, a release or disclosure of technical data made by the data repository contractor or its officers, employees, agents, or representatives.

(b) If the contractor is or will be the data repository manager, the contractor's data management and distribution responsibilities must be identified in the contract or the contract must reference the agreement between the Government and the contractor that establishes those responsibilities.

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

7. A new subpart 227.72 is added to read as follows:

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

Sec.

227.7200 Scope of subpart.
227.7201 Definitions.
227.7202 Commercial computer software and commercial computer software documentation.
227.7202–1 Policy.
227.7202–2 Obtaining commercial computer software or commercial computer software documentation.
227.7202–3 Rights in commercial computer software or commercial computer software documentation.
227.7202–4 Contract clause.
227.7203 Noncommercial computer software and noncommercial computer software documentation.
227.7203–1 Policy.
227.7203–2 Acquisition of noncommercial computer software and computer software documentation.
227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.
227.7203–4 License rights.
227.7203–5 Government rights.
227.7203–6 Contract clauses.
227.7203–7 Reserved.
227.7203–8 Deferred delivery and deferred ordering or computer software and computer software documentation.
227.7203–9 Copyright.
227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.
227.7203–11 Contractor procedures and records.
227.7203–12 Government right to establish conformity of markings.
227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.
227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.
227.7203–15 Subcontractor rights in computer software or computer software documentation.
227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.
227.7203–17 Overseas contracts with foreign sources.
227.7204 Contracts under the Small Business Innovative Research Program.
227.7205 Contracts for special works.
227.7206 Contracts for architect-engineer services.
227.7207 Contractor data repositories.

Subpart 227.72—Rights in Computer Software and Computer Software Documentation

227.7200 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements requirements in the following laws and Executive Order:

(1) 10 U.S.C. 2302(4).

(2) 10 U.S.C. 2305 (subsection (d)(4)).

(3) 10 U.S.C. 2320.

(4) 10 U.S.C. 2321.

(5) 10 U.S.C. 2325.

(6) Executive Order 12591 (subsection 1(b)(6)).

(b) Does not apply to computer software or computer software documentation acquired under GSA schedule contracts.

227.7201 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the terms ''offeror'' and ''contractor'' include an offeror's or contractor's subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7202 Commercial computer software and commercial computer software documentation.

227.7202–1 Policy.

(a) Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.

(b) Commercial computer software and commercial computer software documentation shall be obtained competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.

(c) Offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

227.7202–2 Obtaining commercial computer software or commercial computer software documentation.

Commercial computer software or commercial computer software documentation shall be acquired, to the maximum extent practicable, using the procedures in subpart 211.70.

227.7202–3 Rights in commercial computer software or commercial computer software documentation.

(a) The Government shall have only the rights specified in the license under which the commercial computer software or commercial computer software documentation was obtained.

(b) If the Government has a need for rights not conveyed under the license customarily provided to the public, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific rights granted to the Government shall be enumerated in the contract license agreement or an addendum thereto.

227.7202–4 Contract clause.

A specific contract clause governing the Government's rights in commercial computer software or commercial computer software documentation is not prescribed. As required by 227.7202–3, the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation shall be identified in a license agreement.

227.7203 Noncommercial computer software and noncommercial computer software documentation.

227.7203–1 Policy.

(a) DoD policy is to acquire only the computer software and computer software documentation, and the rights in such software or documentation, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the computer software or computer software documentation to be delivered under a contract and the delivery schedules for the software or documentation;

(2) Establish or reference procedures for determining the acceptability of computer software or computer software documentation;

(3) Establish separate contract line items, to the extent practicable, for the computer software or computer software documentation to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, computer software or computer software documentation to be furnished with restrictions on the Government's rights and require contractors to identify computer software or computer software documentation to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in computer software developed exclusively at private expense except for the software identified at 227.7203–5(a) (3) through (6).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish computer software developed exclusively at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose the software may be restricted.

227.7203–2 Acquisition of noncommercial computer software and computer software documentation.

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that computer software and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7203–1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs. In addition to desired software performance, compatibility, or other technical considerations, needs determinations should consider such factors as multiple site or shared use requirements, whether the Government's software maintenance philosophy will require the right to modify or have third parties modify the software, and any special computer software documentation requirements.

(2) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data managers must balance the original assessment of the Government's needs with prices offered.

(c) Contracting officers are responsible for ensuring that, wherever practicable, solicitations and contracts—

(1) Identify the types of computer software and the quantity of computer programs and computer software documentation to be delivered, any requirements for multiple users at one site or multiple site licenses, and the format and media in which the software or documentation will be delivered;

(2) Establish each type of computer software or computer software documentation to be delivered as a separate contract line item (this requirement may be satisfied by an exhibit to the contract);

(3) Identify the prices established for each separately priced deliverable item of computer software or computer software documentation under a fixed-price type contract;

(4) Include delivery schedules and acceptance criteria for each deliverable item; and

(5) Specifically identify the place of delivery for each deliverable item.

227.7203–3 Early identification of computer software or computer software documentation to be furnished to the Government with restrictions on use, reproduction or disclosure.

(a) Use the provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, in all solicitation that include the clause at

252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. The provision requires offerors to identify any computer software or computer software documentation for which restrictions, other than copyright, on use, modification, reproduction, release, performance, display, or disclosure are asserted and to attach the identification and assertion to the offer.

(b) Subsequent to contract award, the clause at 252.227–7014 permits a contractor, under certain conditions, to make additional assertions of restrictions. The prescriptions for the use of that clause and its alternates are at 227.7203–6(a).

227.7203–4 License rights.

(a) *Grant of license.* The Government obtains rights in computer software or computer software documentation, including a copyright license, under an irrevocable license granted or obtained by the contractor which developed the software or documentation or the licensor of the software or documentation if the development contractor is not the licensor. The contractor or licensor retains all rights in the software or documentation not granted to the Government. The scope of a computer software license is generally determined by the source of funds used to develop the software. Contractors or licensors may, with some exceptions, restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software developed exclusively or partially at private expense (see 227.7203–5 (b) and (c)). They may not, without the Government's agreement (see 227.7203–5(d)), restrict the Government's rights in computer software developed exclusively with Government funds or in computer software documentation required to be delivered under a contract.

(b) *Source of funds determination.* The determination of the source of funds used to develop computer software should be made at the lowest practicable segregable portion of the software or documentation (e.g., a software sub-routine that performs a specific function). Contractors may assert restricted rights in a segregable portion of computer software which otherwise qualifies for restricted rights under the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

227.7203–5 Government rights.

The standard license rights in computer software that a licensor grants to the Government are unlimited rights, government purpose rights, or restricted rights. The standard license in computer software documentation conveys unlimited rights. Those rights are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. In unusual situations, the standard rights may not satisfy the Government's needs or the Government may be willing to accept lesser rights in return for other consideration. In those cases, a special license may be negotiated. However, the licensor is not obligated to provide the Government greater rights and the contracting officer is not required to accept lesser rights than the rights provided in the standard grant of license. The situations under which a particular grant of license applies are enumerated in paragraphs (a) through (d) of this subsection.

(a) *Unlimited rights.* The Government obtains an unlimited rights license in—

(1) Computer software developed exclusively with Government funds;

(2) Computer software documentation required to be delivered under a Government contract;

(3) Corrections or changes to computer software or computer software documentation furnished to the contractor by the Government;

(4) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or it assets to another party;

(5) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(6) Computer software or computer software documentation furnished to the Government, under a Government contract or subcontract with—

(i) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(ii) Government purpose rights and the contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(b) *Government purpose rights.* (1) Except as provided in paragraph (a) of this subsection, the Government obtains government purpose rights in computer software developed with mixed funding.

(2) The period during which government purpose rights are effective is negotiable. The clause at 252.227–7014 provides a nominal five-year period. Either party may request a different period. Changes to the government purpose rights period may be made at any time prior to delivery of the software without consideration from either party. Longer periods should be negotiated when a five-year period does not provide sufficient time to commercialize the software or, for software developed by subcontractors, when necessary to recognize the subcontractors' interests in the software.

(3) The government purpose rights period commences upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software. Upon expiration of the government purpose rights period, the Government has unlimited rights in the software including the right to authorize others to use data for commercial purposes.

(4) During the government purpose rights period, the Government may not use, or authorize other persons to use, computer software marked with government purpose rights legends for commercial purposes. The Government shall not release or disclose, or authorize others to release or disclose, computer software in which it has government purpose rights to any person unless—

(i) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7; or

(ii) The intended recipient is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) When computer software marked with government purpose rights legends will be released or disclosed to a Government contractor performing a contract that does not include the clause at 252.227–7025, the contract may be modified, prior to release or disclosure, to include such clause in lieu of requiring the contractor to complete a use and non-disclosure agreement.

(6) Contracting activities shall establish procedures to assure that computer software or computer software documentation marked with government purpose rights legends are released or disclosed, including a

release or disclosure through a Government solicitation, only to persons subject to the use and non-disclosure restrictions. Public announcements in the Commerce Business Daily or other publications must provide notice of the use and non-disclosure requirements. Class use and non-disclosure agreements (e.g., agreements covering all solicitations received by the XYZ company within a reasonable period) are authorized and may be obtained at any time prior to release or disclosure of the government purpose rights software or documentation. Documents transmitting government purpose rights software or documentation to persons under class agreements shall identify the specific software or documentation subject to government purpose rights and the class agreement under which such software or documentation are provided.

(c) *Restricted rights.* (1) The Government obtains restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under a contract that were developed exclusively at private expense.

(2) Contractors are not required to provide the Government additional rights in computer software delivered or otherwise provided to the Government with restricted rights. When the Government has a need for additional rights, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. List or describe all software in which the contractor has granted the Government additional rights in a license agreement made part of the contract (see paragraph (d) of this subsection). The license shall enumerate the specific additional rights granted to the Government.

(d) *Specifically negotiated license rights.* Negotiate specific licenses when the parties agree to modify the standard license rights granted to the Government or when the Government wants to obtain rights in computer software in which it does not have rights. When negotiating to obtain, relinquish, or increase the Government's rights in computer software, consider the planned software maintenance philosophy, anticipated time or user sharing requirements, and other factors which may have relevance for a particular procurement. If negotiating to relinquish rights in computer software documentation, consider the administrative burden associated with protecting documentation subject to restrictions from unauthorized release or disclosure. The negotiated license rights must stipulate the rights granted the Government to use, modify, reproduce, release, perform, display, or disclose the software or documentation and the extent to which the Government may authorize others to do so. Identify all negotiated rights in a license agreement made part of the contract.

(e) *Rights in derivative computer software or computer software documentation.* The clause at 252.227–7014 protects the Government's rights in computer software, computer software documentation, or portions thereof that the contractor subsequently uses to prepare derivative software or subsequently embeds or includes in other software or documentation. The Government retains the rights it obtained under the development contract in the unmodified portions of the derivative software or documentation.

227.7203–6 Contract clauses.

(a)(1) use the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, in solicitations and contracts when the successful offeror(s) will be required to deliver computer software or computer software documentation. Do not use the clause when the only deliverable items are technical data (other than computer software documentation), commercial computer software or commercial computer software documentation, commercial items (see 227.7102–3), special works (see 227.7205), or contracts under the Small Business Innovative Research Program (see 227.7104), Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts..

(2) Use the clause at 252.227–7014 with its Alternate I in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

(i) In the interest of the Government; and

(ii) Facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

(b) Use the clause at 252.227–7016, Rights in Bid or Proposal Information, in solicitations and contracts that include the clause at 252.227–7014.

(c) Use the clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, in solicitations and contracts that include the clause at 252.227–7014. The clause provides procedures for the validation of asserted restrictions on the Government's rights to use, release, or disclose computer software.

(d) Use the provision at 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, in solicitations and contracts when it is anticipated that the Government will provide the contractor, for performance of its contract, computer software or computer software documentation marked with another contractor's restrictive legend(s).

(e) Use the provision at 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, in solicitations when the resulting contract will require the contractor to deliver computer software or computer software documentation. The provision requires offerors to identify any software or documentation specified in the solicitation as deliverable items that are the same or substantially the same as software or documentation which the offeror has delivered or is obligated to deliver, either as a contractor or subcontractor, under any other federal agency contract.

(f) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in solicitations and contracts that include the clause at 252.227–7014 when the contractor will be required to deliver noncommercial computer software documentation (technical data). The clause implements statutory requirements under 10 U.S.C. 2321. Paragraph (e) of the clause contains information that must be included in a formal challenge.

227.7203–7 [Reserved]

227.7203–8 Deferred delivery and deferred ordering of computer software and computer software documentation.

(a) *Deferred delivery.* Use the clause at 252.227–7026, Deferred Delivery of Technical Data or Computer Software, when it is in the Government's interests to defer the delivery of computer software or computer software documentation. The clause permits the contracting officer to require the delivery of data identified as ''deferred delivery'' data or computer software at any time until two years after acceptance by the Government of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors or suppliers to deliver such data expires two years after the date the prime contractor accepts the last item from the subcontractor or supplier for use in the performance of the contract. The contract must specify the computer

software or computer software documentation that is subject to deferred delivery. The contracting officer shall notify the contractor sufficiently in advance of the desired delivery date for such software or documentation to permit timely delivery.

(b) *Deferred ordering.* Use the clause at 252.227–7027, Deferred Ordering of Technical Data or Computer Software, when a firm requirement for software or documentation has not been established prior to contract award but there is a potential need for computer software or computer software documentation. Under this clause the contracting officer may order any computer software or computer software documentation generated in the performance of the contract or any subcontract thereunder at any time until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the date the contractor accepts the last item under the subcontract. When the software or documentation are ordered, the delivery dates shall be negotiated and the contractor compensated only for converting the software or documentation into the prescribed form, reproduction costs, and delivery costs.

227.7203–9 Copyright.

(a) *Copyright license.* (1) The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor to grant, or obtain for the Government license rights which permit the Government to reproduce the software or documentation, distribute copies, perform or display the software or documentation and, through the right to modify data, prepare derivative works. The extent to which the Government, and others acting on its behalf, may exercise these rights varies for each of the standard data rights licenses obtained under the clause. When non-standard license rights in computer software or computer software documentation will be negotiated, negotiate the extent of the copyright license concurrent with negotiations for the data rights license. Do not negotiate copyright licenses for computer software that provide less rights than the standard restricted rights in computer software license. For computer software documentation, do not negotiate a copyright license that provides less rights than the standard limited rights in technical data license.

(2) The clause at 252.227–7013, Rights in Technical Data—Noncommercial Items, does not permit a contractor to incorporate a third party's copyrighted software into a deliverable software item unless the contractor has obtained an appropriate license for the Government and, when applicable, others acting on the Government's behalf, or has obtained the contracting officer's written approval to do so. Grant approval to use third party copyrighted software in which the Government will not receive a copyright license only when the Government's requirements cannot be satisfied without the third party material or when the use of the third party material will result in cost savings to the Government which outweigh the lack of a copyright license.

(b) *Copyright considerations—special works.* See 227.7205 for copyright considerations when acquiring special works.

227.7203–10 Contractor identification and marking of computer software or computer software documentation to be furnished with restrictive markings.

(a) *Identification requirements:* (1) The solicitation provision at 252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions, requires offerors to identify, prior to contract award, any computer software or computer software documentation that an offeror asserts should be provided to the Government with restrictions on use, modification, reproduction, release or disclosure. This requirement does not apply to restrictions based solely on copyright. The notification and identification must be submitted as an attachment to the offer. If an offeror fails to submit the attachment or fails to complete the attachment in accordance with the requirements of the solicitation provision, such failure shall constitute a minor informality. Provide offerors an opportunity to remedy a minor informality in accordance with the procedures at FAR 14.405 or 15.607. An offeror's failure to correct an informality within the time prescribed by the contracting officer shall render the offer ineligible for award.

(2) The procedures for correcting minor informalities shall not be used to obtain information regarding asserted restrictions or an offeror's suggested asserted rights category. Questions regarding the justification for an asserted restriction or asserted rights category must be pursued in accordance with the procedures at 227.7203–13.

(3) The restrictions asserted by a successful offeror shall be attached to its contract unless, in accordance with the procedures at 227.7203–13, the parties have agreed that an asserted restriction is not justified. The contract attachment shall provide the same information regarding identification of the computer software or computer software documentation, the asserted rights category, the basis for the assertion, and the name of the person asserting the restrictions as required by paragraph (d) of the solicitation provision at 252.227–7017. Subsequent to contract award, the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, permits a contractor to make additional assertions under certain conditions. The additional assertions must be made in accordance with the procedures and in the format prescribed by that clause.

(4) Neither the pre- or post-award assertions made by the contractor nor the fact that certain assertions are identified in the attachment to the contract, determine the respective rights of the parties. As provided at 227.7203–13, the Government has the right to review, verify, challenge and validate restrictive markings.

(5) Information provided by offerors in response to the solicitation provision at 252.227–7017 may be used in the source selection process to evaluate the impact on evaluation factors that may be created by restrictions on the Government's ability to use or disclose computer software or computer software documentation.

(b) *Contractor marking requirements.* The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation—

(1) Requires a contractor who desires to restrict the Government's rights in computer software or computer software documentation to place restrictive markings on the software or documentation, provides instructions for the placement of the restrictive markings, and authorizes the use of certain restrictive markings. When it is anticipated that the software will or may be used in combat or situations which simulate combat conditions, do not permit contractors to insert instructions into computer programs that interfere with or delay operation of the software to display a restrictive rights legend or other license notice; and

(2) Requires a contractor to deliver, furnish, or otherwise provide to the Government any computer software or computer software documentation in which the Government has previously obtained rights with the Government's pre-existing rights in that software or documentation unless the parties have

agreed otherwise or restrictions on the Government's rights to use, modify, produce, release, or disclose the software or documentation have expired. When restrictions are still applicable, the contractor is permitted to mark the software or documentation with the appropriate restrictive legend.

(c) *Unmarked computer software or computer software documentation.* (1) Computer software or computer software documentation delivered or otherwise provided under a contract without restrictive markings shall be presumed to have been delivered with unlimited rights and may be released or disclosed without restriction. To the extent practicable, if a contractor has requested permission (see paragraph (c)(2) of this subsection) to correct an inadvertent omission of markings, do not release or disclose the software or documentation pending evaluation of the request.

(2) A contractor may request permission to have appropriate legends placed on unmarked computer software or computer software documentation at its expense. The request must be received by the contracting officer within six months following the furnishing or delivery of such software or documentation, or any extension of that time approved by the contracting officer. The person making the request must—

(i) Identify the software or documentation that should have been marked;

(ii) Demonstrate that the omission of the marking was inadvertent, the proposed marking is justified and conforms with the requirements for the marking of computer software or computer software documentation contained in the clause at 252.227–7014; and

(iii) Acknowledge, in writing, that the Government has no liability with respect to any disclosure, reproduction, or use of the software or documentation made prior to the addition of the marking or resulting from the omission of the marking.

(3) Contracting officers should grant permission to mark only if the software or documentation were not distributed outside the Government or were distributed outside the Government with restrictions on further use or disclosure.

227.7203–11 Contractor procedures and records.

(a) The clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, requires a contractor, and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, to establish and follow written procedures to assure that restrictive markings are used only when authorized and to maintain records to justify the validity of restrictive markings.

(b) The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, requires contractors and their subcontractors or suppliers at any tier to maintain records sufficient to justify the validity of markings that assert restrictions on the use, modification, reproduction, release, performance, display, or disclosure of computer software.

227.7203–12 Government right to establish conformity of markings.

(a) *Nonconforming markings.* (1) Authorized markings are identified in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation. All other markings are nonconforming markings. An authorized marking that is not in the form, or differs in substance, from the marking requirements in the clause at 252.227–7014 is also a nonconforming marking.

(2) The correction of nonconforming markings on computer software is not subject to 252.227–7019, Validation of Asserted Restrictions—Computer Software, and the correction of nonconforming markings on computer software documentation (technical data) is not subject to 252.227–7037, Validation of Restrictive Markings on Technical Data. To the extent practicable, the contracting officer should return computer software or computer software documentation bearing nonconforming markings to the person who has placed the nonconforming markings on the software or documentation to provide that person an opportunity to correct or strike the nonconforming markings at that person's expense. If that person fails to correct the nonconformity and return the corrected software or documentation within 60 days following the person's receipt of the software or documentation, the contracting officer may correct or strike the nonconformity at the person's expense. When it is impracticable to return computer software or computer software documentation for correction, contracting officers may unilaterally correct any nonconforming markings at Government expense. Prior to correction, the software or documentation may be used in accordance with the proper restrictive marking.

(b) *Unjustified markings.* (1) An unjustified marking is an authorized marking that does not depict accurately restrictions applicable to the Government's use, modification, reproduction, release, or disclosure of the marked computer software or computer software documentation. For example, a restricted rights legend placed on computer software developed under a Government contract either exclusively at Government expense or with mixed funding (situations under which the Government obtains unlimited or government purpose rights) is an unjustified marking.

(2) Contracting officers have the right to review and challenge the validity of unjustified markings. However, at any time during performance of a contract and notwithstanding existence of a challenge, the contracting officer and the person who has asserted a restrictive marking may agree that the restrictive marking is not justified. Upon such agreement, the contracting officer may, at his or her election, either——

(i) Strike or correct the unjustified marking at that person's expense; or

(ii) Return the computer software or computer software documentation to the person asserting the restriction for correction at that person's expense. If the software or documentation are returned and that person fails to correct or strike the unjustified restriction and return the corrected software or documentation to the contracting officer within 60 days following receipt of the software or documentation, the unjustified marking shall be corrected or stricken at that person's expense.

227.7203–13 Government right to review, verify, challenge and validate asserted restrictions.

(a) *General.* An offeror's or contractor's assertion(s) of restrictions on the Government's rights to use, modify, reproduce, release, or disclose computer software or computer software documentation do not, by themselves, determine the extent of the Government's rights in such software or documentation. The Government may require an offeror or contractor to submit sufficient information to permit an evaluation of a particular asserted restriction and may challenge asserted restrictions when there are reasonable grounds to believe that an assertion is not valid.

(b) *Requests for information.* Contracting officers should have a reason to suspect that an asserted restriction might not be correct prior to requesting information. When

requesting information, provide the offeror or contractor the reason(s) for suspecting that an asserted restriction might not be correct. A need for additional license rights is not, by itself, a sufficient basis for requesting information concerning an asserted restriction. Follow the procedures at 227.7203–5(d) when additional license rights are needed but there is no basis to suspect that an asserted restriction might not be valid.

(c) *Transacting matters directly with subcontractors.* The clause at 252.227–7019, Validation of Asserted Restrictions—Computer Software, obtains the contractor's agreement that the Government may transact matters under the clause directly with a subcontractor or supplier, at any tier, without creating or implying privity of contract. Contracting officers should permit a subcontractor or supplier to transact challenge and validation matters directly with the Government when—

(1) A subcontractor's or supplier's business interests in its technical data would be compromised if the data were disclosed to a higher tier contractor.

(2) There is reason to believe that the contractor will not respond in a timely manner to a challenge and an untimely response would jeopardize a subcontractor's or supplier's right to assert restrictions; or

(3) Requested to do so by a subcontractor or supplier.

(d) *Challenging asserted restrictions.* (1) *Pre-award considerations.* The challenge procedures in the clause at 252.227–7019 could significantly delay competitive procurements. Therefore, avoid challenging asserted restrictions prior to a competitive contract award unless resolution of the assertion is essential for successful completion of the procurement.

(2) *Computer software documentation.* Computer software documentation is technical data. Challenges to asserted restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software documentation must be made in accordance with the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, and the guidance at 227.7103–13. The procedures in the clause at 252.227–7037 implement requirements contained in 10 U.S.C. 2321. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7103–12(b)(2) is strongly encouraged.

(3) *Computer software.* (i) Asserted restrictions should be reviewed before acceptance of the computer software deliverable under a contract. The Government's right to challenge an assertion expires three years after final payment under the contract or three years after delivery of the software, whichever is later. Those limitations on the Government's challenge rights do not apply to software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions.

(ii) Contracting officers must have reasonable grounds to challenge the current validity of an asserted restriction. Before challenging an asserted restriction, carefully consider all available information pertaining to the asserted restrictions. Resolution of questions regarding the validity of asserted restrictions using the process described at 227.7203–12(b)(2) is strongly encouraged. After consideration of the situations described in paragraph (c) of this subsection, contracting officers may request the person asserting a restriction to furnish a written explanation of the facts and supporting documentation for the assertion in sufficient detail to enable the contracting officer to determine the validity of the assertion. Additional supporting documentation may be requested when the explanation provided by that person does not, in the contracting officer's opinion, establish the validity of the assertion.

(iii) Assertions may be challenged whether or not supporting documentation was requested. Challenges must be in writing and issued to the person asserting the restriction.

(4) *Extension of response time.* The contracting officer, at his or her discretion, may extend the time for response contained in a challenge, as appropriate, if the contractor submits a timely written request showing the need for additional time to prepare a response.

(e) *Validating or denying asserted restrictions.* (1) Contracting officers must promptly issue a final decision denying or sustaining the validity of each challenged assertion unless the parties have agreed on the disposition of the assertion. When a final decision denying the validity of an asserted restriction is made following a timely response to a challenge, the Government is obligated to continue to respect the asserted restrictions through final disposition of any appeal unless the agency head notifies the person asserting the restriction that urgent or compelling circumstances do not permit the Government to continue to respect the asserted restriction. See 252.227–7019(g) for restrictions applicable following a determination of urgent and compelling circumstances.

(2) Only a contracting officer's final decision, or actions of an agency Board of Contract Appeals or a court of competent jurisdiction, that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Multiple challenges to an asserted restriction.* When more than one contracting officer challenges an asserted restriction, the contracting officer who made the earliest challenge is responsible for coordinating the Government challenges. That contracting officer shall consult with all other contracting officers making challenges, verify that all challenges apply to the same asserted restriction and, after consulting with the contractor, subcontractor, or supplier asserting the restriction, issue a schedule that provides that person a reasonable opportunity to respond to each challenge.

227.7203–14 Conformity, acceptance, and warranty of computer software and computer software documentation.

(a) *Computer software documentation.* Computer software documentation is technical data. See 227.7103–14 for appropriate guidance and statutory requirements.

(b) *Computer software.* (1) *Conformity and acceptance.* Solicitations and contracts requiring the delivery of computer software shall specify the requirements the software must satisfy to be acceptable. Contracting officers, or their authorized representatives, are responsible for determining whether computer software tendered for acceptance conforms to the contractual requirements. Except for nonconforming restrictive markings (follow the procedures at 227.7203–12(a) if nonconforming markings are the sole reason computer software tendered for acceptance fails to conform to contractual requirements), do not accept software that does not conform in all respects to applicable contractual requirements. Correction or replacement of nonconforming software, or an equitable reduction in contract price when correction or replacement of the nonconforming data is not practicable or is not in the Government's interests, shall be accomplished in accordance with—

(i) The provisions of a contract clause providing for inspection and acceptance of deliverables and remedies for nonconforming deliverables; or

(ii) The procedures at FAR 46.407(c) through (g), if the contract does not contain an inspection clause providing

remedies for nonconforming deliverables.

(2) *Warranties.* (i) *Weapon systems.* Computer software that is a component of a weapon system or major subsystem should be warranted as part of the weapon system warranty. Follow the procedures at 246.770.

(ii) *Non-weapon systems.* Approval of the chief of the contracting office must be obtained to use a computer software warranty other than a weapon system warranty. Consider the factors at FAR 46.703 in deciding whether to obtain a computer software warranty. When approval for a warranty has been obtained, the clause at 252.246–7001, Warranty of Data, and its alternates, may be appropriately modified for use with computer software or a procurement specific clause may be developed.

227.7203–15 Subcontractor rights in computer software or computer software documentation.

(a) Subcontractors and suppliers at all tiers should be provided the same protection for their rights in computer software or computer software documentation as are provided to prime contractors.

(b) The clauses at 252.227–7019, Validation of Asserted Restrictions—Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, obtain a contractor's agreement that the Government's transaction of validation or challenge matters directly with subcontractors at any tier does not establish or imply privity of contract. When a subcontractor or supplier exercises its right to transact validation matters directly with the Government, contracting officers shall deal directly with such persons, as provided at 227.7203–13(c) for computer software and 227.7103–13(c)(3) for computer software documentation (technical data).

(c) Require prime contractors whose contracts include the following clauses to include those clauses, without modification except for appropriate identification of the parties, in contracts with subcontractors or suppliers who will be furnishing computer software in response to a Government requirement (see 227.7103–15(c) for clauses required when subcontractors or suppliers will be furnishing computer software documentation (technical data)):

(1) 252.227.7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation;

(2) 252.227.7019, Validation of Asserted Restrictions—Computer Software;

(3) 252.227.7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(4) 252.227.7028, Technical Data or Computer Software Previously Delivered to the Government.

(d) Do not require contractors to have their subcontractors or suppliers at any tier relinquish rights in technical data to the contractor, a higher tier subcontractor, or to the Government, as a condition for award of any contract, subcontract, purchase order, or similar instrument except for the rights obtained by the Government under the provisions of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the contractor's contract with the Government.

227.7203–16 Providing computer software or computer software documentation to foreign governments, foreign contractors, or international organizations.

Computer software or computer software documentation may be released or disclosed to foreign governments, foreign contractors, or international organizations only if release or disclosure is otherwise permitted both by Federal export controls and other national security laws or regulations. Subject to such laws and regulations, the Department of Defense—

(a) May release or disclose computer software or computer software documentation in which it has obtained unlimited rights to such foreign entities or authorize the use of such data by those entities; and

(b) Shall not release or disclose computer software or computer software documentation for which restrictions on use, release, or disclosure have been asserted to such foreign entities or authorize the use of such data by those entities, unless the intended recipient is subject to the same provisions as included in the use and non-disclosure agreement at 227.7103–7 and the requirements of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, governing use, modification, reproduction, release, performance, display, or disclosure of such data have been satisfied.

227.7203–17 Overseas contracts with foreign sources.

(a) The clause at 252.227–7032, Rights in Technical Data and Computer Software (Foreign), may be used in contracts with foreign contractors to be performed overseas, except Canadian purchases (see paragraph (c) of this subsection) in lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government requires the unrestricted right to use, modify, reproduce, release, perform, display, or disclose all computer software or computer software documentation to be delivered under the contract. Do not use the clause in contracts for special works.

(b) When the Government does not require unlimited rights, the clause at 252.227–7032 may be modified to accommodate the needs of a specific overseas procurement situation. The Government should obtain rights to the computer software or computer software documentation that are not less than the rights the Government would have obtained under the software rights clause(s) prescribed in this part for a comparable procurement performed within the United States or its possessions.

(c) Contracts for Canadian purchases shall include the appropriate software rights clause prescribed in this part for a comparable procurement performed within the United States or its possessions.

227.7204 Contracts under the Small Business Innovative Research Program.

When contracting under the Small Business Innovative Research Program, follow the procedures at 227–7104.

227.7205 Contracts for special works.

(a) Use the clause at 252.227–7020, Rights in Special Works, in solicitations and contracts where the Government has a specific need to control the distribution of computer software or computer software documentation first produced, created, or generated in the performance of a contract and required to be delivered under that contract, including controlling distribution by obtaining an assignment of copyright, or a specific need to obtain indemnity for liabilities that may arise out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of such software or documentation. Use the clause—

(1) In lieu of the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, when the Government must own or control copyright in all computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract; or

(2) In addition to the clause at 252.227–7014 when the Government must own or control copyright in some of the computer software or computer software documentation first produced, created, or generated and required to be delivered under a contract. The specific software or documentation in which the Government must own or control copyright must be identified in a special contract requirement.

(b) Although the Government obtains an assignment of copyright and unlimited rights in the computer software or computer software documentation delivered as a special work under the clause at 252.227–7020, the contractor retains use and disclosure rights in that software or documentation. If the Government needs to restrict a contractor's rights to use or disclose a special work, it must also negotiate a special license which specifically restricts the contractor's use or disclosure rights.

(c) The clause at 252.227–7020 does not permit a contractor to incorporate into a special work any work copyrighted by others unless the contractor obtains the contracting officer's permission to do so and obtains for the Government a non-exclusive, paid up, world-wide license to make and distribute copies of that work, to prepare derivative works, to perform or display any portion of that work, and to permit others to do so for government purposes. Grant permission only when the Government's requirements cannot be satisfied unless the third party work is included in the deliverable work.

(d) Examples of other works which may be procured under the clause at 252.227–7020 include, but are not limited to, audiovisual works, scripts, soundtracks, musical compositions, and adaptations; histories of departments, agencies, services or units thereof; surveys of Government establishments; instructional works or guidance to Government officers and employees on the discharge of their official duties; reports, books, studies, surveys or similar documents; collections of data containing information pertaining to individuals that, if disclosed, would violate the right of privacy or publicity of the individuals to whom the information relates; or investigative reports.

227.7206 Contracts for architect-engineer services.

Follow 227.7107 when contracting for architect-engineer services.

227.7207 Contractor data repositories.

Follow 227.7108 when it is in the Government's interests to have a data repository include computer software or to have a separate computer software repository. Contractual instruments establishing the repository requirements must appropriately reflect the repository manager's software responsibilities.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7015 [Removed and Reserved]

8. Section 252.211–7015 is removed and reserved.

252.211–7016 [Removed and Reserved]

9. Section 252.211–7016 is removed and reserved.

252.211–7017 [Removed and Reserved]

10. Section 252.211–7017 is removed and reserved.

252.211–7021 [Amended]

11. Section 252.211–7021 is amended by revising the clause date to read ''(JUN 1995)'' in lieu of ''(MAY 1991); by revising in paragraph (b)(1) in the title in the clause list under the clause number 252.225–7001 the word ''Payment'' to read ''Payments;'' by adding in paragraph (b)(1) an additional clause at the end of the clause list to read ''252.227–7015 Technical Data—Commercial Items;'' and by revising in paragraph (b)(2) in the title in the clause list under the clause number FAR 52.223–1 the word ''Clear'' to read ''Clean;''

12. Section 252.227–7013 is revised to read as follows:

252.227–7013 Rights in technical data—Noncommercial items.

As prescribed in 227.7103–6(a), use the following clause:

Rights in Technical Data—Noncommercial Items (June 1995)

(a) *Definitions.* As used in this clause:

(1) *Computer data base* means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) *Computer program* means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(6) *Developed* means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(11) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(12) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(13) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(14) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(15) *Unlimited rights* means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) *Unlimited rights.*

The Government shall have unlimited rights in technical data that are—

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) *Government purpose rights.*

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) *Limited rights.*

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(4) *Specifically negotiated license rights.*

The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(13) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.*

Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.*

The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(13) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) *Contractor rights in technical data.* All rights not granted to the Government are retained by the Contractor.

(d) *Third party copyrighted data.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) *Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

Technical data to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST) ..	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such item, component, or process.

[2] Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Limited rights markings.* Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.* (1) *Unjustified technical data markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) *Nonconforming technical data markings.* A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data.* (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

Alternate I (June 1995)

As prescribed in 227.7103–6(b), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph only applies to technical data in which the Government has obtained unlimited rights or a license to make an unrestricted release of technical data.

(2) The Government shall not publish a deliverable technical data item or items identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such data on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such data or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the data are reasonably available to the public for purchase.

13. Section 252.227–7014 is added to read as follows:

252.227–7014 Rights in noncommercial computer software and noncommercial computer software documentation.

As prescribed in 227.7203–6(a)(1), use the following clause.

Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (June 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1) (i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Developed* means that—

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(7) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(9) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(11) *Government purpose rights* means the rights to—

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(12) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(13) *Noncommercial computer software* means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(14) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(14) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(14) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

(15) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in—

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) *Government purpose rights.* (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar

contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) *Restricted rights.* (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(4) *Specifically negotiated license rights.* (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13) of the Rights in Technical Data—Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) *Prior government rights.* Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) *Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)	(LIST)	(LIST)	(LIST)

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract; the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at

paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) *Government purpose rights markings.* Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) *Restricted rights markings.* Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) *Special license rights markings.* (i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. _____(Insert contract number)_____, License No._____(Insert license identifier)_____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) *Pre-existing markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.* (1) *Unjustified computer software or computer software documentation markings.* The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions—Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming computer software or computer software documentation markings.* A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions—Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in computer software or computer software documentation.* (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when—

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

ALTERNATE I (JUN 1995)

As prescribed in 227.7203–6(a)(2), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.*

(1) This paragraph only applies to computer software or computer software documentation in which the Government has obtained unlimited rights or a license to make an unrestricted release of the software or documentation.

(2) The Government shall not publish a deliverable item or items of computer software or computer software documentation identified in this contract as being subject to paragraph (l) of this clause or authorize others to publish such software or documentation on its behalf if, prior to publication for sale by the Government and within twenty-four (24) months following the date specified in this contract for delivery of such software or documentation, or the removal of any national security or export control restrictions, whichever is later, the Contractor publishes that item or items for sale and promptly notifies the Contracting Officer of such publication(s). Any such publication shall include a notice identifying the number of this contract and the Government's rights in the published software or documentation.

(3) This limitation on the Government's rights to publish for sale shall continue as long as the software or documentation are reasonably available to the public for purchase.

14. Section 252.227–7015 is added to read as follows:

252.227–7015 Technical Data—Commercial Items.

As prescribed in 227.7102–3, use the following clause:

TECHNICAL DATA—COMMERCIAL ITEMS (JUN 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial item* means—

(i) Any item, other than real property or computer software, that customarily is used by the public for nongovernmental purposes and that—

(A) Has been sold, leased, or licensed to the public; or

(B) Has been offered for sale, lease, or license to the public;

(ii) Any item that evolved from an item described in paragraph (a)(1)(i) of this clause through advances in technology or performance and will be available in the commercial marketplace in time to satisfy the delivery requirements specified in this contract;

(iii) Any item that would satisfy a criterion expressed in paragraph (a)(1)(i) or (ii) of this clause, but for—

(A) Modifications of a type customarily available in the commercial marketplace; or

(B) Minor modifications made to meet Federal Government requirements;

(iv) Any combination of items meeting the requirements of paragraph (a)(1)(i), (ii), (iii), or (v) of this clause that are of a type customarily combined and sold in combination to the public;

(v) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraph (a)(1)(i), (ii), (iii), or (iv) of this clause, and the source of such services—

(A) Offers such services to the public and the Federal Government contemporaneously and under similar terms and conditions; and

(B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(vi) Services, offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed under standard commercial terms and conditions;

(vii) Any item, combination of items, or service referred to in paragraphs (a)(1) (i) through (vi) of this clause notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(viii) Other nondevelopmental items, if the Contracting Officer determines that the item was developed exclusively at private expense and has been sold in substantial quantities, on a competitive basis, to multiple state and local governments.

(2) *Component* means any item supplied to the government as part of an end item or of another component.

(3) *Contractor* includes the Contractor's subcontractors and suppliers at any tier.

(4) *Form, fit, and function data* means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(5) The term *item* includes components or processes.

(6) *Minor modification* means a modification that does not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process.

(7) *Technical data* means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) *License.* (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that—

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not—

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) *Additional license rights.* The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) *Release from liability.* The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are

licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(End of clause)

15. Section 252.227–7016 is added to read as follows:

252.227–7016 Rights in bid or proposal information.

As prescribed in 227.7103–6(e)(1), 227.7104(e)(1), or 227.7203–6(b), use the following clause:

RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)

(a) *Definitions.*

(1) For contracts that require the delivery of technical data, the terms ''technical data'' and ''computer software'' are defined in the Rights in Technical Data—Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term ''computer software'' is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) *Government rights to contract award.* By submission of its offer, the Offeror agrees that the Government—

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) *Government rights subsequent to contract award*—The Contractor agrees—

(1) Except as provided in paragraphs (c)((2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data—Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause(s) of this contract.

(d) *Government-furnished information.* The Government's rights with respect to technical data or computer software contained in the Contractor's bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) *Information available without restrictions.* The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) *Flowdown.* Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

16. Section 252.227–7017 is added to read as follows:

252.227–7017 Identification and assertion of use, release, or disclosure restrictions.

As prescribed in 227.7103–3(b), 227.7104(e)(2), or 227.7203–3(a), use the following provision:

IDENTIFICATION AND ASSERTION OF USE, RELEASE, OR DISCLOSURE RESTRICTIONS (JUN 1995)

(a) The terms used in this provision are defined in following clause or clauses contained in this solicitation—

(1) If a successful offeror will be required to deliver technical data, the Rights in Technical Data—Noncommercial Items clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(2) If a successful offeror will not be required to deliver technical data, the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause, or, if this solicitation contemplates a contract under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause.

(b) The identification and assertion requirements in this provision apply only to technical data, including computer software documents, or computer software to be delivered with other than unlimited rights. For contracts to be awarded under the Small Business Innovative Research Program, the notification requirements do not apply to technical data or computer software that will be generated under the resulting contract. Notification and identification is not required for restrictions based solely on copyright.

(c) Offers submitted in response to this solicitation shall identify, to the extent known at the time an offer is submitted to the Government, the technical data or computer software that the Offeror, its subcontractors or suppliers, or potential subcontractors or suppliers, assert should be furnished to the Government with restrictions on use, release, or disclosure.

(d) The Offeror's assertions, including the assertions of its subcontractors or suppliers or potential subcontractors or suppliers shall be submitted as an attachment to its offer in the following format, dated and signed by an official authorized to contractually obligate the Offeror:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Offeror asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical Data or Computer Software to be Furnished With Restrictions*	Basis for Assertion**	Asserted Rights Category***	Name of Person Asserting Restrictions****
(LIST)*****	(LIST)	(LIST)	(LIST)

*For technical data (other than computer software documentation) pertaining to items, components, or processes developed at private expense, identify both the deliverable technical data and each such items, component, or process. For computer software or computer software documentation identify the software or documentation.

**Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions. For technical data, other than computer software documentation, development refers to development of the item, component, or process to which the data pertain. The Government's rights in computer software documentation generally may not be restricted. For computer software, development refers to the software. Indicate whether development was accomplished exclusively or partially at private expense. If development was not accomplished at private expense, or for computer software documentation, enter the specific basis for asserting restrictions.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited, restricted, or government purpose rights under this or a prior contract, or specially negotiated licenses).
****Corporation, individual, or other person, as appropriate.
*****Enter ''none'' when all data or software will be submitted without restrictions.

Date _____

Printed Name and Title _____

_____

Signature _____

(End of identification and assertion)

(e) An offeror's failure to submit, complete, or sign the notification and identification required by paragraph (d) of this provision with its offer may render the offer ineligible for award.

(f) If the Offeror is awarded a contract, the assertions identified in paragraph (d) of this provision shall be listed in an attachment to that contract. Upon request by the Contracting Officer, the Offeror shall provide sufficient information to enable the Contracting Officer to evaluate any listed assertion.

(End of provision)

17. Section 252.227–7018 is revised to read as follows:

252.227–7018 Rights in noncommercial technical data and computer software—Small Business Innovative Research (SBIR) Program.

As prescribed in 227.7104(a), use the following clause:

RIGHTS IN NONCOMMERCIAL TECHNICAL DATA AND COMPUTER SOFTWARE—SMALL BUSINESS INNOVATIVE RESEARCH (SBIR) PROGRAM (JUN 1995)

(a) *Definitions.* As used in this clause:

(1) *Commercial computer software* means software developed or regularly used for nongovernmental purposes which—

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) *Computer database* means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) *Computer program* means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) *Computer software* means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, re-created, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) *Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) *Detailed manufacturing or process data* means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(7) *Developed* means—

(i) (Applicable to technical data other than computer software documentation.) An item, component, or process, exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered ''developed,'' the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of Title 35 of the United States Code;

(ii) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(iii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iv) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(8) *Developed exclusively at private expense* means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(9) *Developed exclusively with government funds* means development was not accomplished exclusively or partially at private expense.

(10) *Developed with mixed funding* means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(11) *Form, fit, and function data* means technical data that describe the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(12) *Generated* means technical data or computer software first created in the performance of this contract.

(13) *Government purpose* means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software for commercial purposes or authorize others to do so.

(14) *Limited rights* means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or permit the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or permit the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release disclosure, or use of the technical data; and

(iv) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) *Minor modification* means a modification that does not significantly alter the nongovernmental function or purpose of computer software or is of the type customarily provided in the commercial marketplace.

(16) *Noncommercial computer software* means software that does not qualify as

commercial computer software under paragraph (a)(1) of this clause.

(17) *Restricted rights* apply only to noncommercial computer software and mean the Government's rights to—

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may—

(A) Use the modified software only as provided in paragraphs (a)(17) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(17) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(17)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items, procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—

(A) The intended recipient is subject to the non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(17)(iv) of this clause, for any other purpose.

(18) *SBIR data rights* means a royalty-free license for the Government, including its support service contractors, to use, modify, reproduce, release, perform, display, or disclose technical data or computer software generated and delivered under this contract for any United States Government purpose.

(19) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(20) *Unlimited rights* means rights to use, modify, reproduce, release, perform, display, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) *Rights in technical data and computer software.* The Contractor grants or shall obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data or noncommercial computer software. All rights not granted to the Government are retained by the Contractor.

(1) *Unlimited rights.* The Government shall have unlimited rights in technical data, including computer software documentation, or computer software generated under this contract that are—

(i) Form, fit, and function data;

(ii) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(iii) Corrections or changes to Government-furnished technical data or computer software;

(iv) Otherwise publicly available or have been released or disclosed by the Contractor or a subcontractor without restrictions on further use, release or disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data or computer software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Data or software in which the Government has acquired previously unlimited rights under another Government contract or through a specific license; and

(vi) SBIR data upon expiration of the SBIR data rights period.

(2) *Limited rights.* The Government shall have limited rights in technical data, that were not generated under this contract, pertain to items, components or processes developed exclusively at private expense, and are marked, in accordance with the marking instructions in paragraph (f)(1) of this clause, with the legend prescribed in paragraph (f)(2) of this clause.

(3) *Restricted rights in computer software.* The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise furnished to the Government under this contract that were developed exclusively at private expense and were not generated under this contract.

(4) *SBIR data rights.* (i) Except for technical data, including computer software documentation, or computer software in which the Government has unlimited rights under paragraph (b)(1) of this clause, the Government shall have SBIR data rights in all technical data or computer software generated under this contract during the period commencing with contract award and ending upon the date five years after completion of the project from which such data were generated.

(ii) The Government may not release or disclose SBIR data to any person, other than its support services contractors, except—

(A) As expressly permitted by the Contractor;

(B) For evaluation purposes; or

(C) A release, disclosure, or use that is necessary for emergency repair or overhaul of items operated by the Government.

(iii) A release or disclosure of SBIR data to the Government's support services contractors, or a release or disclosure under paragraph (b)(4)(ii)(B) or (C) of this clause, may be made only if, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103–7 or is a Government contractor receiving access to the technical data or software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use of Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(5) *Specifically negotiated license rights.* The standard license rights granted to the Government under paragraphs (b)(1) through (b)(4) of this clause may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in technical data, including computer software documentation, than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software than are enumerated in paragraph (a)(17) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(6) *Prior government rights.* Technical data, including computer software documentation, or computer software that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, release, perform, display, or disclose the technical data or computer software have expired or no longer apply.

(7) *Release from liability.* The Contractor agrees to release the Government from liability for any release or disclosure of technical data, computer software, or computer software documentation made in accordance with paragraph (a)(14), (a)(17), or (b)(4) of this clause, or in accordance with the terms of a license negotiated under paragraph (b)(5) of this clause, or by others to whom the recipient has released or disclosed the data, software, or documentation and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data or software marked with restrictive legends.

(c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative software or documentation.

(d) *Third party copyrighted technical data and computer software.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted technical data, including computer software documentation, or computer software in the data or software to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data or software of the appropriate scope set forth in paragraph (b) of this clause and, prior to delivery of such—

(1) Technical data, has affixed to the transmittal document a statement of the license rights obtained; or

(2) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Identification and delivery of technical data or computer software to be furnished with restrictions on use, release, or disclosure.* (1) This paragraph does not apply to technical data or computer software that were or will be generated under this contract or to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data or computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any technical data or computer software with restrictive markings unless the technical data or computer software are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the technical data or computer software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data or Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data or computer software should be restricted:

Technical data or computer software to be furnished with restrictions [1]	Basis for assertion [2]	Asserted rights category [3]	Name of person asserting restrictions [4]
(LIST) ..	(LIST)	(LIST)	(LIST)

[1] If the assertion is applicable to items, components, or processes developed at private expense, identify both the technical data and each such item, component, or process.

[2] Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data or computer software. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

[3] Enter asserted rights category (e.g., limited rights, restricted rights, government purpose rights, or government purpose license rights from a prior contract, SBIR data rights under another contract, or specifically negotiated licenses).

[4] Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertions, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software and/or Validation of Restrictive Markings on Technical Data clauses of this contract.

(f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software to be delivered under this contract by marking the deliverable data or software subject to restriction. Except as provided in paragraph (f)(6) of this clause, only the following markings are authorized under this contract: the limited rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause, the SBIR data rights legend at paragraph (f)(4) of this clause, or the special license rights legend at paragraphs (f)(5) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) *General marking instructions.* The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend to all technical data and computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data or computer software for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data or computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of technical data, computer software, or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) *Limited rights markings.* Technical data not generated under this contract that pertain to items, components, or processes developed exclusively at private expense and delivered or otherwise furnished with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(3) *Restricted rights markings.* Computer software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

Restricted Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

_____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) *SBIR data rights markings:* Except for technical data or computer software in which the Government has acquired unlimited rights under paragraph (b)(1) of this clause, or negotiated special license rights as provided in paragraph (b)(5) of this clause, technical data or computer software generated under this contract shall be marked with the following legend. The Contractor shall enter the expiration date for the SBIR data rights period on the legend:

SBIR Data Rights

Contract No. _____

Contractor Name _____

Address _____

_____

Expiration of SBIR Data Rights Period _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted during the period shown as provided in paragraph (b)(4) of the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(5) *Special license rights markings.* (i) Technical data or computer software in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data, computer software, or portions thereof marked with this legend must also reproduce the markings.

(end of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(6) of this clause).

(6) *Pre-existing data markings.* If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software, and those restrictions are still applicable, the Contractor may mark such data or software with the appropriate restrictive legend for which the data or software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor, and its subcontractors or suppliers that will deliver technical data or computer software with other than unlimited rights, shall—

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data or computer software delivered under this contract.

(h) *Removal of unjustified and nonconforming markings.*

(1) *Unjustified markings.* The rights and obligations of the parties regarding the validation of restrictive markings on technical data or computer software furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data and the Validation of Asserted Restrictions—Computer Software clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the applicable procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) *Nonconforming markings.* A nonconforming marking is a marking placed on technical data or computer software delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data or the Validation of Asserted Restrictions—Computer Software clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (6)) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) *Limitation on charges for rights in technical data or computer software.* (1) The Contractor shall not charge to this contract any cost, including but not limited to, license fees, royalties, or similar charges, for rights in technical data or computer software to be delivered under this contract when—

(i) the Government has acquired, by any means, the same or greater rights in the data or software; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause—

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor of supplier technical data or computer software, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data or computer software will be delivered.

(k) *Applicability to subcontractors or suppliers.* (1) the Contractor shall assure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes required by paragraph (e) of this clause are recognized and protected.

(2) Whenever any noncommercial technical data or computer software is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. The Contractor shall use the Technical Data—Commercial Items clause of this contract to obtain technical data pertaining to commercial items, components, or processes. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data or computer software.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for technical data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such technical data directly to the Government, rather than through a higher tier contractor, subcontractor, or supplier.

(4) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data or computer software from their subcontractors or suppliers.

(5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data or computer software as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

Alternate I (June 1995)

As prescribed in 227.7104(d), add the following paragraph (l) to the basic clause:

(l) *Publication for sale.* (1) This paragraph applies only to technical data or computer software delivered to the Government with SBIR data rights.

(2) Upon expiration of the SBIR data rights period, the Government will not exercise its right to publish or authorize others to publish an item of technical data or computer software identified in this contract as being subject to paragraph (l) of this clause if the Contractor, prior to the expiration of the SBIR data rights period, or within two years following delivery of the data or software item, or within twenty-four months following the removal of any national security or export control restrictions, whichever is later, publishes such data or software item(s) and promptly notifies the Contracting Officer of such publication(s). Any such publication(s) shall include a notice identifying the number of this contract and the Government's rights in the published data.

(3) This limitation on the Government's right to publish for sale shall continue as long as the technical data or computer software are reasonably available to the public for purchase.

18. Section 252.227–7019 is revised to read as follows:

252.227–7019 Validation of asserted restrictions—Computer software.

As prescribed in 227.7104(e)(3) or 227.7203–6(c), use the following clause:

Validation of Asserted Restrictions—Computer Software (June 1995)

(a) *Definitions.* (1) As used in this clause, unless otherwise specifically indicated, the term ''Contractor'' means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) *Justification.* The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) *Direct contact with subcontractors or suppliers.* The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(d) *Requests for information.* (1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the—

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may—

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restrictions and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct the strike the markings at the Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) *Government right to challenge and validate asserted restrictions.* (1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) *Challenge procedures.* (1) A challenge must be in writing and shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has—

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the contractor a reasonable opportunity for responding to each challenge.

(g) *Contractor appeal—Government obligation.* (1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction—

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if,

within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has: (A) appealed to the Board of Contract Appeals or filed suit an appropriate court within ninety (90) days; or (B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to—

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) *Final disposition of appeal or suit.* If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained—

(i) Any restrictive marking on such computer software shall be struck or corrected at the contractor's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained—

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.

(i) *Flowdown.* The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

19. Section 252.227–7020 is revised to read as follows:

252.227–7020 Rights in special works.

As prescribed in 227.7105–3, 227.7106(a) or 227.7205(a), use the following clause:

Rights in Special Works (June 1995)

(a) *Applicability.* This clause applies to works first created, generated, or produced and required to be delivered under this contract.

(b) *Definitions.* As used in this clause:

(1) ''Computer data base'' means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.

(2) ''Computer program'' means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(3) ''Computer software'' means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

(4) ''Computer software documentation'' means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) ''Unlimited rights'' means the rights to use, modify, reproduce, perform, display, release, or disclose a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(6) The term ''works'' includes computer data bases, computer software, or computer software documentation; literary, musical, choreographic, or dramatic compositions; pantomimes; pictorial, graphic, or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

(c) *License rights.* (1) The Government shall have unlimited rights in works first produced, created, or generated and required to be delivered under this contract.

(2) When a work is first produced, created, or generated under this contract, and such work is required to be delivered under this contract, the Contractor shall assign copyright in those works to the Government. The Contractor, unless directed to the contrary by the Contracting Officer, shall place the following notice on such works: ''© (*Year date of delivery*) United States Government, as represented by the Secretary of (*department*). All rights reserved.''

For phonorecords, the ''©'' markings shall be replaced by a ''P''.

(3) The Contractor grants to the Government a royalty-free, world-wide, nonexclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

(d) *Third party copyrighted data.* The Contractor shall not incorporate, without the written approval of the Contracting Officer, any copyrighted works in the works to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license of the scope identified in paragraph (c)(3) of this clause and, prior to delivery of such works—

(1) Has affixed to the transmittal document a statement of the license rights obtained; or

(2) For computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer.

(e) *Indemnification.* The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, use, modification, reproduction, release, performance, display, or disclosure of any works furnished under this contract, or (2) based upon any libelous or other unlawful matter contained in such works.

(f) *Government-furnished information.* Paragraphs (d) and (e) of this clause are not applicable to information furnished to the Contractor by the Government and incorporated in the works delivered under this contract.

(End of clause)

252.227–7021 [Amended]

20. Section 252.227–7021 is amended by revising the introductory text to read ''As prescribed at 227.7105–2(a), use the following clause:''.

252.227–7022 [Amended]

21. Section 252.227–7022 is amended by revising the introductory text to read

''As prescribed at 227.7107–1(a), use the following clause:''.

252.227–7023 [Amended]

22. Section 252.227–7023 is amended by revising the introductory text to read ''As prescribed at 227.7107–1(b), use the following clause:''.

252.227–7024 [Amended]

23. Section 252.227–7024 is amended by revising the introductory text to read ''As prescribed at 227.7107–3, use the following clause:''.

24. Section 252.227–7025 is added to read as follows:

252.227–7025 Limitations on the use or disclosure of government-furnished information marked with restrictive legends.

As prescribed in 227.7103–6(c), 227.7104(f)(1), or 227.7203–6(d), use the following clause:

Limitations on the Use or Disclosure of Government-Furnished Information Marked With Restrictive Legends (June 1995)

(a)(1) For contracts requiring the delivery of technical data, the terms ''limited rights'' and ''Government purpose rights'' are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(2) For contracts that do not require the delivery of technical data, the terms ''government purpose rights'' and ''restricted rights'' are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(3) For Small Business Innovative Research program contracts, the terms ''limited rights'' and ''restricted rights'' are defined in the Rights in Noncommercial Technical Data and Computer Software—Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) *GFI marked with limited or restricted rights legends.* The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) *GFI marked with government purpose rights legends.* The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103–7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) *GFI marked with specially negotiated license rights legends.* The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at DFARS 227.7103–7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) *Indemnification and creation of third party beneficiary rights.* The Contractor agrees—

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

(2) That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

252.227–7026 [Amended]

25. Section 252.227–7026 is amended by revising the introductory text to read ''As prescribed at 227.7103–8(a), use the following clause:''.

252.227–7027 [Amended]

26. Section 252.227–7027 is amended by revising the introductory text to read ''As prescribed at 227.7103–8(b), use the following clause:''.

27. Section 252.227–7028 is revised to read as follows:

252.227–7028 Technical data or computer software previously delivered to the government.

As prescribed in 227.7103–6(d), 227.7104(f)(2), of 227.7203–6(e), use the following provision:

Technical Data or Computer Software Previously Delivered to the Government (June 1995)

The Offeror shall attach to its offer an identification of all documents or other media incorporating technical data or computer software it intends to deliver under this contract with other than unlimited rights that are identical or substantially similar to documents or other media that the Offeror has produced for, delivered to, or is obligated to deliver to the Government under any contract or subcontract. The attachment shall identify—

(a) The contract number under which the data or software were produced;

(b) The contract number under which, and the name and address of the organization to whom, the data or software were most recently delivered or will be delivered; and

(c) Any limitations on the Government's rights to use or disclose the data or software, including, when applicable, identification of the earliest date the limitations expire.

(End of provision)

252.227–7029 [Removed and Reserved]

28. Section 252.227–7029 is removed and reserved.

252.227–7030 [Amended]

29. Section 252.227–7030 is amended by revising the introductory text to read ''As prescribed at 227.7103–6(f)(2) or 227.7104(e)(4), used the following clause:''.

252.227–7031 [Removed and Reserved]

30. Section 252.227–7031 is removed and reserved.

252.227–7032 [Amended]

31. Section 252.227–7032 is amended by revising the introductory text to read ''As prescribed in 227.7103–17, use the following clause:''.

252.227–7033 [Amended]

32. Section 252.227–7033 is amended by revising the introductory text to read ''As prescribed in 227.7107–1(c), use the following clause:''.

252.227–7036 [Amended]

33. Section 252.227–7036 is amended by revising the introductory text to read ''As prescribed in 227.7103–6(e)(3) or 227.7104(e)(5), use the following clause:''.

34. Section 252.227–7037 is revised to read as follows:

252.227–7037 Validation of restrictive markings on technical data.

As prescribed in 227.7102–3(c), 227.7103(e)(4), 227.7104(e)(6), or 227.7203–6(f), use the following clause:

Validation of Restrictive Markings on Technical Data (June 1995)

(a) *Definitions.* The terms used in this clause are defined in the Rights in Technical Data—Noncommercial Items clause of this contract.

(b) *Contracts for commercial items—presumption of development at private expense.* Under a contract for a commercial item, component, or process, the Department of Defense shall presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Department shall not challenge such assertions unless information the Department demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) *Justification.* The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except under contracts for commercial items, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) *Prechallenge request for information.* (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall—

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2) (ii) through (iv) of this clause.

(g) *Final decision when Contractor or subcontractor responds.* (1) if the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking of a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances will not permit waiting for the

filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) *Final disposition of appeal or suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) *Duration of right to challenge.* The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data—

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes ''validation'' as addressed in 10 U.S.C. 2321.

(j) *Decision not to challenge.* A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute ''validation.''

(k) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data.

(End of clause)

[FR Doc. 95–15251 Filed 6–27–95; 8:45 am]

BILLING CODE 5000–04–M

federal register

Wednesday
June 28, 1995

Part III

Department of Energy

Privacy Act of 1974; Amendment of Existing Systems of Records; Notice

DEPARTMENT OF ENERGY

Privacy Act of 1974; Amendment of Existing Systems of Records

AGENCY: Department of Energy (DOE).

ACTION: Amendment of Existing Systems of Records.

SUMMARY: Federal Agencies are required by the Privacy Act of 1974 (Pub.L. 93–579, 5 U.S.C. 552a) to publish notice in the **Federal Register** of proposed amendments to the routine uses of existing systems of records. The Department of Energy proposes to amend twelve existing systems of records to permit disclosure to health studies advisory entities and disclosure for epidemiological and other health studies and surveys as a routine use of data contained in these systems. In certain of these systems, the proposed amended routine use disclosures will replace previously established routine uses pertaining to health studies so that these systems will reflect the Department's health studies program as it is currently constituted. The text of this notice itemizes the previously established routine uses and the proposed new routine uses for each of the twelve systems.

The systems of records to be amended are: DOE–01, DOE Personnel and General Employment Records; DOE–05, Personnel Records of Former Contractor Employees; DOE–13, Payroll and Leave Records; DOE–33, Personnel Medical Records; DOE–35, Personnel Radiation Exposure Records; DOE–36, Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study); DOE–38, Occupational and Industrial Accident Records); DOE–40, Contractor Employees Insurance Claims; DOE–67, Participants in Experiments, Studies, and Surveys; DOE–71, The Radiation Accident Registry; DOE–72, The Department of Energy Radiation Study Registry; and DOE–73, The US-DTPA Registry.

DATES: The proposed revisions will become effective without further notice 40 days after publication in the **Federal Register** (August 7, 1995), unless comments are received on or before that date that would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Written comments should be directed to the following address: Director, FOIA/Privacy Act Division, Office of Executive Secretariat, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585. Written comments will be available for inspection at the above address between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: (1) Heather Stockwell, Acting Director, Office of Epidemiologic Studies, EH–62, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–3721 or (2) GayLa D. Sessoms, Director, FOIA/Privacy Act Division, HR–78, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5955 or (3) Harold Halpern, Office of General Counsel, GC–80, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7406.

SUPPLEMENTARY INFORMATION: The Department proposes to amend the routine uses of twelve existing systems of records to permit information contained in those systems to be used in epidemiological studies and surveys. The text of this notice contains a description of each of these twelve systems of records, which was published by the National Archives and Records Administration's Office of the Federal Register in Volume I of the Federal Register's 1993 Privacy Act Issuances and Compilations. The text of this notice also includes the proposed new routine uses for each system of records.

The Department has established an epidemiology and health surveillance program to determine the health effects of the Department's activities on workers and populations having access, or in proximity, to the Department's facilities. Epidemiological studies are an important means of improving public health. They permit the scientific evaluation of the effects of exposure to potentially harmful materials by determining and quantifying health effects associated with such exposures. Health surveys, which are used to assess immediate health issues, are designed to discover the occupational source of outbreaks of illness, injury, or death, and to describe the extent of exposure to specific substances at a single point in time. Surveillance is used to identify new and emerging health problems by monitoring groups of workers, who have the same job or exposures, for changes in their illness and injury patterns over time.

Seven of these systems already have routine uses for epidemiological and health studies: DOE–5, DOE–35, DOE–36, DOE–67, DOE–71, DOE–72, DOE–73. The proposed amendments to the existing routine uses of these seven systems and the addition of these routine uses to the other five systems of records will assist the Department in studying and monitoring individual and aggregate population health risks from exposures to radiation or other hazards that may have occurred as a result of the Department's operations and other energy related activities.

Pursuant to Memoranda of Understanding with the Department of Health and Human Services (''HHS''), 56 FR 9701, March 7, 1991, and the Agency for Toxic Substances and Disease Registry (''ATSDR''), October 10, 1990, studies, surveys and surveillances will be conducted by units of the Public Health Service, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention (CDC), and ATSDR, their contractors, grantees, and cooperative agreement holders.

The studies are focussed on a variety of areas that are important for assessing the real and potential health risks to workers and the public resulting from the Department's energy-related technologies and activities. The studies should provide information that is necessary for long-range energy planning pursuant to continued development of the national energy strategy. The health studies include all Department facilities and workers, including contractor employees, and other special populations that have relevance to the Department's mission. States also may perform studies as the Department's or the Department of Health and Human Services' contractors, grantees, or cooperative agreement holders.

The proposed additional routine uses to the twelve systems are:

(1) A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

(2) Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees,

participants in cooperative agreements, collaborating researchers, or their employees in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state, and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

(3) A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities, and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

The proposed amendments should not have adverse privacy consequences. Health studies tend to benefit persons in the studied populations by identifying possible toxic agents. Individuals are never identified in published studies and the studies are not used to support determinations concerning any individual's rights, benefits, or privileges.

Furthermore, privacy interests will be protected by a number of means. As a condition of releasing individually identifiable information for studies, surveys or surveillances conducted for DOE, persons conducting studies will be required to: (1) Keep personal information confidential; (2) use personal information only for purposes of studies in which there is no publication of the identity of any individual subject; (3) consult with DOE prior to any release of personally identifiable information obtained from DOE; (4) establish reasonable administrative, technical and physical safeguards to prevent unauthorized use or disclosure of the record; (5) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions and with written authorization of the Department, (c) for disclosure to an authorized person for the purpose of an audit related to the research project, and (d) when required by law. Additionally, the Department will secure a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions. The provisions in this paragraph apply to DOE collaborating researchers, not those studies being performed by the Department of Health and Human Services.

Privacy safeguards are in place regarding the studies to be conducted pursuant to the Memoranda of Understanding with Department of Health and Human Services or its components. Department of Health and Human Services has agreed: (1) Not to use or disclose any personally-identifiable information obtained from DOE or its contractors and grantees except for research purposes or other public health activities required by law; (2) not to use information in identifiable form to make any determination about the rights, benefits, or privileges of any individual; (3) to use and disclose information in accord with agreements under which the personally-identifiable information was obtained by the Department or its contractors, provided such use or disclosure is consistent with applicable law; (4) to notify the Department of any efforts to use or obtain personally-identifiable information for purposes other than research or other public health activities required by law; (5) to use and take appropriate steps to prevent improper disclosure; (6) to establish or modify Privacy Act systems of records broadening the ''Categories of Individuals'' section to specifically address information provided by DOE, as necessary, and consult with the Department concerning provisions of Privacy Act systems of records notices. Additionally, Department of Health and Human Services requires its contractors, grantees, and cooperative agreement holders performing epidemiological studies and other public health activities to abide by conditions similar to those imposed by the Department, as described in this paragraph.

The types of records needed will be determined by the design and goals of each particular study. Examples of possible types of data needed from the twelve systems of records include, questionnaires, demographic information, work history, medical and reproductive history, birth data, radiation and other exposure history, laboratory test results, data from prior health studies, surveys, and surveillances; and alcohol and tobacco use history. Data of this type are found in records such as health study or personnel files and lists, training files, medical records, legal case files, bioassay records, industrial hygiene files, radiation and other hazard exposure records, occupational and industrial accident records, employee medical insurance claims, personnel security clearance questionnaires, and employee and visitor access control records.

In 1989, the Department published a proposed establishment of two routine uses for DOE–5, DOE–33, DOE–35, DOE–71, DOE–72, and DOE–73 (54 FR 47808 dated November 17, 1989). The two proposed routine uses were published as follows: (1) ''A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiological study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences and deemed appropriate for such access. A researcher granted access to these records shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.'' (2) ''A record from this system of records may be disclosed to a member of an advisory committee for purposes of conducting a review of the DOE's epidemiologic program. Members of an advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.'' The Department received comments to the contrary on the proposed routine uses, but did not publish a response to the comments. This notice eliminates the above-mentioned routine uses and proposes to establish new routine uses for the twelve systems of records for the purposes of performing epidemiological studies.

The Department is submitting the report required by Office of Management and Budget Circular A–130 concurrently with the publication of

this notice. The text of this notice contains the information required by section (e)(4)(d) of the Privacy Act, 5 U.S.C. 552a(e)(4)(d).

Issued in Washington, DC this 19th day of June, 1995.

Thomas T. Tamura,

Principal Deputy Assistant Secretary for Human Resources and Administration.

DOE–1

SYSTEM NAME:

DOE Personnel and General Employment Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545

U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003

U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401

U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567

U.S. Department of Energy, Headquarters, Washington, DC 20585

U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401

U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880

U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831

U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019

U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342

U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940

U.S. Department of Energy, Pittsburgh Naval Reactors, PO Box 109, West Mifflin, PA 15122–0109

U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352

U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928

U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801

U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301

U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635

U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101

U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123

U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees, consultants, board members, and applicants (only to the extent they are considered for competitive selection), specifically including all such personnel of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, sex, grade level, occupational code, Official Personnel Folders (SF–66), Service Record Cards (SF–7), records on suggestions and awards, training request and authorization data, training course evaluation statements, appraisals resulting from annual supervisor-employee review, pay requests and dispositions, reduction in-force registers (including associated records of competitive levels and competitive areas), reemployment and repromotion priority lists, retirement-associated eligibility and calculations, records on competitive selections (Form 178, Standard Form 39, and supporting documents), central copy of approved position descriptions, correspondence related to and copies of employee appeals, grievances, and complaints, including records of hearings or examiners reports, lists of separated employees, correspondence from employees requesting transfer or reassignment, average grade data, minority group code, data related to and derived from the Payroll/Personnel System (PAY/PERS) and Energy, Manpower and Personnel Reporting Information System (EMPRIS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

3. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be

disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

11. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

12. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

13. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer printouts, punched cards, magnetic tape and disk, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets in controlled access rooms. Computerized records are maintained in the DOE computer center with access limited to those with a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Personnel, HR–32, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate Field Office; in accordance with DOE 's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and, if appropriate, the geographic location(s) and organization(s) where requester believes such record may be located, social security number, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, other Government agencies, former employers, and references provided by subject individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from subsection (c)(3), (d), (e)(1), (e)(4), (G), (H), (I) and (f) of 5 U.S.C. 552a under the Privacy Act of 1974. This exemption applies only to information in this system of records which is exempt pursuant to 5 U.S.C. 552a (k)(2), and (6).

DOE–5

SYSTEM NAME:

Personnel Records of Former Contractor Employees.

SYSTEM LOCATION:

U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87115
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Oak Ridge Operations Office, PO Box E, Oak Ridge, TN 37830
U.S. Department of Energy, Pittsburgh Naval Reactors, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former contractor employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, employment history, earnings, medical history, and other related information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses of records include employment history verification, radiation exposure records for medical and litigation purposes, and issuance of clearances.

1. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

5. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations at 28 CFR 50.2.

6. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

7. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

9. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

10. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

11. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

12. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and

local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

13. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are maintained in locked or guarded buildings.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office of Contractor Human Resource Management, HR–524 U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Field Offices: The managers and directors of personnel in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field office in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual's employer.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–13

SYSTEM NAME:

Payroll and Leave Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Pittsburgh Naval Reactors, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE personnel and consultants, specifically including personnel and consultants of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance records, earning records, payroll actions, deduction information requests, authorizations for overtime, and night differential, and Office of Personnel Management retirement records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Treasury Department—To collect withheld taxes, print payroll checks and issue savings bonds.

2. Internal Revenue Service—To process Federal income tax.

3. State and Local Governments—To process state and local income tax processing.

4. Office of Personnel Management—Retirement records and benefits.

5. Social Security Administration—Social Security records and benefits.

6. Department of Labor—To process Workmen's Compensation claims.

7. Department of Defense—Military Retired Pay Offices—To adjust Military Retirement.

8. Savings Institutions—To credit accounts for savings made through payroll deductions.

9. Employee Unions—To credit accounts for employees with union dues deductions.

10. Health Insurance Carriers—To process insurance claims.

11. General Accounting Office—Audit—To verify accuracy and legality of disbursement.

12. Veterans' Administration—To evaluate veteran's benefits to which the individual may be entitled.

13. States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.

14. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

15. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

16. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

17. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

18. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

19. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

20. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

21. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

22. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

23. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

24. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health, of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

25. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

26. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required

to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, punched cards, magnetic tape and disc, and microfiche.

RETRIEVABILITY:

By name, social security number, and payroll number.

SAFEGUARDS:

Access to magnetic tapes and disc files is controlled through established DOE computer center procedures (personnel screening and physical security). Paper records are maintained in locked cabinets and desks. Access to any record is on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Office of the Chief Financial Officer, CR–1, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers and directors of field locations are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, location(s) of employment, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, timekeepers, official personnel records, and the IRS.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–33

SYSTEM NAME:

Personnel Medical Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Allied-Signal, Kansas City Division, PO Box 419159, Kansas City, MO 64141
U.S. Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120–0030
U.S. Department of Energy, Ames Laboratory, Iowa State University, Ames, Iowa 50011
U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Batavia Area Office, PO Box 2000, Batavia, IL 60510
U.S. Department of Energy, Bettis Atomic Power Laboratory, PO Box 79, Pittsburgh, PA 15122–0079
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Bldg 464, Upton, NY 11973
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, Virginia 23606
U.S. Department of Energy, Dayton Area Office, PO Box 66, Miamisburg, OH 45342–0066
U.S. Department of Energy, EG&G Mound Applied Technologies, PO Box 3000, Miamisburg, Ohio 45343–3000
U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014–3621
U.S. Department of Energy, Fermi National Accelerator Laboratory, PO Box 500, Batavia, Illinois 60510
U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, PO Box 398704, Cincinnati, Ohio 45239–8704
U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Inhalation Toxicology Research Institute, PO Box 5890, Albuquerque, New Mexico 87185
U.S. Department of Energy, Kansas City Area Office, PO Box 410202, Kansas City, MO 64141–0202
U.S. Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Knolls Atomic Power Laboratory, PO Box 1072, Schenectady, NY 12301
U.S. Department of Energy, Lawrence Livermore National Laboratory, PO Box 808, Livermore, California 94551
U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, California 94720
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, PO Box 2009, Oak Ridge, Tennessee 37831–8103
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, PO Box 2003, Oak Ridge, Tennessee 37831–7422
U.S. Department of Energy, MK Ferguson of Oak Ridge Company, PO Box 2011, Oak Ridge, Tennessee 37831–2011
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880
U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM-Oklahoma, Inc., PO Box 2565, Bartlesville, Oklahoma 74005
U.S. Department of Energy, National Renewable Energy Laboratory Area

Office, 1617 Cole Boulevard, Golden, CO 80401–3393
U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601
U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, PO Box 11, Tupman, CA 93276
U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615
U.S. Department of Energy, Naval Reactors Representative Office, PO Box 7021, Groton, CT 06340
U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, PO Box 2053, Vallejo, CA 94592
U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, PO Box 973, Newport News, VA 23607
U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, PO Box 848, Portsmouth, VA 23705–0848
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, PO Box 128, Pearl Harbor, HI 96860
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, PO Box 2008, Portsmouth, NH 03801–2008
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, PO Box 1A, Bremerton, WA 98314
U.S. Department of Energy, Nevada Test Site, Mercury, Mercury, NV 89023
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Phoenix Area Office, PO Box 6457, Phoenix, AZ 85005
U.S. Department of Energy, Pinellas Area Office, PO Box 2900, Largo, FL 34649
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, PO Box 451, Princeton, New Jersey 08543
U.S. Department of Energy, Portsmouth Enrichment Office, PO Box 700, Piketon, OH 45661
U.S. Department of Energy, Princeton Area Office, PO Box 102, Princeton, NJ 08542
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, PO Box 7922, Department 056 EA08, Canoga Park, California 91309–7922
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Sandia National Laboratories, PO Box 5800, Albuquerque, NM 87115
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Stanford Linear Accelerator Center, PO Box 4349, Stanford, California 94309
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Waste Isolation Pilot Plant, Westinghouse Electric Company, Waste Isolation Division, PO Box 2078, Carlsbad, New Mexico 88220
U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, Missouri 63304
U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, PO Box 191, MS: F, West Valley, New York 14171
U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, PO Box 2068, Idaho Falls, ID 83403–2068

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOE employees and DOE contractor employees. This system includes individuals admitted to or treated at Kadlec Hospital, Richland, prior to September 9, 1956.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories on employees resulting from medical examination and radiation exposure. In cases of injury, description of injury occurrence and treatment. In addition, medical records of periodic physical examinations and psychological testing, blood donor program records, audiometric testing, routine first aid, and other visits. Also, hospital in-patients at Kadlec Hospital. Records kept on the results of work place and medical monitoring of individuals for exposure to chemical and physical agents (not covered in DOE–35) and related work history data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Physicians, U.S. Department of Labor, various state departments of labor and industry groups, and contractors use information (a) to ascertain suitability of an employee for job assignments with regard to health, (b) to provide benefits under Federal programs or contracts, and (c) to maintain a record of occupational injuries or illnesses and the performance of regular diagnostic and treatment services to patients.

2. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such

as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

4. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

7. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

8. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

9. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

10. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

11. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

12. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

13. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

14. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, magnetic tape, paper, computer disc, and microfilm.

RETRIEVABILITY:

By name, social security number, and plant area.

SAFEGUARDS:

Active records are maintained in locked file cabinets in locked buildings. Inactive records are maintained in locked storage vaults.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Environment, Safety, Health, EH–1, Washington, DC 20585.

Field Offices: The managers and directors of field locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy

Act Officer at the appropriate field office in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Applicable location or locations where individual is or was employed, full name or where requester believes such record may be located, social security number, employer(s), and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record, physicians, medical institutions, Office of Workers Compensation Programs, military retired pay systems records, Federal civilian retirement systems, Office of Personnel Management retirement life insurance and health benefits records system, and the Office of Personnel Management personnel management records systems.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–35

SYSTEM NAME:

Personnel Radiation Exposure Records.

SYSTEM LOCATION:

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545

U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, Allied-Signal, Kansas City Division, PO Box 419159, Kansas City, MO 64141

U.S. Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120–0030

U.S. Department of Energy, Ames Laboratory, Iowa State University, Ames, Iowa 50011

U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003

U.S. Department of Energy, Batavia Area Office, PO Box 2000, Batavia, IL 60510

U.S. Department of Energy, Bettis Atomic Power Laboratory, PO Box 79, Pittsburgh, PA 15122–0079

U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208

U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Bldg 464, Upton, NY 11973

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439

U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, Virginia 23606

U.S. Department of Energy, Dayton Area Office, PO Box 66, Miamisburg, OH 45342–0066

U.S. Department of Energy, EG&G Mound Applied Technologies, PO Box 3000, Miamisburg, Ohio 45343–3000

U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014–3621

U.S. Department of Energy, Fermi National Accelerator Laboratory, PO Box 500, Batavia, Illinois 60510

U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, PO Box 398704, Cincinnati, Ohio 45239–8704

U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030

U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401

U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567

U.S. Department of Energy, Headquarters, Washington, DC 20585

U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401

U.S. Department of Energy, Inhalation Toxicology Research Institute, PO Box 5890, Albuquerque, New Mexico 87185

U.S. Department of Energy, Kansas City Area Office, PO Box 410202, Kansas City, MO 64141–0202

U.S. Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185–5400

U.S. Department of Energy, Knolls Atomic Power Laboratory, PO Box 1072, Schenectady, NY 12301

U.S. Department of Energy, Lawrence Livermore National Laboratory, PO Box 808, Livermore, California 94551

U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, California 94720

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, PO Box 2009, Oak Ridge, Tennessee 37831–8103

U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, PO Box 2003, Oak Ridge, Tennessee 37831–7422

U.S. Department of Energy, MK Ferguson of Oak Ridge Company, PO Box 2011, Oak Ridge, Tennessee 37831–2011

U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880 Morgantown, WV 26507–0880,

U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM-Oklahoma, Inc., PO Box 2565, Bartlesville, Oklahoma 74005

U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401–3393

U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601

U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, PO Box 11, Tupman, CA 93276

U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615

U.S. Department of Energy, Naval Reactors Representative Office, PO Box 7021, Groton, CT 06340

U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, PO Box 2053, Vallejo, CA 94592

U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, PO Box 973, Newport News, VA 23607

U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, PO Box 848, Portsmouth, VA 23705–0848

U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, PO Box 128, Pearl Harbor, HI 96860

U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, PO Box 2008, Portsmouth, NH 03801–2008

U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, PO Box 1A, Bremerton, WA 98314

U.S. Department of Energy, Nevada Test Site, Mercury, Mercury, NV 89023
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Phoenix Area Office, PO Box 6457, Phoenix, AZ 85005
U.S. Department of Energy, Pinellas Area Office, PO Box 2900, Largo, FL 34649
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, PO Box 451, Princeton, New Jersey 08543
U.S. Department of Energy, Portsmouth Enrichment Office, PO Box 700, Piketon, OH 45661
U.S. Department of Energy, Princeton Area Office, PO Box 102, Princeton, NJ 08542
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, PO Box 7922, Department 056 EA08, Canoga Park, California 91309–7922
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Sandia National Laboratories, PO Box 5800, Albuquerque, NM 87115
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Stanford Linear Accelerator Center, PO Box 4349, Stanford, California 94309
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Waste Isolation Pilot Plant, Westinghouse Electric Company, Waste Isolation Division, PO Box 2078, Carlsbad, New Mexico 88220
U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, Missouri 63304
U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, PO Box 191, MS: F, West Valley, New York 14171
U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, PO Box 2068, Idaho Falls, ID 83403–2068

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Department of Energy employees and contractor employees, and any other persons having access to certain DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

U.S. Department of Energy and contractor personnel and other individuals' radiation exposure records, and other records, in connection with registries of uranium, transuranics, or other elements encountered in the nuclear industry.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. U.S. Navy uses these records to monitor radiation exposure of Naval and other personnel.

2. Nuclear Regulatory Commission uses these records to monitor radiation exposure of DOE contractor personnel. U.S. Department of Energy and its contractors and consultants, other contractors, and organizations, including various states' departments of labor and industry groups, use these records to monitor radiation exposure.

3. Department of Defense uses these records for the purpose of identifying DOD and DOD-contractor personnel exposed to ionizing radiation during nuclear testing and for conducting epidemiological studies of radiation effects on individuals so identified.

4. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

5. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

6. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to

follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer printouts, paper records, index cards, magnetic tape, punched cards, microfilm, and disc.

RETRIEVABILITY:

By name, alphanumeric code, and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings, with access on a need-to-know basis.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Environment, Safety, Health, EH–1, Washington, DC 20585.

Field Offices: The managers and directors of field locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, and geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, accident-incident investigations, film badges, dosimetry records, and previous employee records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–36

SYSTEM NAME:

Statistical Analysis Using Personnel Security Questionnaire (Health and Mortality Study).

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE and predecessor agency employees, consultants and contractor employees, and consultants who were granted access authorizations (clearances).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of employees of the Manhattan Engineering District Project, Atomic Energy Commission, Energy Research and Development Administration, and DOE, including copies of Personnel Security Questionnaires completed after termination of employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

2. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

4. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

5. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

6. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required

to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in alarm storage areas in locked file cabinets. Access is limited to individuals having a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Field Offices: The managers and directors of field locations at Oak Ridge and Richland Operations Offices are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURE:

a. Request by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or Privacy Act Officer at the appropriate field office in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Clearance histories of Manhattan Engineering District, Atomic Energy Commission, Energy Research and Development Administration, and DOE employees; access permittees' security clearances; and reports from investigative agencies.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–38

SYSTEM NAME:

Occupational and Industrial Accident Records.

SYSTEM LOCATION(S):

U.S. Department of Energy, Alaska Power Administration, 2770 Sherwood Lane, Juneau, AK 99801–8545
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Allied-Signal, Kansas City Division, PO Box 419159, Kansas City, MO 64141
U.S. Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120–0030
U.S. Department of Energy, Ames Laboratory, Iowa State University, Ames, Iowa 50011
U.S. Department of Energy, Argonne Area Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Bartlesville Project Office, 220 North Virginia Avenue, PO Box 1398, Bartlesville, OK 74003
U.S. Department of Energy, Batavia Area Office, PO Box 2000, Batavia, IL 60510
U.S. Department of Energy, Bettis Atomic Power Laboratory, PO Box 79, Pittsburgh, PA 15122–0079
U.S. Department of Energy, Bonneville Power Administration, PO Box 3621, Portland, OR 97208
U.S. Department of Energy, Brookhaven Area Office, 53 Bell Avenue, Bldg. 464, Upton, NY 11973
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Continuous Electron Beam Accelerator Facility, 12000 Jefferson Avenue, Newport News, Virginia 23606
U.S. Department of Energy, Dayton Area Office, PO Box 66, Miamisburg, OH 45342–0066
U.S. Department of Energy, EG&G Mound Applied Technologies, PO Box 3000, Miamisburg, Ohio 45343–3000
U.S. Department of Energy, Environmental Measurements Laboratory, 376 Hudson Street, New York, NY 10014–3621
U.S. Department of Energy, Fermi National Accelerator Laboratory, PO Box 500, Batavia, Illinois 60510
U.S. Department of Energy, Fernald Environmental Restoration Management Corporation, PO Box 398704, Cincinnati, Ohio 45239–8704
U.S. Department of Energy, Fernald Field Office, 7400 Willey Road, Cincinnati, OH 45030
U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401
U.S. Department of Energy, Grand Junction, PO Box 2567, Grand Junction, CO 81502–2567
U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Inhalation Toxicology Research Institute, PO Box 5890, Albuquerque, New Mexico 87185
U.S. Department of Energy, Kansas City Area Office, PO Box 410202, Kansas City, MO 64141–0202
U.S. Department of Energy, Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Knolls Atomic Power Laboratory, PO Box 1072, Schenectady, NY 12301
U.S. Department of Energy, Lawrence Livermore National Laboratory, PO Box 808, Livermore, California 94551
U.S. Department of Energy, Lawrence Berkeley Laboratory, One Cyclotron Road, Building 26, Room 143, Berkeley, California 94720
U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., Y–12 Plant, PO Box 2009, Oak Ridge, Tennessee 37831–8103
U.S. Department of Energy, Lockheed Martin Energy Systems, Inc., K–25 Plant, PO Box 2003, Oak Ridge, Tennessee 37831–7422
U.S. Department of Energy, MK Ferguson of Oak Ridge Company, PO Box 2011, Oak Ridge, Tennessee 37831–2011
U.S. Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, PO Box 880, Morgantown, WV 26507–0880
U.S. Department of Energy, National Institute for Petroleum and Energy Research, BDM-Oklahoma, Inc., PO Box 2565, Bartlesville, Oklahoma 74005
U.S. Department of Energy, National Renewable Energy Laboratory Area Office, 1617 Cole Boulevard, Golden, CO 80401–3393
U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 907 N. Poplar, Suite 150, Casper, WY 82601

U.S. Department of Energy, Naval Petroleum Reserves in California, 28590 Highway 119, PO Box 11, Tupman, CA 93276
U.S. Department of Energy, Naval Reactors Representative Office, Naval Base Branch Post Office, General Delivery, Charleston Naval Shipyard, Charleston, SC 29408–5615
U.S. Department of Energy, Naval Reactors Representative Office, PO Box 7021, Groton, CT 06340
U.S. Department of Energy, Naval Reactors Representative Office, Mare Island Naval Shipyard, PO Box 2053, Vallejo, CA 94592
U.S. Department of Energy, Naval Reactors Representative Office, Newport News Shipbuilding & Dry Dock Company, PO Box 973, Newport News, VA 23607
U.S. Department of Energy, Naval Reactors Representative Office, Norfolk Naval Shipyard, PO Box 848, Portsmouth, VA 23705–0848
U.S. Department of Energy, Naval Reactors Representative Office, Pearl Harbor Naval Shipyard, PO Box 128, Pearl Harbor, HI 96860
U.S. Department of Energy, Naval Reactors Representative Office, Portsmouth Naval Shipyard, Naval Base Branch, PO Box 2008, Portsmouth, NH 03801–2008
U.S. Department of Energy, Naval Reactors Representative Office, Puget Sound Naval Shipyard Substation, PO Box 1A, Bremerton, WA 98314
U.S. Department of Energy, Nevada Test Site, Mercury, Mercury, NV 89023
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Ohio Field Office, 1 Mound Road, Miamisburg, OH 45342
U.S. Department of Energy, Phoenix Area Office, PO Box 6457, Phoenix, AZ 85005
U.S. Department of Energy, Pinellas Area Office, PO Box 2900, Largo, FL 34649
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Pittsburgh Energy Technology Center, PO Box 10940, Pittsburgh, PA 15236–0940
U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Princeton University, PO Box 451, Princeton, New Jersey 08543
U.S. Department of Energy, Portsmouth Enrichment Office, PO Box 700, Piketon, OH 45661
U.S. Department of Energy, Princeton Area Office, PO Box 102, Princeton, NJ 08542
U.S. Department of Energy, Radiological and Environmental Sciences Laboratory, 785 DOE Place, Idaho Falls, ID 83402
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Rocketdyne—Rockwell Aerospace, 6633 Canoga Avenue, PO Box 7922, Department 056 EA08, Canoga Park, California 91309–7922
U.S. Department of Energy, Rocky Flats Office, PO Box 928, Golden, CO 80402–0928
U.S. Department of Energy, Sandia National Laboratories, PO Box 5800, Albuquerque, NM 87115
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301
U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Public Square, Elberton, GA 30635
U.S. Department of Energy, Southwestern Power Administration, PO Box 1619, Tulsa, OK 74101
U.S. Department of Energy, Stanford Linear Accelerator Center, PO Box 4349, Stanford, California 94309
U.S. Department of Energy, Strategic Petroleum Reserve Project Office, 900 Commerce Road East, New Orleans, LA 70123
U.S. Department of Energy, Waste Isolation Pilot Plant, Westinghouse Electric Company, Waste Isolation Division, PO Box 2078, Carlsbad, New Mexico 88220
U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, Missouri 63304
U.S. Department of Energy, West Valley Nuclear Service Company, Inc., 10282 Rock Springs Road, PO Box 191, MS: F, West Valley, New York 14171
U.S. Department of Energy, Waste Isolation Pilot Project Office, PO Box 3090, Carlsbad, NM 88221
U.S. Department of Energy, Western Area Power Administration, PO Box 3402, Golden, CO 80401
U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, PO Box 2068, Idaho Falls, ID 83403–2068

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOE employees, contractor employees, and any other persons having access to DOE facilities who have had accidents on DOE facilities. Also individuals involved in accidents with employees or contractor employees or other persons having access to DOE facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident/incident information, occupational injury and illness experience, property damage experience, and motor vehicle accidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pertinent provisions of 29 CFR 1904.7 apply to the records maintained in this system of records.

1. Physicians: For purpose of treating patients.

2. Property owners and insurance companies: For purpose of processing insurance claims.

3. DOE contractors and consultants, state departments of labor and industries and other state agencies, U.S. Department of Labor, National Drivers Registry, and Department of Transportation: For purposes of processing insurance claims and accident reporting.

4. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

5. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.

6. A record from this system of records may be disclosed, as a routine

use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

8. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.

9. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.

10. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

11. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

12. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

13. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

14. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health, the National Center for Environmental Health, of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

15. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

16. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, punched cards, paper records, and microfilm.

RETRIEVABILITY:

By name and by alphabetic, numeric, or alphanumeric code.

SAFEGUARDS:

Records are maintained in locked file cabinets, locked safes, guarded areas, and secured buildings with access limited to personnel with a need to know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Assistant Secretary for Environment, Safety and Health, EH–1, Washington, DC 20585.

Field Offices: The managers and directors of field offices in the locations where the records are maintained are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number,

and/or birth date, geographic location of the accident, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The subject individual, the individual's supervisor, medical officers or personal physicians, accident investigators, investigation boards, investigating law enforcement officers, the National Drivers Registry, and previous employer records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–40

SYSTEM NAME:

Contractor Employees Insurance Claims.

SYSTEM LOCATION:

U.S. Department of Energy, Headquarters, Washington, DC 20585
U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87185–5400
U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439
U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83401
U.S. Department of Energy, Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518
U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831
U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612–52019
U.S. Department of Energy, Pittsburgh Naval Reactors Office, PO Box 109, West Mifflin, PA 15122–0109
U.S. Department of Energy, Richland Operations Office, 825 Jadwin Avenue, PO Box 550, Richland, WA 99352
U.S. Department of Energy, Savannah River Operations Office, PO Box A, Aiken, SC 29801
U.S. Department of Energy, Schenectady Naval Reactors Office, PO Box 1069, Schenectady, NY 12301

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants under worker's compensation insurance and third-party claimants against DOE contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, physician statements, pictures, maps, sketches, claimant and witness statements, doctor and hospital bills, reports from engineering firms, and claims activity reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Insurance companies—in administering claims against DOE Contractors and DOE.
2. State and local agencies—for consideration of insurance claims.
3. Physicians—for claims evaluations.
4. Lawyers—for claims evaluations.
5. State industrial commissions—for claim evaluations.
6. Claims—adjustment services firms—for claim evaluations.
7. In the event that a record within this system of records maintained by this agency indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.
8. A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit.
9. A record from this system of record may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.
11. A record maintained by this agency to carry out its functions which relates to civil and criminal proceedings may be disclosed to the news media in accordance with guidelines contained in Department of Justice regulations 28 CFR 50.2.
12. A record maintained by this agency to carry out its functions may be disclosed to foreign governments in accordance with treaty obligations.
13. A record from this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.
14. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.
15. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.
16. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.
17. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor

personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

18. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

19. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer printouts.

RETRIEVABILITY

By contractor, name and claim number.

SAFEGUARDS:

Records are maintained in a locked building.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: U.S. Department of Energy, Director, Office Contractor Human Resource Management, HR–524, Washington, DC 20585.

Field offices: The managers and directors of field locations where the records are maintained are the systems managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate field location, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Claimants, witnesses, and insurance company claim files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–67

SYSTEM NAME:

Participants in Experiments, Studies, and Surveys.

Subsystem A: EIA Survey Reports.

Subsystem B: Hanford Clinical Epidemiologic Studies.

SYSTEM LOCATION:

Subsystem A: U.S. Department of Energy, Office of Oil and Gas, 1000 Independence Avenue, SW., Washington, DC 20585.

Subsystem B: Richland Operations Office, Post Office Box 550, Richland, WA 99352.

Portions of the system may be located with contractors or other entities involved in conducting the experiments, studies or surveys, or in any DOE office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants in experiments, studies, and surveys undertaken in furtherance of authorized DOE research activities.

Subsystem A: Operators of oil and/or natural gas wells.

Subsystem B: All present and former DOE and DOE contractor Richland Operations employees, their spouses and offspring, and selected controls.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subsystem A: Company name and identification, address and data relating to oil and gas reserves and production.

Subsystem B: Name, age, birth date, place of birth, sex, race, social security number, home address and telephone number, business address and telephone number, education, income, occupation, family size and composition, patterns of product use, and such other information as is necessary, to be determined by the subject matter and purpose of the experiment, study or survey, including data derived from participants' responses during the course of the authorized research. System also consists of a variety of records pertinent to the health status of individuals and their families: Medical history; reproductive history; birth records; developmental history; occupational history and work environment; demographic information; and selected items such as smoking habits, alcohol use, family medical history, and location of residence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subsystem A:

1. Information in this system may, on occasion, be disclosed to Federal

agencies and other entities which are participating in research in connection with which the data were obtained. Information in the possession of the Energy Information Administration must be disclosed, upon request, to any DOE office which determines the information relates to its functions.

2. A record from this system may be disclosed as a routine use, to DOE contractors in performance of their contracts, and their officers and employee have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

3. A record from this system may be disclosed to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

Subsystem B:

1. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

2. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

3. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

4. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

5. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Generally paper records in file folders, electromagnetic storage material, and microfiche.

Subsystem A: Paper records, microfiche, disk, and tape.

Subsystem B: Paper records, computer printouts, index cards, microfilm, and disk.

RETRIEVABILITY:

Subsystem A: By data element, name, or control number.

Subsystem B: By name, alphanumeric code, and social security number.

SAFEGUARDS:

Generally during business hours, the records at DOE sites are maintained in secured buildings with access limited to those whose official duties require access; during nonbusiness hours, the records are in secured rooms with access controlled by security guards. Any records maintained by other entities will be maintained in a similar fashion in accordance with DOE specifications. Records are maintained in lockable cabinets, in secured buildings. Access is limited to individuals having a need-to-know.

Subsystem A: The contract stipulates that the contractor will exercise all diligence in controlling access to the records maintained under the program and that only authorized members of the contractor, and DOE will be allowed to use the data. All personnel that handle or process the data are instructed and cautioned as to the confidentiality of the data and its proper disposition.

Subsystem B: Records are maintained in lockable cabinets, in secured buildings. Access is limited to individuals having a need-to-know.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Subsystem A: U.S. Department of Energy, Administrator, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Subsystem B: U.S. Department of Energy, Richland Operations Office, PO Box 550 Richland, WA 99352.

NOTIFICATION PROCEDURE:

Subsystem A: Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, FOIA and Privacy Act Division, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585.

Subsystem B: Requests by an individual to determine if a system of records contains information about him/her should be directed to, the Privacy Act Officer, U.S. Department of Energy, Richland Operations Office, PO Box 550, Richland, WA 99352, in accordance with DOE's Privacy Act regulations (10 CFR part 1008, 45 FR 61576, September 16, 1980).

b. Required identifying information: Complete name at the time of study,

birthday, social security number, current name, address, and telephone number.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–71

SYSTEM NAME:

The Radiation Accident Registry.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those persons accidentally exposed to acute doses of ionizing radiation as defined by exposure dose criteria agreed to by the DOE and the Nuclear Regulatory Commission (NRC) by an interagency agreement. The dose criteria established by this agreement include one or more of the following: Greater than or equal to 25 REM (Roentgen Equivalent in Man) to the whole body, active blood forming organs or gonads; greater than or equal to 600 REM to skin of the whole body or extremities; greater than or equal to 75 REM to other tissues or organs from an external source; and greater than or equal to 1/2 NCRP maximum permissible organ burden internally; all those medical misadministrations of radioisotopes that result in a dose or organ burden equal to or greater than those given above.

To those individuals known to have been involved in an event in which one or more other persons received a dose equal to or in excess of the DOE/NRC criteria but whose personal dose was less than these criteria. The histories of these individuals contribute control population data.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official accident reports including reports of those accidents that have occurred within the jurisdiction of the NRC and have been transferred to the DOE for the Accident Registry according to the DOE/NRC agreement; names, addresses, social security numbers, date of birth, and sex; medical records compiled at the time of the accident (such records include physician and hospital records, diagnostic and laboratory test reports, radiographs, EKGs, and radiation exposure report); medical records of illnesses, examinations, including routine follow-up examinations, and investigations that have occurred since the radiation exposure; photographs or facsimiles of radiation-induced injuries; search and contact information for registrants not identified and/or located; consent to release information forms completed by registrants; death certificates; anecdotal information; correspondence relating to the accident and/or the individuals involved.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide a current record of radiation accidents for use by the DOE, and its contractors and consultants; to identify specific populations for use in epidemiological and clinical studies; and to conduct medical surveillance during the lifetime of the registrants.

2. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

3. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

4. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

8. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request

for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, disc, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operation Office, PO Box 2001, Oak Ridge, TN 37831, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

DOE–72

SYSTEM NAME:

The Department of Energy Radiation Study Registry.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants are those present and former employees of contractors of the DOE and its predecessor organizations including the Manhattan District, USAEC, and ERDA, and present and former civilian employees in the DOE Naval Reactor Program who received a whole body exposure of ionizing radiation equal to or in excess of 5 REM in any 1 year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Rosters of names of individuals meeting the above criteria for inclusion in the Registry submitted through the DOE field operation officers from DOE owned and operated facilities and sites. In addition to names of such individuals, these rosters include social security number or other identifying information, sex, race, date of birth, date and/or place of death, first date of hire, last date of termination, continuity of hire, year in which they received first dose greater than or equal to 5 REM, actual radiation dose in excess of 5 REM, and total career radiation exposure dose.

Original or copied lifetime medical records from plant and private physicians and hospitals including routine physical examinations, reports of diagnostic and laboratory tests, radiographs, EKG's, etc., or abstracted portions of such records as are required for the purposes of this study.

Search and contact information for registrants who are no longer employed at qualified sites or who are deceased.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide a current record of registrants for use by DOE, its contractors, and consultants; to identify specific populations for use in epidemiological and clinical studies; to conduct medical surveillance during the lifetime of the registrants.

2. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

3. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

4. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All

recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

8. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, discs, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831, in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, social security number, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOE–73

SYSTEM NAME:

The US-DTPA Registry.

SYSTEM LOCATION:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

Registrants are those individuals who, because of real or suspected internal contamination with transuranic elements, have received diethylenetriaminepentaacetic acid (DTPA), in the calcium or zinc form during the course of chelation therapy. Administration of the agent DTPA is limited to physicians who are co-investigators with the DOE contractor staff on the Investigative New Drug License of the Food and Drug Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records compiled by the physician administering DTPA in the event of an exposure that was known to have or was suspected of having caused transuranic contamination internally requiring chelation therapy with DTPA. These records include a description of the exposure, the results of serial bioassays and investigations conducted to evaluate the level of internal contamination and the efficacy of subsequent chelation by DTPA. The form of DTPA and the route and frequency of administration are recorded together with any untoward effects of the therapy.

Name, social security numbers or other identifiers and vital status of treated persons. The last known address and the name of the private physicians of individuals who have relocated or who are no longer within the practice of the administering physician(s) are included in the DTPA Registry to facilitate the search and contact of these individuals; medical records of illnesses, examinations, including routine follow-up examinations, investigations, etc., that have occurred since the initial administration of DTPA; and death certificate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide a current record of individuals treated with DTPA for use by the DOE and its contractors and consultants; identify by epidemiological methods any long-term untoward effects associated with DTPA therapy; to provide information to FDA in accord with the IND license and issuances.

2. A record from this system of records may be disclosed to facilitate health hazard evaluations, epidemiological studies, or public health activities required by law performed by personnel, contractor personnel, grantees, and cooperative agreement holders of components of the Department of Health and Human Services, including the National Institute for Occupational Safety and Health and the National Center for Environmental Health of the Centers for

Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry pursuant to Memoranda of Understanding between the Department and the Department of Health and Human Services or its components.

3. Subject to the same Privacy Act limitations applicable to employees of the Department, a record from this system of records may be disclosed as a routine use to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, in performance of health studies or related health or environmental duties pursuant to their contracts, grants, and cooperating or collaborating research agreements. In order to perform such studies, the Department, its contractors, grantees, participants in cooperative agreements, and collaborating researchers may disclose a record to: Federal, state and local health and medical agencies or authorities; to subcontractors in order to determine a subject's vital status or cause of death; to health care providers to verify a diagnosis or cause of death; or to third parties to obtain current addresses for participants in health-related studies, surveys and surveillances. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the above described research purposes.

4. A record from this system of records may be disclosed to members of DOE advisory committees, the Department of Health and Human Services Advisory Committee on Projects Related to Department of Energy Facilities and to designated employees of Federal, State, or local government or government-sponsored entities authorized to provide advice to the Department concerning health, safety or environmental issues. All recipients of such records are required to comply with the Privacy Act, to follow prescribed measures to protect personal privacy, and to disclose or use personally identifiable information only for the purpose of providing advice to the Department or to the Department of Health and Human Services.

5. A record from this system of records may be disclosed, as a routine use, (a) to appropriate parties engaged in litigation or in preparation of possible litigation, such as potential witnesses, for the purpose of securing their testimony when necessary; (b) to courts, magistrates or administrative tribunals; (c) to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; and (d) to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings.

6. A record from this system of records may be disclosed, as a routine use, to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to DOE officers and employees under the Privacy Act.

7. A record in this system of records may be disclosed, as a routine use, to a member of Congress submitting a request involving the individual when the individual is a constituent of the member and has requested assistance from the member with respect to the subject matter of the record.

8. A record in this system of records which contains medical and/or psychological information may be disclosed, as a routine use, to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and DOE's Privacy Act regulations if, in its sole judgment and good faith, DOE believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable DOE regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, computer tapes, computer printouts, punched cards, discs, magnetic tape, and microfilm.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in locked security areas in locked file cabinets. Access is limited to individuals whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the General Records Schedule and DOE records schedules which have been approved by the National Archives and Records Administration. Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831.

NOTIFICATION PROCEDURE:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Privacy Act Officer, Department of Energy, Oak Ridge Operations Office, PO Box 2001, Oak Ridge, TN 37831, in accordance with the DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual, medical records, physicians, medical institutions, and reports of incident/accident investigations from private and public sources, radiation dosimetry records, security clearance records, and employment records.

SYSTEM EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 95–15584 Filed 6–27–95; 8:45 am]

BILLING CODE 6450–01–P

federal register

Wednesday
June 28, 1995

Part IV

Department of Commerce

International Trade Administration

Countervailing and Antidumping Notices; Oil Country Tubular Goods; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–433–806]

Final Affirmative Countervailing Duty Determination: Certain Oil Country Tubular Goods (''OCTG'') From Austria

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Daniel Lessard, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0189 or 482–1778, respectively.

Final Determination

The Department of Commerce (''the Department'') determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (''the Act''), are being provided to manufacturers, producers, or exporters in Austria of certain oil country tubular goods (''OCTG''). For information on the estimated net subsidy, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of the preliminary determination in the **Federal Register** (60 FR 4600, January 24, 1995), the following events have occurred. On February 2, 1995, pursuant to a request by Voest-Alpine Stahlrohr Kindberg (''Kindberg''), the Department postponed the final determination in the companion antidumping investigation (60 FR 6512) until not later than June 19, 1995. Because this investigation is aligned with the companion antidumping investigation, we notified parties that the final determination in this investigation would also be made no later than June 19, 1995.

We conducted verification of the responses submitted by the Government of Austria (''GOA'') and Voest-Alpine Stahlrohr Kindberg (''Kindberg'') from February 27 through March 8, 1994. Both respondents and petitioners submitted case and rebuttal briefs on May 23 and May 30, 1995, respectively. A hearing was not requested.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the *HTSUS* subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (''Proposed Regulations''), which has been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Injury Test

Because Austria is a ''country under the Agreement'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') must determine whether imports of OCTG from Austria materially injure, or threaten material injury to, a U.S. industry. On August 24, 1994, the ITC published its preliminarily determination that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reasons of imports from Austria of the subject merchandise (59 FR 43591, August 24, 1994).

Corporate History of Respondent Kindberg

Prior to 1987, the subject merchandise was produced in the steel division of Voest-Alpine AG (''VAAG''), a large conglomerate which also had engineering and finished products divisions. In 1987, VAAG underwent a major restructuring and several new companies were formed from the three major divisions of VAAG. The steel division was incorporated as Voest-Alpine Stahl GmbH, Linz (''VA Linz''). Among VA Linz's separately incorporated subsidiaries were Kindberg and Voest-Alpine Stahl Donawitz GmbH (''Donawitz''). VAAG became a holding company for VA Linz and its other former divisions.

In 1988, VAAG transferred its ownership interest in VA Linz to Voest-Alpine Stahl AG (''VAS''). At the same time, Kindberg became a subsidiary of Donawitz. Donawitz and other companies were owned by VAS, which in turn was owned by VAAG.

In 1989, VAS and all other subholdings of VAAG were transferred to Industrie und Beteiligungsverwaltung GmbH (''IBVG''). In 1990, IBVG, in turn, was renamed Austrian Industries AG (''AI''). VAAG remained in existence, but separate from IBVG and AI, holding only residual liabilities and non-steel assets.

In 1991, as part of the reorganization of the long products operations, Donawitz was split. The rail division remained with the existing company (*i.e.*, Donawitz), however, the name of the company was changed to Voest-Alpine Schienen GmbH (''Schienen''). In addition to producing rails, Schienen also became the holding company for Kindberg and the other Donawitz subsidiaries. The metallurgical division of the former Donawitz was incorporated as a new company and was

named Voest-Alpine Stahl Donawitz (''Donawitz II'').

Equityworthiness

As discussed below, we have determined that the GOA provided equity infusions, through the state-owned industry holding company, Österreichische Industrieholding-Aktiengesellschaft (''ÖIAG''), to VAAG in the years 1983, 1984, and 1986, and to Kindberg in 1987. In order for the Department to find an equity infusion countervailable, it must be determined that the infusion is provided on terms inconsistent with commercial considerations. Petitioners have alleged that VAAG and Kindberg were unequityworthy in the years in which they received equity infusions and that the equity infusions were, therefore, inconsistent with commercial considerations. According to § 355.44(e)(2) of the Department's *Proposed Regulations,* for a company to be equityworthy it must show the ability to generate a reasonable rate of return within a reasonable period of time. A detailed equityworthiness analysis can be found in the Department's Concurrence Memorandum dated June 19, 1995. A summary of that analysis follows.

In the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217 (July 9, 1993) (''Certain Steel''), the Department found VAAG to be unequityworthy in the years 1978–84 and 1986. Respondents have not questioned this determination and no additional information concerning that period has come to light. Therefore, we determine VAAG to be unequityworthy during the period 1978–84, and for 1986.

With respect to the equityworthiness of Kindberg in 1987, we have further examined the information provided regarding Kindberg's future prospects. This information included a more detailed excerpt of the VA Neu study than was available at the time of the preliminary determination, ÖIAG Finance Concepts, and an internal operating forecast performed by Kindberg. Although the forecasts show a trend toward profitability, they fail to establish that Kindberg would generate a reasonable rate of return in a reasonable period of time. Therefore, we determine that the 1987 equity infusion into Kindberg was inconsistent with commercial considerations. We also reaffirm our preliminary determination, based on our analysis from Certain Steel, that VAAG's poor performance prior to the restructuring supports a finding that the 1987 infusion into Kindberg was inconsistent with commercial considerations.

Allocation of Non-Recurring Benefits

We have determined that the subsidies received by Kindberg are ''non-recurring'' because the benefits are exceptional and the recipient could not expect to receive them on an ongoing basis (see, the *General Issues Appendix* to the Final Countervailing Duty Determination: Certain Steel Products from Austria (''GIA''), 58 FR 37225, 37226 (July 9, 1993)). Consequently, as explained in § 355.49 of the *Proposed Regulations,* we have allocated the benefits over a period equal to the average useful life of assets in the industry.

A company-specific discount rate was not available for the allocation. Therefore, we have used the bond rate designated as being for ''Industry and other Austrian Issuers'' in the Austrian National Bank's Annual Report. Although respondents reported an alternative borrowing rate to be used as the discount rate, we verified that their proposed rate reflected large government borrowings. Because we are measuring the benefit to the recipient company, we prefer a commercial benchmark. Therefore, we have rejected the rate dominated by government borrowing and selected instead a rate which reflects what it costs businesses to borrow.

Calculation of the Benefit

For purposes of this final determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Kindberg in the POI by Kindberg's total sales revenue. Next, we added the benefits for all programs to arrive at Kindberg's total subsidy rate. Because Kindberg is the only respondent company in this investigation, this rate is also the country-wide rate.

Based upon our analysis of the petition, responses to our questionnaires, verifications and comments made by interested parties, we determine the following:

A. Programs Determined To Be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Austria of OCTG under the following programs:

1. Equity Infusions to Voest-Alpine AG (VAAG): 1983, 1984 and 1986

The GOA provided equity infusions through ÖIAG to VAAG in 1983, 1984 and 1986, while VAAG owned the facilities which became Kindberg, the producer of the subject merchandise. The 1983 and 1984 infusions were given by ÖIAG pursuant to Law 589/1983. The 1986 equity infusion was given as an advance payment for funds to be provided under Law 298/1987 (the ÖIAG Financing Act). Law 589/1983 and Law 298/1987 provide authority for disbursement of funds solely to companies of ÖIAG, of which VAAG is one.

In Certain Steel, the Department determined these equity infusions to be *de jure* specific. Respondents did not provide any information disputing these findings in this proceeding. Moreover, since we have determined that VAAG was unequityworthy in these years, we determine that these infusions were provided to VAAG on terms inconsistent with commercial considerations.

Respondents argue that subsidies received by VAAG prior to the 1987 restructuring are not appropriately attributable to Kindberg. However, we have determined that these subsidies continue to benefit Kindberg's production of OCTG, in accordance with restructuring methodology discussed in the *GIA,* at 37265–8. (See *Comment Two,* below, for a discussion of respondents' comments and the Department's position on this matter.)

To calculate the portion of these subsidies to VAAG which is attributable to Kindberg, we divided Kindberg's asset value on January 1, 1987, by VAAG's total asset value on December 31, 1986 (*i.e.,* pre-restructuring). This ratio best reflects the proportion of VAAG's total 1986 assets that became Kindberg in 1987.

We then applied this ratio to VAAG's subsidy amount to calculate the portion of these infusions allocable to Kindberg. To calculate the benefit for the POI, we treated each of the equity amounts as a grant and allocated the benefits over a 15 year period beginning in the years the equity was received by VAAG. Our treatment of equity as grants is discussed in the *GIA,* at 37239. We then divided the benefit by total sales of Kindberg during the POI. On this basis, we determine the net subsidies for these equity infusions to be 1.37 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

2. Grants Provided to VAAG: 1981–86

The GOA provided grants to VAAG through ÖIAG pursuant to Law 602/1981, Law 589/1983, and Law 298/1987. In Certain Steel, the Department found grants disbursed under Law 602/1981, Law 589/1983 and Law 298/1987 to be provided specifically to the steel industry and, hence, countervailable (58 FR 37221). Respondents have not challenged the countervailability of these grants in this proceeding.

The grant received in 1981 was less than 0.50 percent of VAAG's sales in that year. Hence, as explained in § 355.44(a) of our *Proposed Regulations* and the *GIA*, at 37217, we have expensed the grant received in 1981 in that year. To calculate the benefit from the other grants, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies under this program to be 3.68 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

3. Assumption of Losses at Restructuring by VAAG on Behalf of Kindberg

In Certain Steel, we determined that, in connection with the 1987 restructuring, VAAG retained all the losses carried forward on its balance sheet and that no losses were assigned to its newly created subsidiaries. VAAG later received funds from the GOA under Law 298/1987 to offset these losses. We found that VAAG's subsidiaries benefitted because VAAG retained these losses when the company was restructured. In the present investigation, petitioners allege that this assumption of losses provided a countervailable subsidy to Kindberg, a subsidiary of VAAG.

In our preliminary determination, respondents argued that the assumption of losses did not provide a benefit to Kindberg because Kindberg could have used such losses to reduce income-tax liabilities in the future. We stated that this argument would be more closely analyzed for our final determination.

At verification, we learned that Austrian Commercial Law and Austrian Tax Law distinguish between two types of losses: tax losses and commercial losses. Kindberg's tax losses *were* carried forward after the restructuring and were used to offset income taxes in future years. The losses which were retained by VAAG and countervailed in Certain Steel, were commercial losses. All commercial losses were retained by VAAG after the restructuring. Hence we conclude that the losses retained by VAAG could not be used to reduce the future tax liabilities of Kindberg.

Respondents now argue that these commercial losses were not generated by Kindberg and, therefore, the assumption of losses by VAAG does not benefit Kindberg. At verification, however, respondents were unable to identify how the losses which remained on VAAG's books were incurred. Moreover, Kindberg's auditor's report states that Kindberg incurred significant commercial losses in 1985 and 1986. Hence, we find no basis for concluding that the losses retained by VAAG should not be attributed in part to Kindberg.

We concluded in Certain Steel that, ''if VAAG had assigned these losses to its new companies, then each of the new companies would have been in a * * * precarious financial position'' (Certain Steel, 37221). Similarly, we determine that the assumption of losses provided a benefit to Kindberg.

To calculate the benefit, we have treated the losses not distributed to Kindberg as a grant received in 1987. Kindberg's share of the losses was determined by reference to its asset value relative to total VAAG assets. To allocate the benefit, we used the methodology described in *Equity Infusions to VAAG: 1983–84, 1986* section, above. On this basis, we determine the net subsidies for this program to be 1.26 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

4. Equity Infusion to Kindberg: 1987

A direct equity infusion from ÖIAG to Kindberg was made on January 1, 1987, pursuant to Law 298/1987. As under Law 589/1983, funds under Law 298/1987 were provided solely to the steel industry. Therefore, we find this infusion to be specific. Moreover, since we have determined that Kindberg was unequityworthy in 1987, this infusion was made on terms inconsistent with commercial considerations. Thus, we determine this infusion to be countervailable.

To calculate the benefit for the POI, we treated the equity amount as a grant and allocated the benefit over 15 years. Because the equity investment was made directly in Kindberg, and because Kindberg was separately incorporated as of that year, the entire benefit has been attributed to Kindberg. The portion allocated to the POI was divided by total sales of Kindberg during the POI to determine the *ad valorem* benefit. On this basis, we determine the net subsidies for this program to be 5.13 percent *ad valorem* for all manufacturers, producers, and exporters in Austria of OCTG.

B. Programs Determined not to Benefit the Subject Merchandise

We included in our investigation subsidies provided after 1987 to VA Linz, VAAG and VAS based on petitioners' allegation that subsidies to these companies benefitted Kindberg. Based on information provided in the responses and our findings at verification, we determine that no subsidies were being transmitted to Kindberg from its related companies. Therefore, the following programs did not bestow a benefit on Kindberg. For a discussion of the transmittal of subsidies, see the Department's Concurrence Memorandum dated June 19, 1995.

1. 1987 Equity Infusion to VA Linz.
2. Post-Restructuring Equity Infusions to VAAG.
3. Post-Restructuring Grants to VAAG.
4. Post-Restructuring Grants to VAS.

C. Analysis of Upstream Subsidies

The petitioners have alleged that manufacturers, producers, or exporters of OCTG in Austria receive benefits in the form of upstream subsidies. Section 771A(a) of the Tariff Act of 1930, as amended (the Act), defines upstream subsidies as follows:

The term ''upstream subsidy'' means any subsidy * * * by the government of a country that:

(1) Is paid or bestowed by that government with respect to a product (hereinafter referred to as an ''input product'') that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;

(2) In the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) Has a significant effect on the cost of manufacturing or producing the merchandise.

Each of the three elements listed above must be satisfied in order for the Department to find that an upstream subsidy exists. The absence of any one element precludes the finding of an upstream subsidy. As discussed below, respondents have shown that a competitive benefit does not exist. Therefore, we have not addressed the first and third criteria.

Competitive Benefit

In determining whether subsidies to the upstream supplier(s) confer a competitive benefit within the meaning of section 771A(a)(2) on the subject merchandise, section 771A(b) directs that:

* * * a competitive benefit has been bestowed when the price for the input product * * * is lower than the price that the manufacturer or producer of merchandise

which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

The *Proposed Regulations* offer the following hierarchy of benchmarks for determining whether a competitive benefit exists:

* * * In evaluating whether a competitive benefit exists pursuant to paragraph (a)(2) of this section, the Secretary will determine whether the price for the input product is lower than:

(1) The price which the producer of the merchandise otherwise would pay for the input product, produced in the same country, in obtaining it from another unsubsidized seller in an arm's length transaction; or

(2) A world market price for the input product.

In this instance, there is not another supplier in Austria of the input product, steel blooms. However, Kindberg does purchase the input product from an unrelated foreign supplier. Therefore, we have used the prices charged to Kindberg by the foreign supplier as the benchmark world market price.

Because the foreign supplier's prices are delivered, we made an upward adjustment to the domestic supplier's prices to account for the cost of freight between Kindberg and that supplier. Based on our comparison of these delivered prices for identical grades of steel blooms, we found no competitive benefit was bestowed on Kindberg during the POI. Therefore, we determine that Kindberg did not receive an upstream subsidy.

Interested Party Comments

Comment One: Attribution of VAAG subsidies to Kindberg

Respondents argue that in *British Steel plc* v. *United States*, the CIT established that ''a subsidy cannot be provided to a 'productive unit' or 'travel' with it unless the 'productive unit' is itself an artificial person capable of receiving a subsidy.'' Prior to 1987, Kindberg was not a separately incorporated company—Kindberg was not an ''artificial person.'' Therefore, respondents claim that subsidies received by VAAG prior to 1987 could not ''travel'' with Kindberg after the restructuring. Moreover, they argue that the requirements in British Steel also preclude the Department from attributing losses assumed at restructuring by VAAG to Kindberg because only subsidies received directly by Kindberg after its incorporation are countervailable.

Petitioners assert that British Steel is irrelevant to Kindberg because it involved cases where subsidized state-owned companies were privatized. However, in this investigation, the Austrian government still owns 100% of Kindberg (*i.e.*, Kindberg has not been privatized). Petitioners note that two types of corporate restructuring were identified in Certain Steel. Privatizations (*i.e.*, mergers, spin-offs, and acquisitions) were one type of corporate restructuring, while internal corporate restructurings were the other type. The 1987 VAAG restructuring was identified as an internal corporate restructuring. Petitioners note that an internal restructuring does not constitute a sale for purposes of evaluating the extent to which subsidies passed through to a new entity. Therefore, they assert that none of the issues addressed in British Steel are relevant.

DOC Position

Respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. First, British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Further, even if British Steel were a final decision, the issues contained in the opinion which relate to privatization are inapposite in this case. The entire British Steel opinion is premised on an actual privatization of a company, *i.e.*, a sale of all or part of the government's interest. In this case, Kindberg has not been privatized. Although the immediate parent of Kindberg changed through the restructuring, the ultimate equity owner was and remains the GOA. The *British Steel* opinion did not address a situation in which a company was restructured, but there was no sale of the government's interest.

Comment Two: Allocation Time-Period

Respondents argue that allocating benefits from nonrecurring grants and equity infusions over fifteen years, based on the IRS tables, contravenes established judicial precedent, as well as congressional intent. They state that a recent CIT decision (*i.e.*, *British Steel plc* v. *the United States*) held that this allocation methodology, used in *Certain Steel*, was contrary to law. Respondents argue that the Department should employ an allocation methodology which reasonably reflects the relevant commercial and competitive advantages enjoyed by Kindberg. Specifically, the Department should allocate benefits using the 3, 5, and 10-year schedules of depreciation found in Kindberg's balance sheet and statement of profit and loss.

Petitioners claim that the the CIT did not find that the Department's allocation methodology was unlawful *per se*. The court's specific concern was that the Department had not adequately explained how the IRS tables reflected the benefit from subsidies used for purposes other than the purchase of physical assets. The court recognized that, after engaging in an examination of the firms under investigation, the Department might still find that the IRS tables could serve as a proxy for allocating subsidy benefits.

Petitioners argue that Kindberg has not provided sufficient evidence that fifteen years does not reflect the benefit to Kindberg from non-recurring subsidies. Petitioners note that Kindberg did not provide cites for the 3, 5, and 10 year depreciation schedules. Moreover, Kindberg did not explain the relevance of these depreciation schedules, nor did it identify the assets that are subject to the depreciation schedules. Given the lack of contrary evidence in the record, the Department should determine that the 15-year allocation period reasonably represents the benefit to Kindberg from non-recurring subsidies.

DOC Position

As noted previously, respondents' reliance on *British Steel PLC* v. *United States*, Slip Op. 95–17 (CIT February 9, 1995) is misplaced. British Steel is not a final decision of the CIT, and no decision has been made regarding whether any issue contained in that opinion should be appealed. Therefore, the Department is not bound by that opinion.

Furthermore, renewable physical assets are essential to the continuation of a company's productive activity, which in turn affects the commercial and competitive position of a company. Therefore, the Department has determined that the average useful life of renewable physical assests is an appropriate measure of the commercial and competitive benefits from non-recurring subsidies (see, GIA, at 37227).

Comment Three: Assumption of Losses

Respondents argue that the evidence on record does not support the Department's preliminary finding that VAAG's assumption of losses provided a countervailable subsidy to Kindberg. According to respondents, it was determined at verification that the losses which remained on VAAG's books after the restructuring were incurred by other units of Voest-Alpine. Respondents claim that ''absent substantial evidence on the record attributing VAAG's losses to Kindberg,

the Department's final determination should not result in a net subsidy calculation for these fictive benefits.''

According to petitioners, the Department was told at verification that the majority of the losses in question were incurred by divisions other than Kindberg, and that Kindberg's portion would therefore be small. Petitioners note that respondents were unable to document or even to determine the actual amount of the losses which were attributable to Kindberg. Petitioners further argue that, had any of VAAG's losses been allocated to Kindberg, the newly formed company would have required additional capital in order to avoid insolvency. They conclude that at least some of the losses assumed by VAAG may have been incurred by Kindberg and should, therefore, have been allocated to Kindberg. The assumption of those losses provided a countervailable subsidy to Kindberg.

DOC Position

We agree with petitioners. At verification, VAAG officials explained that the amount of VAAG's losses attributable to Kindberg is not determinable. While we did see evidence that substantial losses were incurred by other divisions of VAAG prior to the restructuring, it does not follow that no losses were created by Kindberg. Moreover, an excerpt from Kindberg's 1987 auditor's report notes that Kindberg incurred operating losses in the amounts of AS 781 million in 1985 and AS 289 million in 1986. Thus, the evidence on the record indicates that Kindberg incurred losses prior to 1987.

Comment Four: 1987 Equityworthiness of Kindberg

Respondents assert that the Department should not rely solely on the past financial performance of VAAG in determining whether Kindberg was equityworthy in 1987. The Department's determination should take into consideration Kindberg's expected future performance—as outlined in the VA Neu study, the FGG reports, and Kindberg's operating forecasts. Respondents claim that these sources all predicted profitability within three years of the date of incorporation.

Furthermore, respondents argue that the company's performance both prior to and after its effective incorporation date should be considered. With respect to Kindberg's actual performance, respondents note that as early as the third quarter of 1987, Kindberg's performance showed marked improvement over 1986. Therefore, even before Kindberg's equity infusion was provided, future financial prospects for the firm had improved significantly. Moreover, they state that Kindberg's performance continued to improve during 1988 and 1989 and that by 1990, Kindberg was operating at a profit. They contend that at the time of the equity infusion, a reasonable private investor would have recognized that Kindberg was capable of generating a sizable return on investment in a reasonable amount of time.

Petitioners claim that the Department's stated policy in the *GIA* is to place greater reliance on past indicators than on studies of future expected performance. The starting point of the Department's analysis, therefore, should be a review of VAAG's past performance—which would lead to a finding that Kindberg was unequityworthy in 1987.

With respect to the VA Neu Study, petitioners argue that the information is inadequate to establish whether Kindberg was equityworthy. They argue that the Department cannot properly analyze the study because respondents only submitted excerpts containing general discussions of possible cost savings.

Additionally, petitioners assert that Kindberg's predicted profitability does not establish that the company would generate a reasonable rate of return within a reasonable time—particularly in light of the substantial losses that Kindberg was expected to incur prior to achieving profitability.

Finally, petitioners stress that the Department does not consider the actual performance of the company subsequent to the receipt of an equity infusion. Kindberg's actual performance after 1987 is irrelevant for purposes of an equityworthiness determination because such information would not have been available to a private investor at that time.

DOC Position

We agree with respondents that the Department should not rely solely on the past financial performance of VAAG to determine whether the 1987 equity infusion in Kindberg was consistent with commercial considerations. As stated in the *GIA*, as 37244, in circumstances such as a restructuring it may be appropriate to place greater weight on certain factors (such as future prospects), than others (past performance). Hence, the Department has examined closely the expected results of the restructuring for Kindberg. At the same time, we reaffirm our earlier conclusion as to VAAG's performance.

We also disagree with petitioners that the information provided by respondents regarding future prospects is inadequate. While the VA Neu study by itself might not be sufficient, largely because it was internally generated and because it was undertaken for different purposes, we have not relied solely on that study. In addition, we have relied on the estimates provided in conjunction with the FGG's ''oversight'' activities in the restructuring. Although the FGG is part of the Austrian Finance Ministry, there is no indication that it did not operate independently in its assessments of the restructuring process.

We do, however, agree with petitioners that these forecasts do not provide a basis for concluding that the GOA would receive a reasonable return within a reasonable amount of time. Heavy losses were predicted for the early years and the best year showed only that the company would break even (or possibly return a small profit). Although these estimates showed a trend toward profitability, they also showed a negative net return over the time horizon they covered.

We also agree with petitioners that Kindberg's actual performance after the equity infusion is irrelevant to this determination. Our examination focuses on what the investor could have expected to receive at the time the investment was made.

Comment Five: Amount of the 1987 Equity Infusion

Petitioners argue that the Department should find the total amount of equity received by Kindberg in 1987 (*i.e.*, both the direct infusion from ÖIAG and the initial equity contribution by VAAG) to be a countervailable subsidy.

DOC Position

The equity on Kindberg's opening balance sheet for 1987 was composed of initial start-up capital provided by VAAG, an increase in VAAG's equity position due to a revaluation of the assets contributed by VAAG to Kindberg, and the 1987 equity infusion by ÖIAG. VAAG was later reimbursed by ÖIAG for its initial equity contribution.

In Certain Steel, the Department concluded that VAAG's contributions of equity capital to its newly formed subsidiaries in 1987 did not constitute countervailable equity infusions. Rather, VAAG merely distributed its pre-existing assets and liabilities to its subsidiaries. Because the method used to allocate assets and liabilities to the new subsidiaries was reasonable, the Department found that no countervailable benefit was conferred in this action. The initial equity received by Kindberg was part of that

redistribution of VAAG's assets. Therefore, consistent with Certain Steel, we have found that the assets provided by VAAG to Kindberg are not a subsidy. However, as discussed above, the losses retained by VAAG did give rise to a subsidy to Kindberg.

Comment Six: Bayou Steel Corporation (''BSC'')

Respondents assert that the Department should not countervail the equity infusions and grants received by VAAG in 1983 and 1984 because these funds were used to cover losses incurred by BSC in the United States. Moreover, because BSC was sold in 1986, Kindberg cannot be receiving any benefits from those funds.

Petitioners argue that in Certain Steel, the Department found that the funds in question were provided to cover VAAG's worldwide losses, including those associated with Bayou Steel. Therefore, the subsidies are attributable to all of VAAG, including Kindberg.

DOC Position

We agree with petitioner. In Certain Steel, we determined that these funds were provided to cover VAAG's worldwide losses. Respondents have not provided information that these funds were intended solely to benefit BSC (see GIA, at 37236). With respect to the sale of BSC, we have applied the spin off methodology applied in the Certain Steel cases. A portion of the subsidies received by VAAG would have been allocated to BSC at the time of its sale, but the payment VAAG received for BSC was sufficiently large that all of the subsidies reverted to VAAG. Hence, these subsidies continue to be, in part, attributable to Kindberg.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of OCTG from Austria, which were entered or withdrawn from warehouse for consumption, on or after January 24, 1995, the date our preliminary determination was published in the **Federal Register**.

Under Article 5, paragraph 3 of the GATT Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue suspension of liquidation on the subject merchandise beginning May 24, 1995, but to continue suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered from January 24 through May 23, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated below.

OCTG

Country-Wide *Ad Valorem Rate:* 11.44 percent

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officers to assess countervailing duties on OCTG from Austria.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15762 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–357–810]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Argentina

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3646 or (202) 482–1673, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Case History

Since the amended preliminary determination on March 6, 1995 (60 FR 13119, March 10, 1995), the following events have occurred.

In March and April 1995, the Department verified the cost and sales questionnaire responses of Siderca S.A.I.C. and Siderca Corp. (collectively Siderca). Verification reports were issued in May 1995. On May 10 and 17, 1995, the interested parties submitted case and rebuttal briefs, respectively. On May 18, 1995, a public hearing was held. On May 23, 1995, Siderca submitted a revised sales tape pursuant to the Department's request correcting for minor errors discovered at verification.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well

casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we were informed by Customs that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. This was confirmed by examination both of the Customs module and the published 1995 HTSUS tariff schedule. Accordingly, these numbers have been deleted from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined for purposes of the final determination that the OCTG covered by this investigation comprises a single category of ''such or similar'' merchandise within the meaning of section 771(16) of the Act. Where there were no sales of identical merchandise in the third country [1] to compare to U.S. sales, we made similar merchandise comparisons on the basis of the product characteristics listed in Appendix V of the Department's antidumping questionnaire, as modified and discussed in the preliminary determination. In two instances, the revised product concordance submitted by Siderca did not follow exactly the product comparisons made in the preliminary determination. We have corrected the product concordance for these instances (*see* Comment 5 in the ''Interested Party Comments'' section of this notice).

We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether Siderca's sales of OCTG from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. For the cost of production (COP) of the merchandise that was further manufactured in the United States, we included in the cost of manufacture (COM) the research and development (R&D) expense excluded by respondent and computed general and administrative (G&A) expense on an annual basis from Siderca's March 31, 1994, income statement.

2. We applied the net financial expense of the consolidated parent to the further manufacturing costs of the related further manufacturer.

3. We made deductions from gross unit price for movement variances that represent the difference between the accrual and actual movement costs.

4. We recalculated inventory carrying cost to use the interest rate of the entity during the time period when that entity holds title to the goods. That is, we used the Argentine interest rate during the period from production to Siderca S.A.I.C.'s transfer of title to Siderca Corp. and the U.S. interest rate during the period the merchandise is held by Siderca Corp.

In order to calculate credit expenses for certain sales which had either not yet been shipped or paid for, we followed the methodology used in our preliminary determination and assigned the average number of credit days when shipment and payment dates were missing, but now used the date of the final determination, June 19, 1995, as the assumed payment date when only payment dates were missing.

Foreign Market Value

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on sales to the People's Republic of China (PRC). During the course of this investigation, the petitioners questioned the legitimacy of certain sales made by Siderca to the Chinese market. The Department closely examined these sales at verification and found no reason to alter its determination that PRC sales are the appropriate basis for FMV (see Comment 1 in the ''Interested Party Comments'' section of this notice).

Cost of Production Analysis

As we indicated in our preliminary determination, the Department initiated an investigation to determine whether Siderca's sales in the PRC were made below their COP. We calculated the COP according to the methodology described in our preliminary determination, with the following exceptions:

1. We included in the COM the R&D expense excluded by Siderca.

2. We computed G&A expense on an annual basis from Siderca's March 31, 1994, income statement.

3. We excluded duties from the COP since the price to which COP was compared was also exclusive of duties.

After computing COP, we compared product-specific COP net of direct and indirect selling expenses to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

[1] The home market in this case is not viable. Sales to the People's Republic of China (PRC) are being used as the basis for the FMV and COP analysis.

Results of COP Analysis

In accordance with section 773(b) of the Act, we followed our standard methodology as described in the preliminary determination to determine whether the third country sales of each product were made at prices below their COP. Based on this methodology, none of Siderca's PRC sales were found to be below cost. Accordingly, we calculated FMV according to the methodology described in our preliminary determination, with the following exceptions:

1. We recalculated credit using the U.S. interest rate since all third country sales were denominated in U.S. dollars.

2. We made a circumstance-of-sale adjustment to FMV to account for the difference in the average effective reintegro (rebate) rate included in the U.S. price (see Comment 6 in the ''Interested Party Comments'' section of this notice).

In order to calculate credit expenses for unshipped or unpaid Chinese sales, we applied the same methodology described above for USP.

Currency Conversion

Because certified exchange rates for Argentina were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Argentine pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund in accordance with 19 CFR 353.60(a).

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Comment 1: Third Country Sales

The petitioners argue that information obtained from Siderca reveals that the date of sale of many of Siderca's third-country sales falls outside the POI, making the home market viable. The petitioners state that Siderca did not adhere to the Department's definition of date of sale for the majority of its third-country sales. They argue that Siderca's refusal to produce written agreements with a certain Chinese customer or price lists pursuant to those agreements leads one to conclude that there were two binding contracts between Siderca and the Chinese customer, one inside the POI and one outside the POI. The petitioners argue that the shipments pursuant to both of those agreements should be excluded from the Department's viability analysis.

Regarding the first agreement, the petitioners argue that the price and quantity were agreed to before the POI, in accordance with the terms specified in Siderca's 1991 Framework Agreement with its customer. Therefore, the POI shipments should be associated with pre-POI sales and excluded from the Department's analysis.

The petitioners argue that Siderca's contention that the 1991 Framework Agreement resulted only in periodic ''general agreements'' on quantity and on ''general price levels'' is an attempt to discount the authority of the 1991 Framework Agreement. They state that nothing in the 1991 Framework Agreement makes any mention of Siderca's claim that the general agreements entered into periodically with the customer were not final. Furthermore, the petitioners state that changes in some sales terms, as mentioned by Siderca to support its claim that the general agreements were not final sales agreements, do not invalidate the parties' intent to establish definite sales terms in the general agreements for the rest of the merchandise.

The petitioners further state that in the Final Determination of Sales at Less Than Fair Value: Steel Bar from India (59 FR 66915, December 28, 1994), the Department found that shipments under a sale agreement were a valid sale as of the date of the agreement, even though the sale was subsequently cancelled. The petitioners argue that if the cancellation of a contract does not alter the date of sale with regard to other merchandise covered by the contract, then ordering a new product does not alter the date of sale, at least for all other types of merchandise, evidenced by the general agreements in question. Therefore, the periodic agreements must be considered actual sales agreements.

As a result, the petitioners maintain that only the second agreement with the Chinese customer was entered into during the POI. However, the petitioners argue that the shipments pursuant to this second agreement should also be excluded from the Department's viability analysis because the terms of delivery for the total tonnage ordered were not met by Siderca, and the quantity shipped is not even close to the shipment terms agreed to by the parties. The petitioners state that the delivery term was an essential term of the agreement and was changed; therefore, the Department must exclude these sales from its viability analysis. Alternatively, if the Department does not exclude all the sales pursuant to this agreement, it must, at a minimum, exclude the merchandise where shipment was not even close to the shipment term agreed to by the parties. Additionally, the petitioners contend that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and should be excluded from the viability analysis.

Regarding a non-Chinese third country sale, the petitioners state that the documentation placed on the record demonstrates that the correct date of sale is outside the POI, since the documentation references a sales acknowledgement dated outside the POI. Therefore, the Department must also exclude this sale from its viability analysis.

Finally, the petitioners argue that because a proper analysis of third country sales results in a viable home market, the Department must base its determination on the best information available, which in this case is the information contained in the petition.

Siderca states that to determine the date of sale, the Department relies on the first written memorialization of the sales agreement setting forth the essential contract terms. Siderca argues that there were no written agreements with the Chinese customer pursuant to the periodic negotiations and that there is nothing in the record to support the petitioners' claims that written agreements or price lists pursuant to the periodic negotiations exist.

Siderca states that it holds periodic negotiations with its customer regarding sales of OCTG, pursuant to the 1991 Framework Agreement, which end with a general agreement on the tonnage to be purchased during the next six months, and on general price levels. However, the product mix is not specified in these agreements, nor is there any firm commitment to purchase the total quantity. Sometimes the customer orders the total quantity discussed in the negotiations, sometimes it does not. Siderca states that production does not begin until the contracts pursuant to the general agreements are signed. It further states that it reported all contracts which were signed by both parties during the POI as POI sales.

Siderca argues that its sales process was fully verified by the Department. Siderca states that information was provided on the record which supports Siderca's treatment of the contract date as the date of sale, such as an internal document requesting guidance on the price to offer a certain customer during the POI. Siderca further states that the verification showed that it was consistent in its approach to the date of sale; for example, not treating as POI sales those shipments during the POI

that were pursuant to a contract signed before the POI.

Siderca further argues that there is evidence on the record which proves that the periodic negotiations with the Chinese customer do not end in a formal commitment to buy or sell. This is evidenced by a purchase order showing no terms for a particular product and also by the fact that, while the second agreement listed a certain quantity, only a portion of that quantity was actually ordered and shipped.

Siderca contends that the record supports its position that the specific terms of sale are established when the customer's purchase order is received. It notes that the original contracts were examined at the verification.

Regarding the merchandise that was shipped after the delivery date stipulated in the contract, Siderca argues that the delivery date influenced the timing of the negotiations and the timing of the contract signing. Siderca contends that the customer wanted shipment by a particular month but then experienced logistical problems and arranged for subsequent delivery. It states that the parties did not change the merchandise, price, quantity or other material terms of the contract. It also states that the petitioners could cite no cases where this type of modification had been interpreted as changing the date of sale.

Siderca then addresses the petitioners' argument that, at a minimum, the Department should exclude the merchandise where the shipment terms were not even close to those agreed to by the parties. Siderca argues that the petitioners provided no precedent to support their theory that these sales do not constitute sales during the POI. It argues that a delivery term is only a material term if the parties treat it as one and that the evidence on the record shows that all merchandise was eventually shipped.

Next, Siderca addresses the petitioners' argument that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and excluded from the viability analysis. Siderca states that this merchandise was never ordered because it was never sold. Therefore, it does not need to be excluded from the viability analysis because it was never included.

Finally, Siderca addresses the petitioners' argument that the documentation placed on the record demonstrates that the correct date of sale for a non-Chinese third country sale is outside the POI, since the documentation references a sales acknowledgement dated outside the POI. It argues that the sales acknowledgement was only an ''observation/clarification'' of the customer's purchase order and that the record does not show any change or modification in the material terms.

DOC Position

We agree with Siderca. This issue was argued extensively by the parties and examined very closely by the Department at the verification. At verification, we found no evidence of written price agreements or price lists pursuant to the periodic negotiations which might result in certain reported sales being outside the POI. A review of the 1991 Framework Agreement also showed no basis to discount Siderca's claim that the periodic agreements with the Chinese customer were only ''general agreements'' where terms were not finalized. Thus, the 1991 Framework Agreement was akin to a memorandum of understanding between the parties, setting forth no definite material contract terms. It is clear from information on the record that the purchase order sets the price and quantity of the sale. Therefore, respondent's reporting of the purchase order date as the date of sale was consistent, and in accordance, with the Department's practice (see, e.g., Final Determination of Sales at Less than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom (52 FR 18992, July 28, 1987).

Furthermore, changes in the delivery term of the contract at the end of the POI do not constitute changes to a term of the contract significant enough to alter the date of sale, unlike terms such as price and quantity. This is evidenced by the fact that the parties themselves did not treat the delivery term as a material one. Moreover, the petitioners could show no cases to support the opposite conclusion. Therefore, these sales were also properly within the POI.

Regarding the petitioners' argument that the merchandise that remained unordered under the second agreement should also not be considered as POI sales and should be excluded from the viability analysis, this merchandise was never sold nor reported; therefore, this issue is moot.

Regarding the petitioners' argument that the documentation placed on the record demonstrates that the correct date of sale for a non-Chinese sale is outside the POI, the acknowledgement in question references no change in the material contract terms. Furthermore, even if the petitioners' argument was correct, excluding this sale alone would not change the viability analysis.

Accordingly, the use of best information available, as suggested by the petitioners, is not warranted. We will use all PRC sales as reported by Siderca in our analysis.

Comment 2: Related Customer Allegation

The petitioners argue that Siderca and a certain Chinese customer are related parties and, therefore, the sales to the Chinese customer must be excluded from the Department's analysis. They state that the Department's questionnaire specifies that companies are considered related when one or more of the same individuals are members of the board of directors of both companies or other entities which control those companies. The petitioners also argue that in the Final Results of Administrative Review: Roller Chain, Other than Bicycle, from Japan (57 FR 56319, November 27, 1992) (Roller Chain), the Department found that two companies were related when they shared one director on each board. Thus, the petitioners contend that shared board members and officers have long been equated with common control of companies.

The petitioners state that when different individuals sit on the boards of two different companies, but serve as representatives of a common corporation, it results in interlocking directors which may violate section 8 of the Clayton Act, instituted to prevent a restraint of trade from being effected. The petitioners state that this is the situation that exists between Siderca and the Chinese customer through the management of several companies. They claim that Siderca failed to rebut the documentary evidence of relatedness placed on the record by the petitioners.

The petitioners contend that the ownership of Siderca is closely tied to that of many other companies, through Siderca's parent companies. They then argue that information on the record demonstrates shared management between Siderca and the Chinese customer. The petitioners note that all evidence they placed on the record to show the interrelationship between the management of these companies are certified copies of extracts from commercial registers. The petitioners then state that Siderca's attempts to rebut this evidence at verification are inadequate for the following reasons.

First, the petitioners discuss Siderca's attempt to obtain ownership information from the Chinese customer. They argue that Siderca has shared management with the Chinese customer and, therefore, it could have done more to obtain information from this

customer than just to send the customer a letter.

Second, the petitioners discuss Siderca's explanation of its alleged connection with the representative of the Chinese customer. They question Siderca's characterization of the president of Siderca's ultimate parent as only serving as local agent of the representative of the Chinese customer. The petitioners also claim that, under Swiss law, which applies to the representative of the Chinese customer, persons authorized to represent a company have the right to carry out all acts that may be covered by the company's aims. In addition, the petitioners claim that Siderca's explanation for the common board member between the Chinese customer and its representative fails to rebut the presumption of a relationship.

Third, the petitioners discuss Siderca's explanation of the alleged relationship with the local Argentine office of its Chinese customer. They argue that Siderca's characterization of a legal representative as that of an employee with no powers of a director or officer of the company is incorrect. The petitioners contend that, under Argentine law, persons authorized to represent a company are ''obliged to it for all the acts that are not manifestly outside the company's objectives.'' Furthermore, the petitioners argue that the self-serving oral explanations at verification are not sufficient to rebut the documentary evidence provided by the petitioners.

Fourth, the petitioners discuss the charts provided by Siderca to illustrate its relationships with other companies. The petitioners contend that these charts are inadequate to rebut the claim of relatedness between Siderca and the Chinese customer because the charts are incomplete and have no supporting documentation.

The petitioners conclude that the Department must exclude Siderca's sales to this particular Chinese customer from its analysis because they were made to a related party and because Siderca has made no effort to prove that the sales to this customer were at arm's length.

Siderca argues that the petitioners' argument is results-oriented and that the Department should follow established standards for determining whether parties are related. Moreover, the fact that the sales to the customer in question are similar to U.S. sales makes the Chinese market a better comparison market than those where Siderca did not sell similar merchandise (*i.e.*, plain end OCTG).

Siderca argues that the Tariff Act of 1930, as amended (19 U.S.C. 1677(13)), focuses on either some financial relationship through stock ownership or otherwise, or the exercise of some control over the other business, to show relatedness. Siderca maintains that neither it nor its related commissionaire own or control the Chinese customer and are, therefore, not related to that customer.

Siderca maintains that the verification documents support the following conclusions. First, there is no corporate relationship between the Chinese customer and its representative, which the Chinese customer uses for certain corporate services, such as the collection of mail. Second, there is no corporate relationship between the customer and Siderca, either by ownership or control. Third, the only information that links Siderca and its Chinese customer is a good relationship that is not uncommon between a supplier and a client. Siderca states that it is because of this good relationship that the customer approached an officer of one of Siderca's related parties for advice on setting up a subsidiary in another country. Siderca maintains that this individual agreed to have his name placed on the incorporation documents as an attorney-in-fact. As a result, Siderca states that its related company and this customer each had a subsidiary in the same country with the same individual involved in both. In addition, Siderca argues that its related company and its customer appointed some of the same citizens to serve as corporate directors in fulfillment of local law requirements regarding the citizenship and residency of corporate directors.

Fourth, the Chinese customer expanded its activities in Argentina by opening a branch there, and hired an employee to serve as its local representative. This employee was not involved at any time in the ownership or management of the Chinese customer, and was never employed at the same time by the Chinese customer and Siderca's related companies. Siderca argues that this person switched jobs to one of Siderca's related companies, and recommended another person to wind down the operations of the Argentine branch of the Chinese customer. This other person was a retired employee of one of Siderca's related parties, who was allowed to use one of the office buildings belonging to the organization.

Siderca concludes from the above-cited evidence that there is no evidence of corporate control, through stock ownership, common management, or otherwise.

Siderca then states that the Department's questionnaire never mentions the term ''shared management,'' even though the petitioners use this term to define related parties. It also states that Roller Chain says nothing about ''shared management'' and refers to individuals on multiple boards being one of the indicia of control, not control in and of itself. Siderca argues that Roller Chain based relatedness by control on many factors, including financial relationship and the sharing of two of five board members. It states that the Department mentioned common board members as ''further evidence that the potential to control was present'' and this was not the only or major reason for its decision. Siderca also argues that modern corporate boards are routinely comprised of individuals who sit on boards of other unrelated companies. It says that this does not make the companies related.

Siderca concludes that the petitioners' relationship allegations do not satisfy a balanced statement of the applicable statutory provision, nor even the ''shared management control'' standard that the petitioners, themselves, have invented. It states that the petitioners have shown no ownership, financial dealings, coordinated management or cross investments.

DOC Position

We agree with Siderca. To determine whether Siderca's customer is related to Siderca, we examined whether the definition of ''exporter'' was met by the customer within the meaning of section 771(13) of the Act. First, regarding the petitioners' argument that since Siderca has shared management with the Chinese customer, Siderca could have done more to obtain information than simply to send a letter, we note that, as stated below, no shared management between these parties has been demonstrated by the record evidence.

Second, regarding the petitioners' claim that under Swiss law, persons authorized to represent a company have the right to carry out all acts that may be covered by the company's aims, we acknowledge that, under Swiss law, a representative acts in the same capacity as a board member. However, with regard to the president of the ultimate parent of Siderca, this only shows that the Siderca's parent company and the customer's agent had a common board member. As shown below, this is not enough to establish control of Siderca over the Chinese customer.

Regarding the other individuals listed by the petitioners as showing a relationship between Siderca and its

customer, only one has conclusively been shown to be on the board of a company related to Siderca through its parent companies and also on the board of a subsidiary of Siderca's customer. All other individuals characterized by the petitioners to be common board members have what is known as a ''power of attorney.'' We found no evidence that under Swiss law, the ''power of attorney'' capacity equates with being a member of a board of directors.

Few past cases address the issue of indirect control. In Roller Chain, cited by the petitioners, the Department found that a company was related to its customer within the meaning of 771(13) of the Act, noting that since two company officials were members of the customer's board of directors and that the company in question provided a majority (60%) of the capital used to establish the customer. Thus, in Roller Chain, it was the significant financial connection, coupled with the two common board members, that provided the basis for the Department's determination of relatedness. In this case, there is only one common board member and no proof of outlay of capital to establish the customer. Therefore, the circumstances present in this case are not analogous to those found by the Department in Roller Chain. Furthermore, there is no proof of any stock ownership between the companies.

Third, with regard to the alleged relationship between Siderca and the local Argentine office of its Chinese customer, the Department acknowledges that, under Argentine law, persons authorized to represent a company are ''obliged to it for all the acts that are not manifestly outside the company's objectives.'' However, the employee in question was never employed at the same time by the Chinese customer and Siderca's related companies.

Also, the other person mentioned by the petitioners was characterized by Siderca as having been hired to wind down the operations of the Argentine branch of the Chinese customer. This other person was also characterized as a retired employee of one of Siderca's related parties, who was allowed to use one of the office buildings belonging to the organization. We note for the record that the Department was informed at verification that this person was not completely retired from one of Siderca's related parties but was still on the payroll as a consultant when he was hired by the Argentine branch of the Chinese customer. However, even if he was on Siderca's payroll as a consultant at the same time he was winding down the operations of the Argentine branch of the Chinese customer, this employee/consultant capacity is not the same thing as board membership or management and is not enough to establish control.

Fourth, regarding the petitioners' contention that the charts provided by Siderca to illustrate its relationships with other companies are inadequate to rebut the claim of relatedness, at the verification the team also examined the corporate books that listed the management of these companies. Nothing to discredit Siderca's claims was found.

Finally, we also note that the petitioners have shown, and we have found, no ownership between the parties.

In sum, the record evidence does not demonstrate that the Chinese customer and Siderca are related companies within the meaning of section 771(13) of the Act.

Comment 3: Ordinary Course of Trade

The petitioners state that section 773(a)(1)(A) of the Act requires that FMV of imported merchandise be based on sales made in the ordinary course of trade. According to the petitioners, the U.S. Court of International Trade noted that the ordinary course of trade requirement is meant to ''prevent dumping margins which are not representative'' of sales in the home market *(Cemex, S.A.* v. *United States,* Slip. Op. 95–72 at 6, April 24, 1995). The petitioners contend that, in the past, the Department has considered the following factors to determine whether sales were made in the ordinary course of trade.

First, the petitioners discuss the channels of sale. The petitioners argue that since the Chinese customer was not located in China, used the services of another company not located in China, and had intertwined control with Siderca, the sales to this customer are not representative of Siderca's sales practices in China.

Second, the petitioners discuss product uses. The petitioners argue that the products sold by Siderca to this Chinese customer had different characteristics from Siderca's other sales of OCTG to the Chinese market and therefore were not in the ordinary course of trade. The petitioners cite the Final Results of Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India (57 FR 54360, November 18, 1992) (Standard Pipes) to show a case where products with different physical characteristics were excluded as being outside the ordinary course of trade.

Third, the petitioners discuss the frequency and volume of sales. The petitioners argue that the frequency and volume of sales to this particular Chinese customer, when compared to the frequency and volume of sales to another customer, and when considering the other factors mentioned by the petitioners, demonstrates that these sales were not in the ordinary course of trade.

Fourth, the petitioners discuss the shipping arrangements. The petitioners contend that the difference in the average time between order and shipment for the sales to this particular customer, when compared to the other reported Chinese sales, is evidence that these sales are not in the ordinary course of trade.

Finally, the petitioners state that Siderca's characterization of its relationship with the Chinese customer is not one of an ordinary business relationship, even a ''friendly'' one, between a producer and a buyer. The petitioners argue that in the ordinary course of trade producers do not lend the services of their officers to set up subsidiary companies for their buyers and serve as attorneys in fact for the resulting subsidiaries.

Siderca argues that petitioners' points fail to show that this sale is outside the ordinary course of trade. First, regarding the channels of sale, Siderca contends that there is no abnormality in the customer not being located in China, as it is a trading company. Siderca asserts that trading companies rarely take delivery in the country where they do business. Siderca states that this particular customer purchased OCTG for other markets during the POI as well. Siderca argues that the use of trading companies is a normal practice in the steel trade.

Second, regarding product uses, Siderca states that, while the merchandise to this customer did have different, albeit not abnormal, physical characteristics than the other merchandise sold to this market, it did have the same end use. Siderca states that the trading company's customer in China simply did not need, or could not use, the type of product Siderca sold to the other Chinese customers. Siderca argues that the Department only excludes sales as outside the ordinary course of trade where the product use is very dissimilar. Siderca states that in Standard Pipes, the Department found that the physical differences had a direct bearing on use.

Third, regarding the frequency and volume of sales, Siderca argues that these sales cannot be considered aberrant. Siderca states that the sales to

this particular customer are similar in size and frequency to the sales to another Chinese customer, to which the petitioners do not object. Therefore, Siderca states that the sales to the customer in question were consistent with other sales in the Chinese market.

Fourth, regarding the shipping arrangements, Siderca states that in examining shipping arrangements for the purpose of an ordinary course of trade determination, the Department examines factors such as shipments over substantial distances, the unusual absorption of high freight costs or a complete change in shipping terms, none of which is relevant to the customer in question. Furthermore, Siderca notes that shipment was made within the period stipulated in the purchase order.

DOC Position

We agree with Siderca. In making the determination whether sales should be excluded by being outside the ordinary course of trade within the meaning of section 773 of the Act and section 353.46 of the Department's regulations, the Department examines several factors (see the Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan (58 FR 37154, July 9, 1993).

Regarding channels of sale, there is nothing unusual with selling to a trading company located in a third country. As noted by Siderca, we consider these sales to be Chinese sales because Siderca knew the ultimate destination of the merchandise. Regarding product uses, the petitioners, although showing that the products sold to different customers in China had certain different physical characteristics, in no way proved, and we did not find, that the products had different end uses.

Regarding the frequency and volume of sales, since the frequency and volume of sales to the customer in question were similar to that of another Chinese customer, we don't find that there is an abnormality. Regarding the shipping arrangements, differences in average time between order and shipment alone is not evidence that the sales were outside the ordinary course of trade. No cases were cited by the petitioners, nor found by us, to support this position and the shipments were made within the period stipulated in the purchase order. Therefore, the Department finds that these sales are not outside the ordinary course of trade within the meaning of section 773(a)(1)(A) of the Act.

Comment 4: Home Market Sales

The petitioners contend that certain home market sales reported as being made prior to the POI were actually made during the POI. According to the petitioners, the prices for Siderca's sales to a specific home market customer do not correspond with the prices listed in the sales agreement with this customer. Since the prices do not match, the petitioners contend that these sales were made during the POI and not pursuant to the pre-POI sales agreement. The petitioners claim that adding the home market sales to this particular customer in the viability analysis would make the home market viable.

Siderca argues that the petitioners are wrong in claiming that the prices for Siderca's sales to a specific home market customer do not correspond with the prices listed in the sales agreement with this customer. Siderca states that the petitioners did not take into consideration an article in the contract that explained a large part of the discrepancy. Siderca also states that minor calculation errors were made by the petitioners due to poor copy quality of the contract. Siderca argues that correcting for these errors results in the price charged being the same as the price agreed upon in the contract.

Siderca claims that it correctly reported the home market sales during the POI. It states that information was provided which supported its position that: (1) Exporting to world-wide markets has dominated Siderca's sales in each six month interval; (2) short-term sales were the norm in the 18 month period from January 1, 1993 to June 30, 1994; (3) the POI, with private end-user clients, was representative of the post-privatization market that was the context for Siderca's home market sales practices during the 18 month period; (4) there was no sale pursuant to a long-term contract in the POI; and (5) Siderca's home market sales practices prior to 1993 reflected a different era, characterized by a single, state-owned oil and gas monopoly.

Siderca states that its definition of the date of sale and the Department's preliminary determination that the home market was not viable during the POI was supported by the evidence presented at verification. It states that the Department reviewed the long-term contracts in detail, including a complete list of the purchase orders associated with a given contract and, for selected purchase orders, the shipments made against the order. Siderca states that the Department also verified the actual volume and value of Siderca's home market sales and no discrepancies were found.

DOC Position

We agree with Siderca. At the public hearing, the petitioners conceded that their argument was based on an incomplete reading of the contract (namely, failure to take into account an article in the contract), as well as an illegible copy of the contract. Therefore, there was no price discrepancy. Furthermore, we examined the home market sales process (especially price and quantity terms in the purchase orders pursuant to the long-term contracts) in detail at the verification and no discrepancies were found. Therefore, the record continues to show that the home market is not viable.

Comment 5: Model Match

The petitioners argue that the Department should rely on its own product matching decisions outlined in a January 24, 1995, product matching memorandum and used in the preliminary determination instead of Siderca's proposed model matches.

Siderca argues that a certain Chinese product, although more similar to the U.S. products based on a strict application of the Department's model-matching methodology, is not the most similar overall based on physical characteristics, production and commercial value. Siderca states that while the two third country selections are nearly equally dissimilar to the U.S. products based on a higher-ranking characteristic, its match is more similar based on lower-ranking characteristics, which should be taken into consideration.

Siderca argues that there is nothing that prevents the Department from adapting the hierarchy to a particular set of facts, especially where there is a clear reason to modify the approach and the statutory definition of similar merchandise warrants the modification. Siderca contends that in the past the Department has deviated from the published hierarchy when the respondent has demonstrated that it is necessary to achieve the proper comparison.

DOC Position

We agree with the petitioners. The matching of the U.S. products based on the January 24, 1995, memorandum, is consistent with the purpose of a matching hierarchy; i.e., more weight is given to higher-ranked characteristics and less weight to lower-ranked characteristics. Following a strict application of the matching hierarchy

also allows for more predictable results. Lower-ranked characteristics are taken into consideration only when higher-ranked characteristics are equal. This is not the case here.

Comment 6: Reintegro (Rebate)

The petitioners argue that the Department must deduct from the COP only that portion of the reintegro (a rebate upon export of indirect taxes imposed during production of the merchandise) attributable to material inputs. The petitioners note that current law does not address the issue of rebates such as the reintegro in COP situations. The petitioners argue that the statutory silence on the issue of indirect taxes relating to items other than materials indicates that such taxes should remain in the product's cost and, therefore, the full rebate should not be deducted from the COP. Both the Department's regulations (19 CFR 353.50(a)(1)) and section 773(e)(1)(A) of the Act provide that, when calculating constructed value, the cost of materials is to exclude internal taxes applied directly to the cost of such materials when the taxes are refunded upon exportation. The petitioners argue that under current law only the Department's practice of excluding value added taxes paid on raw material inputs offers guidance in the area of COP.

The petitioners also argue that the Department must average the market specific tax rebate so that only one cost of production is reported for each product. The petitioners maintain that the Department's long standing practice is that cost differences based on shipping destination should not enter into the company's cost of production for a particular product.

Siderca argues it properly reduced the actual cost of production by the average rebate received on sales to China. Siderca states that both final stage and prior stage indirect taxes appear in its records as costs and, therefore, the rebate of the tax must be applied as an offset to this cost. Siderca argues it presented to the Department the same indirect tax study it presents annually to the Argentine government to prove the amount of rebate it is entitled to under the reintegro program. Siderca notes the study was tested and reviewed during the cost verification and that Department personnel have reviewed the study on six previous occasions.

Siderca concedes the precise percentage of material cost accounted for by cumulative indirect taxes cannot be known, but argues that the study provides a reasonable estimate. Moreover, there is no double counting of the exclusion, because the total level of taxes paid exceeds the rebate. Further, the 1993 tax study, upon which the 1994 rebate was based, accurately reflects the amount of taxes paid while the tax was in effect during 1993. Siderca states that it presented support for the actual cash rebate received on sales to the U.S. and China.

Siderca maintains that its approach is consistent with the Department's practice of using actual costs, and cites to the Final Determination of Sales at Less Than Fair Value: Fresh Chilled Atlantic Salmon from Norway (58 FR 37915, July 14, 1993), where the Department stated its preference for the use of the actual cost of the subject merchandise, whenever possible. Siderca also cites Final Determination of Sales at Less Than Fair Value: Aramid Fiber Formed of Poly-phenylene Terephthalamide from the Netherlands (59 FR 23684, May 6, 1994) in which the Department treated government grants as an offset to the respondent's fixed overhead costs.

Siderca does not dispute that its methodology results in two different net costs, but argues that this is always the case when duties are rebated on export sales. Siderca states that the cost of the home market product is tax inclusive, and the cost of the export product is exclusive of the tax after export. Because the COP comparisons are based on sales to a specific market, the calculation should take into account only rebated taxes relevant to that market.

Finally, Siderca argues the effect of the differential should not be a source of double jeopardy. The differential exists because Siderca has foregone a portion of the rebate for exports to the United States in deference to the U.S. countervailing duty regime.

DOC Position

We agree with Siderca, in part. Regarding the issue of allowing only the portion of the reintegro attributable to material inputs, the Department's Offices of Countervailing Investigations and Countervailing Compliance normally test to determine whether or not the reintegro is countervailable (see, *e.g., American Alloys, Inc.* v. *United States*, 30 F.3d 1469 (Fed. Cir. 1994). To be non-countervailable, the rebate must be for taxes on merchandise which was physically incorporated into the exported product and the rebate must be no greater than the actual taxes imposed.

The last countervailing determination concerning OCTG from Argentina for which results have been published is the 1988–89 Countervailing Duty Administrative Review. In the preliminary results of that review, the Department determined that Siderca was entitled to the entire reintegro without incurring countervailing duties (56 FR 50855, October 9, 1991). This issue was not discussed and, therefore, was not changed, in the final results (56 FR 64493, December 10, 1991). The reimbursement percentage on OCTG was then raised in 1992. However, Siderca only accepts the pre-1992 rebate percentage on U.S. sales because the current U.S. countervailing duty order is still in place. Based on the fact that the Department has previously determined that Siderca was entitled to a rebate without incurring countervailing duties and because it currently accepts a lower rebate, it is reasonable to assume that the entire reintegro is attributable only to material inputs.

We agree with Siderca regarding the issue of averaging the market specific tax rebates so that only one cost of production is reported for each product. For the cost test, the Department noted that the cost of production is the cost of the product as sold in the third country. This cost is being compared to the third country price. Since Siderca receives the entire rebate on sales to the third country, the cost of the third country product should be lowered by the entire amount of the rebate received upon exportation of the product to the third country.

Therefore, for COP, we have made no changes from the preliminary determination and have deducted the full rebate percentage from the COP.

Although not mentioned by the interested parties, the impact of the reintegro in the context of the price-to-price comparisons must be addressed. Included in Siderca's manufacturing costs of OCTG are taxes paid to the Argentine government. Siderca received a rebate of these taxes upon exportation of the merchandise. However, the amount of the rebate claimed by Siderca for the two export markets was not identical. For sales to the PRC, Siderca chose to accept the entire rebate. For sales to the United States, Siderca chose to accept only a partial rebate. Because only a partial rebate is taken for U.S. sales, a portion of the tax imposed by the Argentine government remains in the U.S. price (the difference between the total rebate and the partial rebate taken). Because these rebates are directly related to the sales of the merchandise in the two markets, it is necessary to make a circumstance-of-sale adjustment to FMV to account for the different amount of taxes included in the Chinese and U.S. prices. This procedure is consistent with *Zenith*

Electronics v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993).

In calculating dumping margins, the Department equalizes the effective tax rates in each market. Normally (where the home market sale is taxed, but the export sale to the United States is not taxed) this is accomplished by applying the home market tax rate to the U.S. price at the same point in the chain of commerce at which the home market tax is imposed. Here, where the pipe exported to the United States was taxed in excess of the tax on the pipe exported to China, the comparable procedure would be to subtract the differential from the price charged in the United States. Because the statute provides no mechanism for removing tax from the U.S. price, however, we achieved the necessary equivalence in tax rates by adding the difference between the effective rebate percentages claimed by Siderca between the two prices to the price of the pipe exported to China as a circumstance-of-sale adjustment, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a). This prevented Siderca's acceptance of a complete tax rebate on the sales to China, but only a partial export tax rebate on the sales to the United States from masking any tax-net dumping margin.

Comment 7: Revenues Earned on Sales of Secondary Pipe

The petitioners argue Siderca should not reduce the reported costs for the subject merchandise by revenues earned on sales of secondary pipe. The petitioners argue that Siderca is treating secondary pipe as a by-product, when it should be treated as a co-product. According to the petitioners, in *IPSCO Inc.* v. *United States* (*IPSCO*) (965 F.2d 1056, 1060–61 (Fed. Cir. 1992)) the Court of Appeals for the Federal Circuit upheld the Department's treatment of second quality pipe when the Department fully allocated costs evenly over output tons. The petitioners argue that the classification of secondary pipe as a co-product precludes Siderca's offset of costs by revenue from secondary pipe.

Siderca argues it properly offset the cost of production by the revenue earned on sales of secondary pipe. Siderca contends the secondary pipe in question is a by-product, not a co-product, and is pulled from the scrap pile when a particular customer periodically stops by to purchase material. It further contends by-products are defined as products that have a low sales value compared with the sales value of the main product. Siderca notes that revenue from the sale of these products account for a small percentage of its total revenue for the period. Siderca rebuts the petitioners' reliance on *IPSCO* by asserting that *IPSCO* concerned limited service pipe, not scrap pipe. It argues that if the Department treats the secondary pipe as a co-product, then it must increase the production quantity over which production costs have been allocated, thereby lowering the cost of all products.

DOC Position

We disagree with the petitioners that IPSCO applies in this case. IPSCO dealt with limited service merchandise, an OCTG product with a quality sufficient enough to allow its use in some drilling applications. We also note that during the relevant period in that case, IPSCO produced and sold limited service products in significant quantities. Although Siderca overstates its assertion that these pipes are scrap sales, this is not a product that could be used for normal pipe applications. In this case, the merchandise in question was purchased because of its form, not because of its ability to act as a conduit for fluids.

The distinction as to whether a joint product is a by-product or a co-product of the subject merchandise is important because the Department treats by-products and co-products differently in calculating the COP of the subject merchandise. Central to our determination as to whether a product is a by-product or a co-product of the subject merchandise is the determination of the ''split-off'' point, which is the point in the production process where the co-product becomes a separately identifiable product. All costs incurred up to and including the split-off point are considered common to producing all co-products. Accordingly, where the Department determines a product to be a co-product, common costs incurred up to and including the split-off point are allocated among all the co-products, with none allocated to by-products. Alternatively, where the Department determines a product to be a by-product, it allocates all common costs to the primary merchandise and subtracts the amount of the revenue from the sale of by-products from the total COM of the chief product (see, e.g., the Preliminary Determination of Sales at Less than Fair Value and Postponement of the Final Determination: Sebacic Acid from the People's Republic of China (Sebacic Acid) (59 FR 565 (January 5, 1994)).

The most important factor in determining whether a product is a co-product or a by-product is its relative sales value compared with that of the other main products produced in the joint processes (see Sebacic Acid). By-products are defined as ''products of joint processes that have minor sales value as compared with that of the chief product'' by Charles T. Horngren in Cost Accounting, Fifth Edition. In this case, the record evidence demonstrates that the relative value of secondary pipe is insignificant compared to OCTG and line pipe, and accounts for only a small percentage of Siderca's sales.

Additional factors that the Department may examine include: the respondent's normal accounting treatment; whether significant additional processing occurs after the split-off point; whether management controls the quantity produced of the product in question; and whether its production is an unavoidable consequence of the production process (see Sebacic Acid; see also the Final Determination of Sales at Less than Fair Value: Titanium Sponge from Japan (49 FR 38687, October 1, 1987) and the Final Determination of Sales at Less than Fair Value: Frozen Concentrated Orange Juice from Brazil (52 FR 8324, March 17, 1987).

The respondent's normal accounting treatment indicates its opinion as to whether the product in question is a by- or co-product. A respondent's normal treatment is not considered persuasive if the Department has evidence indicating that it would be unreasonable for purposes of an antidumping analysis. In this case the respondent treats the product in question as a by-product. We find that this treatment does not distort the antidumping analysis. Significant additional processing of a magnitude that would raise the value of the product in question to a point where its relative value to the other main products is significant may indicate that the product should be treated as a co-product. In this case no additional processing takes place. Additionally, if management takes steps to intentionally produce the product, then it would be an indication that the product may be a co-product. If the production of a product is unavoidable, the product could be either a by-product or co-product. Other factors would have to be considered to make the determination. In this case, the management of Siderca takes steps to avoid the production errors which cause pipes to become seconds. It is only where production errors exist that the secondary pipe is produced. After careful consideration of all of the relevant factors, the Department concludes that the product in question was properly treated as a by-product in this investigation.

Comment 8: Fixed Fabrication and Depreciation Cost

The petitioners argue the difference between the company-wide average and the average of the reported fixed fabrication and depreciation cost indicates Siderca understated the reported amounts. The petitioners assert fixed costs are normally higher for OCTG than for other types of pipe because of substantially higher finishing costs for OCTG. The petitioners state differences in fixed costs could only result if different production lines are used or if different capacity utilization rates are realized, but neither situation applies to Siderca. The petitioners reference Siderca's production flow charts, which show that subject and non-subject merchandise share the same production lines. Where subject and non-subject merchandise do not share the same production line, the equipment used for downstream processing is similar.

Siderca argues it properly allocated depreciation expense in the reported product-specific costs. Siderca asserts the results of the gross comparison test can be explained. First, the test compares an average of all products to an average from only two OCTG markets. Siderca's plain-end pipes carry a smaller portion of fixed fabrication and depreciation, while the remaining production carries a greater amount of these costs, because of their complexity. Siderca argues the overall product mix of the merchandise sold to the United States and China is at the lower end of the complexity range. It is natural, they argue, that the average fixed fabrication and depreciation costs allocated to OCTG sold in the United States and China would be lower. The more complex products include pipe that is cold-drawn, custom threaded, buttress threaded, and also pup joints.

Second, the Department's verification report notes that the total depreciation expense was traced to each cost center and that Siderca demonstrated how the per-unit costs were determined using the productivity of each product in a given cost center. Siderca also notes the Department looked at several product comparisons which show the relative amounts of fixed fabrication costs allocated to each product.

Siderca contends that it was able to demonstrate the flow of fixed factory costs and depreciation from the financial statements to the amounts input into the computer for each cost center. Siderca notes that the Department verified the allocation factors used to apply fixed factory costs and depreciation and that they were the same factors used to allocate factory costs under normal circumstances. In addition, they note that the Department was able to recalculate the cost of manufacturing for the test products and compared the allocation of costs between various products, including line pipe. Siderca further argues that plain end pipes account for a significant portion of its U.S. sales, but account for only a small proportion of its overall sales.

DOC Position

We agree with Siderca. At verification, while we could not reconcile the total of the individual per unit fixed fabrication and depreciation costs to the total expense, we were able to perform alternative procedures in place of that reconciliation. If the Department is satisfied that the respondent described the systems abilities accurately, that the system was used in the normal course of business, and that the data could be verified through alternative procedures, then the Department normally does not adjust the reported information. In this case, the system used to allocate the fixed factory cost and depreciation is the same system used in the normal course of business to derive the variable factory costs. We performed the following alternative procedures in place of the reconciliation.

Our analysis compared a company-wide average of fixed factory overhead and depreciation expense to an average of these variables for only the U.S. and PRC markets. Additionally, our test of reasonableness compared a weighted-average figure of fixed factory overhead and depreciation expense to a simple average figure of these variables. We do not find that the Department's reasonableness test nor other evidence on the record indicated Siderca's methodology distorted the reported per unit costs. Consequently, we used the per unit fixed factory costs and depreciation reported by Siderca.

Comment 9: Treatment of Quality Control Costs

The petitioners argue the Department may not treat inspection costs as selling expenses. The petitioners contend that the costs in question are quality control costs incurred at the end of the production process and in varying degrees are incurred on all products. The petitioners cite the Final Determination of Sales at Less than Fair Value: Gray Portland Cement and Clinker from Japan (56 FR 12156, 12162, March 22, 1991), in which the Department held that quality control costs incurred at respondent's plant did not constitute selling expenses. The petitioners argue that the record does not demonstrate that the testing was a condition of sale. In the Final Determination of Sales at Less than Fair Value: Forged Stainless Steel Flanges from India (59 FR 68853, 68858, December 29, 1993), the petitioners argue that the Department found that there was no evidence on the record to support the assertion that the testing was a condition of sale, and the Department included the quality control costs in the cost of manufacturing.

Siderca argues that it correctly treated these particular inspection costs as selling expenses. It argues that its normal records treat these inspection costs as selling expenses, and notes that the Department verified Siderca's ability to identify the extra inspection costs associated with sales to China. It further argues that the Department has treated inspection costs as a selling expense in prior cases. Siderca cites the Final Results of Antidumping Duty Administrative Review and Revocation in Part of an Antidumping Duty Order: Antifriction Bearings from Japan (Industrial Belts) (58 FR 39729, 39750, July 26, 1993) and Final Results of Antidumping Duty Administrative Review: Industrial Belts and Components and Parts Thereof Whether Cured or Uncured, from Japan (58 FR 30018, 30024, May 25, 1993).

DOC Position

We agree with Siderca. We find that these costs are incurred commensurate with Siderca's corporate goal to continue to develop sales of OCTG to the PRC, a situation similar to that in Industrial Belts (Comment 12). At the sales verification, we looked at correspondence and other documentation between Siderca and the Chinese customer and were able to confirm that quality control issues were discussed in great detail.

At the cost verification, we were able to verify that Siderca tested OCTG destined for China significantly more than OCTG destined for other markets. Finally, Siderca is only claiming the quality control testing costs which can be specifically identified to a particular market. Siderca included quality control testing costs incurred at earlier production steps as a cost of production. These quality control testing costs incurred at the earlier production stage were incurred regardless of market and, therefore, were properly included in the COP. The quality control costs incurred at the end of production could be differentiated based on the market to which the merchandise was shipped.

Comment 10: Threading Technology Research and Development

The petitioners argue that the reported costs must include the amounts Siderca spent on threading technology R&D. The petitioners argue that Siderca's assertion that it properly excluded R&D costs is completely unsupported. The company brochure indicates Siderca's research center focuses on research into basic physical phenomena and research directly related to production techniques. It is clear, they argue, that R&D advancements in threading technology would benefit all OCTG products and are, therefore, not market specific.

Siderca argues it properly excluded non-related R&D costs from the cost of production. Siderca argues the R&D expenses did not relate to any of the products sold in the United States or China during the POI. The expenditures were targeted at the development of special threading for extreme conditions. Siderca argues that the brochure only refers to the capabilities of the R&D facility, not to specific R&D efforts. Siderca asserts that if the Department decides to include these R&D costs, the amount incurred in 1993 should be added, not the 1994 amount.

DOC Position

We agree with the petitioners. Siderca provided no support for its assertion that the R&D expenses relate only to OCTG products sold in markets other than the United States and China. More importantly, the R&D costs in question were for products included in the scope of the investigation, even if they were not sold in the United States or China during the period of investigation. Research into technologies for specific products within the scope of the investigation can reasonably be assumed to provide collateral benefits for other products within scope. It would be infeasible for the Department to identify model-specific distinctions in R&D expenditures. Generally, the Department has only made distinctions between research into subject and non-subject merchandise, as shown in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings and Parts Thereof From France, *et al.* (60 FR 10900, 101921, February 28, 1995). The Department normally does not make distinctions between research into specific models. We, therefore, included the R&D expenses as part of the cost of manufacturing.

Comment 11: Asset Taxes, Restructuring Costs and Social Security Taxes

The petitioners argue Siderca understated G&A expense by excluding a portion of asset taxes and by normalizing restructuring costs and social security taxes. Siderca calculated a G&A rate from the audited financial statements for the year ending March 31, 1994, but in doing so adjusted these three types of expenses. The petitioners argue the Department's long-standing practice requires G&A expenses to be calculated from the financial statements which most closely correspond to the period of investigation, as shown in Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From Thailand (Furfuryl Alcohol) (60 FR 22557, 22560, May 8, 1995).

In Furfuryl Alcohol, the Department reasoned G&A expenses are tied more closely to the time period than to the revenues earned during the period and, therefore, an average rate representing one full business cycle of the company is a reasonable basis on which to calculate the G&A rate. The Department concluded the G&A rate should be calculated from annual audited financial statements because G&A expenses: (1) Are incurred sporadically throughout the fiscal year; (2) are frequently based on estimates that are adjusted to actual expenses at fiscal year end; and (3) are typically incurred in connection with the company's overall operations. The salient point, the petitioners argue, is that Department methodology already smooths out fluctuations and captures a representative picture of respondent's G&A costs. The petitioners also note the Department's questionnaire instructed Siderca to calculate its G&A rate from the audited financial statements for the year which most closely corresponds to the POI.

Siderca argues the Department is mistaken about the amount of asset taxes excluded from G&A expense, and that it was proper to exclude this portion. Siderca argues the government repealed the asset tax four months prior to the POI and, therefore, the asset tax does not relate to the products under investigation.

In Argentina, the private pension funds took over the social security functions previously administered by the Argentine government. Individuals close to the retirement age were given the option of remaining under the old system. The retirement age was increased by five years. As a result, a significant number of individuals chose to retire early. This led to a larger than normal number of retirements for Siderca. These higher costs were recognized by Siderca in 1994.

Siderca argues that because of this, severance expenses and social security expenses were adjusted to reflect what they otherwise would have been if the government had not changed the labor law at the end of 1993. Because of the privatization, Siderca argues it incurred in fiscal 1993 labor costs that it otherwise would have incurred in a future period.

DOC Position

We agree with the petitioners. As the petitioners note, the Department's methodology intends to smooth out fluctuations and capture a representative picture of respondent's G&A costs (*see e.g.,* Furfuryl Alcohol). The Department's long-standing practice is to calculate G&A expenses from the audited financial statements which most closely correspond to the POI. Neither the change in the tax law nor the restructuring costs incurred during the period are extraordinary events that warrant a departure from the Department's practice. The events are neither unusual in nature nor infrequent in occurrence. Companies frequently must react to changes in the laws of the countries in which they conduct business. The specific change may not occur frequently, but tax laws which affect the company and its employees are continuously changing. Therefore, consistent with our normal methodology, as set forth in Furfuryl Alcohol, we have excluded Siderca's normalization of costs, and recalculated the G&A rate from audited financial statements for the year ending March 31, 1994.

Comment 12: Offsetting G&A With Intermediary Sales Revenues

The petitioners argue that Siderca inappropriately offset G&A expense with revenues from the sale of non-subject merchandise. Reported total G&A expense included other income and expenses. The detail of other income and expenses shows revenues from the sale of miscellaneous products, none of which were pipe. The petitioners argue the Department's long-standing policy is to deduct from G&A only the portion of miscellaneous income related to the production of subject merchandise. The petitioners cite the Final Results of Antidumping Duty Administrative Reviews: Certain Brass Sheet and Strip From Italy (57 FR 9235, March 17, 1992), in which the Department disallowed miscellaneous income because it did not relate to the subject merchandise.

Siderca argues that the revenue from the sale of intermediate products can be used to offset G&A expense because they were produced in the same integrated facility with the OCTG products. Siderca argues that the costs associated with the revenue are included in the reported costs, and therefore the G&A should be offset by the revenue. Siderca claims that the petitioners' focus on ''production of the subject merchandise'' is misleading. Siderca argues there does not have to be a direct link to OCTG, only to the production facilities where the merchandise was produced. Siderca cites the Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea (59 FR 58826, 58828, November 15, 1994), in which the Department stated that miscellaneous income should be permitted as an offset to G&A because the income was related to respondent's production operations.

DOC Position

We agree with Siderca. The insignificant size of the offset indicates the revenue is miscellaneous in nature and should be included in G&A. The costs associated with this revenue are captured in the company's overall variance and, therefore, have been included in the reported costs. As the Department noted in Saccharin from Korea, miscellaneous income relating to production operations of the subject merchandise may be permitted as an offset to G&A. Intermediate products, sold in small quantities, are considered to be related to production operations. We have included in G&A the miscellaneous revenue from the sale of intermediate products.

Comment 13: G&A Expense of Siderca Corp.

The petitioners argue the Department must treat the G&A expense of Siderca Corp. as further manufacturing costs and not as indirect selling expenses. They state that Siderca Corp. plays an integral part in the further manufacturing process, claiming it negotiates and oversees the work of the unrelated subcontractors, functions as a purchasing agent for Texas Pipe Threaders (TPT) and the unrelated subcontractor, and shares with TPT office space and the same company president. The petitioners argue that, because Siderca failed to demonstrate which of Siderca Corp.'s G&A expenses relate to further manufacturing, the Department should make an adverse inference, and include all of the costs in further manufacturing.

Siderca argues that it properly included Siderca Corp.'s G&A expenses as a selling expense. Siderca concedes that Siderca Corp. does purchase material for use in further manufacturing, and arranges when necessary for the further processing to occur at TPT and other processors. However, Siderca argues that Siderca Corp.'s activities are directed toward selling merchandise.

DOC Position

We agree with Siderca. Siderca Corp. may direct the movement of materials to the related and unrelated further manufacturers, but all production activities are carried out by the further manufacturers. These further manufacturers charge Siderca Corp. for their services. These charges have been reported as further manufacturing costs. We have treated the G&A expenses of Siderca Corp. as a selling expense, since the primary function of Siderca Corp. is one of a selling agent.

Comment 14: Interest Expense on Further Manufactured Merchandise

The petitioners argue that Siderca calculated and applied interest expense incorrectly on sales of further manufactured merchandise. The petitioners also argue Siderca inappropriately applied the interest factor to fabrication costs only, and thereby understated costs. Finally, the petitioners argue Siderca should calculate the rate from the consolidated financial statements of Siderca, rather than the financial statements of Siderca Corp.

Siderca maintains that Siderca Corp.'s interest expense is the appropriate measure of interest expense on sales of further manufactured merchandise. Siderca argues that Siderca Corp. has a direct line of credit with a bank in the United States to finance its operations. Siderca also argues that it is unnecessary to apply any financing to TPT's activities as the cash balance at TPT is sufficient to handle its requirements.

DOC Position

The Department's methodology for calculating financial expense is well-established (*see, e.g.,* the Final Determination of Sales at Less than Fair Value: New Minivans from Japan (57 FR 21937, May 26, 1992) and the Final Determination of Sales at Less than Fair Value: Small Business Telephones from Korea (54 FR 53141, December 27, 1989)). The Department's preference for using the consolidated financial statements of the organization, because of the fungibility of money, applies equally in further manufacturing situations. Both TPT and Siderca Corp. are consolidated with their parent, Siderca S.A.I.C.. Therefore, the appropriate rate to apply to the further manufacturing costs is the rate from the parent's consolidated financial statements.

The petitioners are incorrect in their assertion the rate should be applied to the cost of the materials (*i.e.,* the cost of the product produced by Siderca in Argentina which is further manufactured in the United States). The Department accounts for the interest expense associated with the product produced in Argentina as part of the financing cost of the product. It would effect a double counting of financial expenses if the Department applied the financial expense rate first to the product produced in Argentina and then to the total of the further manufactured product.

We applied the financial expense percentage calculated from the audited consolidated financial statements of Siderca to the cost of the foreign manufactured product and the cost of the U.S. further manufacturing.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below for entries of OCTG from Argentina that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Siderca S.A.I.C.	1.36
All Others	1.36

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the

Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15616 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–433–805]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or James Maeder, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–0116 or 482–3330, respectively.

Final Determination

We determine that oil country tubular goods (''OCTG'') from Austria are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on January 26, 1995 (60 FR 6512, February 2, 1995), the following events have occurred.

In February and April 1995, the Department conducted its sales and cost verifications of the respondent, Voest-Alpine Stahlrohr Kindberg GmbH (''Kindberg''). Verification reports were issued on April 17, 1995, April 26, 1995, and April 27, 1994.

On May 12, 1995, Koppel Steel Corporation, U.S. Steel Group (a unit of USX Corporation) and USS/Kobe Steel Company (''the petitioners'') and Kindberg submitted case briefs. Rebuttal briefs were submitted by both parties on May 19, 1995. No hearing was held, as petitioners withdrew their request on April 12, 1995.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we were informed Customs that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. This was confirmed by examination both of the Customs module and the published 1995 HTSUS tariff schedule. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

For purposes of the final determination, we have determined that the OCTG covered by this investigation comprises a single category of ''such or similar'' merchandise within the meaning of section 771(b) of the Act. We modified the matching hierarchy outlined in Appendix V of the Department's antidumping questionnaire as described in the preliminary determination.

Fair Value Comparisons

To determine whether sales of OCTG from Austria to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice. When comparing the U.S. sales to sales of similar merchandise in the third country, we made adjustments for differences in physical characteristics, pursuant to 19 CFR 353.57. Further, in accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible.

United States Price (USP)

We calculated USP according to the methodology described in our preliminary determination with the following exceptions: (1) We recalculated U.S. indirect selling expenses incurred in Austria to adjust for cost variances; (2) we recalculated U.S. indirect selling expenses incurred by Kindberg's Houston Texas related sales agent, VATC, to adjust for cost variances and to correct for an incorrect allocation of VATC's personnel costs; (3) we made corrections and adjustments to reported foreign brokerage charges; (4) we made corrections and adjustments to U.S. duty, wharfage and brokerage expenses, where necessary; and (5) we recalculated U.S. imputed credit to use an interest rate tied to U.S. dollar lending.

Foreign Market Value

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on third country sales to Russia.

Cost of Production (COP)

As we indicated in our preliminary determination, on October 5, 1994, the Department initiated an investigation to determine if sales in the third-country market were made below the cost of production (COP). In order to determine whether the third country prices were below COP within the meaning of section 773(b) of the Act, we calculated the COP based on the sum of Kindberg's cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). Kindberg had reported four cost variances prior to the preliminary determination, but provided insufficient explanation and incomplete documentation. In fact, some of the information on the record at the date of the preliminary determination concerning the reported variances was self-contradictory.

We sent Kindberg several supplemental questionnaires. The last supplemental questionnaire due date fell after the preliminary determination, therefore we could only consider the corrections submitted pursuant to the last supplemental questionnaire for purposes of this final determination. Additionally, the nature of the variances was confirmed during the course of the cost verification. Therefore, for purposes of the preliminary determination, we did not adjust the reported standard costs for the reported variances because Kindberg had not, at that time, properly explained and documented these variances. Based on clarifications timely submitted after the preliminary determination and reviewed at verification, we analyzed the variances submitted by Kindberg for purposes of the final determination.

Kindberg's four reported variances are as follows: (1) The ''Recalculating'' (Verrechnungsergebnis) variance, which adjusts standard costs to actual costs, (2) the ''Reconciling'' (Überleitung) variance, which reconciles the cost accounting system results with Kindberg's financial statements, (3) the ''Plant Idling'' (Betriebstillstand) variance, which adjusts actual period factory overhead to reverse the decreased efficiencies of scale caused by factory idling, and (4) the ''profit-sharing'' (Gewinnausschüttung) variance, which adjusts actual period costs to reverse Kindberg's state-mandated bonus pay.

For our final determination, we made the following adjustments to Kindberg's costs:

1. We used only the ''Recalculating'' and ''Reconciling'' variances to adjust Kindberg's reported standard costs because the remaining two variances reflect an improper hypothetical normalization of actual costs incurred during the POI. A detailed and proprietary analysis of the nature of Kindberg's reported cost variances is contained in the Department's June 12, 1995, final concurrence memorandum. Also, see the Cost Comments section of the notice, below.

2. We have recalculated the variance as a percentage of the POI cost of manufacturing (COM) and applied that percentage to each per-unit cost of manufacturing. See also the Cost Comments section of the notice, below.

3. We calculated a revised (G&A) rate from the annual financial statements and applied this revised rate to the per-unit cost of manufacturing.

4. We removed from the COM of one model sold in the United States, to a separate packing expense field, the significant packing costs incorrectly included by Kindberg in COM.

5. We recalculated Kindberg's financial expenses using the 1993 annual audited financial statements of its parent organization, Ö.I.A.G. A detailed and proprietary analysis of this adjustment is contained in the Office of Accounting's June 13, 1995, memorandum.

After computing COP, we compared product-specific COP to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

Results of COP Analysis

In accordance with Section 773(b) of the Act, we followed our standard methodology to determine whether the third country sales of each product were made at prices below their COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, as described in the preliminary determination.

Based on this methodology, for certain products sold in the United States, there were adequate numbers of third country sales made above the cost of production to serve as FMV. For U.S. sales of other products, there were not. In such cases, we matched U.S. sales to constructed value (CV).

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV as described in the preliminary determination, with the same adjustments for purposes of this final determination as listed in the ''Cost of Production'' section above, with one additional change: We offset the financial expense calculated from Ö.I.A.G.'s financial statements by the ratio of trade receivables and inventory over total assets.

For CV to U.S. price comparisons, we made deductions from CV, where appropriate, for the weighted-average third country direct selling expenses. We also deducted the weighted-average third country indirect selling expenses. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Third-Country Sales Comparisons

Where appropriate, we calculated FMV based on delivered prices to unrelated customers in Russia and to unrelated international trading companies whose customers in Russia were known to Kindberg at the time of Kindberg's sale to the trading company.

In light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398 (Fed. Cir. 1994), the Department no longer can deduct third-country movement charges from FMV pursuant to its inherent power to fill in gaps in the antidumping statute. Instead, we will adjust for those expenses under the circumstance-of-sale provision of 19 CFR 353.56(a), as appropriate. Accordingly, in the present case, we deducted post-sale third-country inland freight, inland insurance and foreign inland insurance from FMV as direct selling expenses under the circumstance-of-sale provision of 19 CFR 353.56(a).

We deducted third-country packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. We also made circumstance-of-sale adjustments for differences in direct selling expenses, which included credit, warranties, guarantees and commissions, in accordance with 19 CFR 353.56(a)(2). We deducted commissions incurred on third-country sales and added total U.S. indirect selling expenses, capped by the amount of third-country commissions; those total U.S. indirect selling expenses included U.S. inventory carrying costs, indirect selling expenses incurred in Austria on U.S. sales and indirect

selling expenses incurred in the United States.

Based on information obtained at verification, we made corrections and adjustments to certain charges claimed by Kindberg. We recalculated indirect selling expenses incurred in Austria for Russian sales to adjust for cost variances. We also recalculated imputed credit on Russian sales to use an interest rate tied to U.S. dollar lending, since Russian sales were denominated in U.S. dollars. Based on information obtained at verification, we allowed an adjustment for occasional early payment discounts, where applicable.

We discovered at verification that Kindberg failed to report a limited number of Russian sales. However, taking into considering the relatively insignificant volume of these sales and the FMV of these sales relative to the FMV of reported sales, we find that the omission does not distort our margin calculation. Therefore, we made no modification to our analysis to account for their inadvertent exclusion. See also *Sales Comment 1,* below.

Currency Conversion

We made currency conversions based on the official exchange rates, as certified by the Federal Reserve Bank of New York, in effect on the dates of the U.S. sales, pursuant to 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Sales Comments

Comment 1—Kindberg's Failure To Report Certain Russian Sales

The petitioners maintain that the Department should use best information available (BIA) to remedy Kindberg's failure to report Russian sales which account for a portion of the total volume of POI sales to Russia. According to the petitioners, the information on the record is not sufficient to determine what effect these sales would have on the calculation of third country prices or on dumping margins. The petitioners urge the Department to employ a methodology similar to that used in Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand (57 FR 13695, April 17, 1992), (''Kiwifruit'') whereby the Department distributed the volume of the missing sales equally across all pricing periods, and assigned to each portion of the added volume the highest net price in the pricing period that was found in each kiwifruit category.

Kindberg maintains that its omission of these sales should be treated as a clerical error pursuant to section 735(e) of the Act and therefore should be corrected for purposes of the final determination. Kindberg rejects the petitioners' suggestion for use of BIA, stating that the failure to report these sales was unintentional and that their inclusion would have actually benefitted Kindberg. The respondent states that Kiwifruit as cited by the petitioners is not germane for several reasons: (1) The omission of the Russian sales was inadvertent; (2) Kindberg is not requesting that the sales be disregarded; (3) Kiwifruit involved the omission of a significantly larger portion of sales; and (4) Kiwifruit involved sales over six distinct pricing periods where the price did not change during those periods, whereas no analogous pricing structure exists for OCTG. Kindberg maintains that the Department should use its discretion to modify the record and not reject the new sales data, and argues that the courts have never reversed a decision by the Department to accept late information rather than use BIA.

DOC Position

We disagree with the petitioners in that we are not using BIA for these unreported sales. We also disagree with respondent, in that we have not corrected the database to account for the missing transactions. The amount of sales inadvertently omitted is relatively insignificant.

The Department has, in the past, disregarded sales inadvertently omitted from the database for FMV when such unreported sales were of insignificant quantity and value. In the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France, (58 FR 37131, comment 16, July 9, 1993), we disregarded previously unreported home market sales, both those presented at the outset of, and those discovered during the course of, the Department's verification, because they were of insignificant quantity and value.

Further, based on our analysis of sampled missing invoices, the gross prices of the omitted transactions were considerably lower than similar sales reported. As such, the record indicates that the omission of these third-country sales is in fact, adverse to respondent's interests. Accordingly, no further adverse action is warranted.

Comment 2—Discounts on Russian Sales

The petitioners argue that the Department should not allow any adjustment to third country prices for discounts. According to the petitioners, because Kindberg did not report discounts in its database sales listing, but rather only referred to their possible existence in the body of its narrative response, it never truly reported the discounts. The petitioners acknowledge that the Department was able to successfully test the discount program at verification; however, the petitioners also point out that the verification report records the verifier's notice to company officials that examination of the administration of the discount program did not constitute acceptance of the adjustment for purposes of the final determination. Indeed, they object to any such acceptance. The petitioners cite to the Department's regulation that factual information must be submitted no later than seven days before the scheduled date on which the verification is to commence (19 CFR 353.31(a)(i)), maintaining that the inclusion of the discounts is not warranted because the discounts are not a minor revision to the responses but instead are substantial new information.

Kindberg maintains that its omission from the computer listing of these discounts should be treated as a clerical error pursuant to section 735(e) of the Act and therefore corrected for purposes of the final determination. Kindberg maintains that it did report these discounts in its response, though it inadvertently did not include them on its submitted computer tape. Kindberg states that the Department corroborated the applicability of the discounts at verification.

DOC Position

We disagree with the petitioners. Kindberg did report the circumstances in which this discount apply and the percentage thereof, but failed to include the transaction-specific amounts in its computerized sales listing. The detailed information submitted by Kindberg enabled the Department to analyze the pertinent Russian sales prior to verification. Thus, the verification team had at its disposal the subset of such sales in a format which allowed relatively easy review of the omitted discounts. Kindberg officials recognized and alerted verifiers to their mistake early in the verification. The sample selected for verification by the team tied correctly and the correction placed no administrative burden on the Department. Given these particular

circumstances, we modified the final programming to deduct the discount from those sales with the corresponding payment code.

Comment 3—Exchange Rates

The petitioners contend that the Department should follow its normal practice and apply the Federal Reserve exchange rates in its final margin calculations and reject Kindberg's logic for using the ''secured exchange rates'' reported in its sales listings. The petitioners maintain that the Department's regulations governing currency conversions state clearly that the Department will use the quarterly exchange rates published by the Treasury Department on the applicable date of sale. First, the petitioners claim that the Department's decision in the administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, *et. al.*, 60 FR 10900, 10921 (February 25 1995), confirms that the Department will not use the exchange rate a company allegedly received through hedging operations, citing our position in that review that the Department is required by 19 CFR 353.60 to make currency conversions using the Federal Reserve rates. Second, the petitioners allege that verification revealed that many sales were not secured by forward contracts, but were entered into Kindberg's books using either a mixed rate consisting of the secured exchange rate and the daily exchange rate quoted in the Wiener Zeitung or the Wiener Zeitung daily rate alone.

Kindberg maintains that the mix of daily and hedged currency conversion rates should be treated as a clerical error pursuant to section 735(e) of the Act (19 USC 1673d(e)) and therefore corrected for purposes of the final determination. Kindberg argues that the reported exchange rate contracts lock in sales that are denominated in U.S. dollars and that these rates are integrally linked to Kindberg's cost accounting and financial accounting systems.

DOC Position

We disagree with the respondent. First, the Department should not use Kindberg's parent-company's partial currency hedging exchange rates in lieu of official exchange rates. The Department is required by 19 CFR 353.60 to make currency conversions using the Federal Reserve rates.

Second, the petitioners are correct in pointing out that verification revealed that many sales were not secured by forward contracts, but were entered into Kindberg's books using either a mixed rate consisting of the secured exchange rate and the daily exchange rate quoted in the Wiener Zeitung or the Wiener Zeitung daily rate alone. Kindberg is incorrect to classify a question of fundamental calculation methodology as a ''clerical'' error. The error herein is Kindberg's inaccuracy in describing the use of ''secured'' exchange rates. The Department cannot accurately use Kindberg's mix of reported exchange rates, since the databases for U.S. and third-country sales do not indicate which transactions were ''secured,'' which were recorded with daily newspaper rates and which were recorded with part-secured/part-daily rates.

Comment 4—Third Country Commissions

The petitioners argue that the Department should not adjust Kindberg's third country prices for commissions because Kindberg failed to submit adequate information regarding commissions paid on sales to the Russian market. According to the petitioners, Kindberg failed to provide meaningful details on the payment of charges it claims as commissions in its response. Additionally, the petitioners argue that Kindberg failed to submit any usable information regarding commissions until verification. The petitioners maintain that the information presented at verification by Kindberg indicates that the commissions may not be linked to individual sales or even calculated on the basis of sales.

Kindberg maintains that it reported in its response that commissions on sales to Russia are negotiated individually and may vary for each commissionaire depending on the agreement negotiated with Kindberg. Further, Kindberg states that, regardless of the extent of their services, all commissionaires provide Kindberg with client contact and client cultivation directly relating to sales that are the subject of this investigation. Kindberg therefore urges the Department to make a downward adjustment to foreign market value to account for these commissions.

DOC Position

We disagree with the petitioners. The payments examined in the context of the selected Russian sales were documented by Kindberg as having been administered as commissions. These payments were made in recognition of the selling functions of the trading companies, which are located in market economies, and are by nature sales commissions. The general purpose and administration of these payments is fully consistent with the characteristics of commissions outlined in the Final Determination of Sales at Less Than Fair Value: Stainless Steel Angle from Japan, (60 FR 16608, 16611, March 31, 1995). These characteristics are consistent in that: (1) These adjustments are designed and agreed upon in writing with the commissionaires; (2) commissions were earned directly on sales made, based on flat rates or percentage rates applied to the value of individual orders; (3) the commissions take into consideration the expenses which the trading companies must incur to cultivate and maintain successful relationships with Russian purchasers; and (4) Kindberg relies on the external sales and marketing abilities of these commissionaires in lieu of establishing its own larger Eastern European sales force. We are, therefore, continuing to treat these reported adjustments as commissions, deducting them from FMV and adding to FMV indirect selling expenses incurred by Kindberg on U.S. sales, capped by the amount of third-country commissions.

Comment 5—Value Allocation of U.S. Indirect Selling Expenses

The petitioners maintain that in calculating U.S. price, the Department should divide the total U.S. indirect selling expenses reported by Kindberg by the value of sales to obtain the proper allocation, rather than use the per-ton charges originally reported by Kindberg.

DOC Position

We agree with the petitioners, and are calculating indirect selling expenses, both on U.S. and Russian sales, as a percentage of sales.

Comment 6—U.S. Credit Expenses

The petitioners note that in reporting U.S. sales, Kindberg calculated imputed credit using an Austrian interest rate of 4.6 percent. They point out that in the preliminary determination, the Department based its calculation of U.S. imputed credit on the late payment charge formula used by VATC on its invoices, of ''prevailing New York prime plus 1 percent.'' According to the petitioners, the Department has stated in the past that for a given interest rate to be used, a respondent must show that it actually had access to funds at that interest rate. The petitioners maintain that Kindberg has provided no information that it or VATC in access to funds at the prevailing New York prime rate plus one percent. The petitioners urge the Department to use the higher interest rate on Kindberg's invoices to VATC to calculate U.S. imputed credit.

In response, Kindberg maintains that the Department should not use the late payment rate set forth on its invoices to VATC because this rate is not a borrowing rate but rather a punitive rate established by Kindberg to encourage timely payment by their related sales agent. Asserting that this rate does not reflect the actual cost to it for extending credit to customers in the United States, Kindberg urges the Department to use instead the 4.6 percent interest rate it reported which was based on its deferred interest deposits in Austrian schillings.

DOC Position

We disagree with both parties. Petitioners object to using the U.S. interest rate noted on the VATC invoice to the U.S. customer, and would have us use a higher rate noted on the pro-forma invoice from Kindberg to VATC. Yet the higher rate set forth on the pro-forma invoice does not represent actual borrowing by Kindberg any more than does the rate on the VATC invoices. However, the rate on the VATC invoice is used by VATC to establish the time value of credit it extends when receiving late payment by the first unrelated U.S. customer, the purchaser who defines the actual U.S. transaction. Additionally, the rate on the VATC invoice to the U.S. customer is tied to an objective market rate, the N.Y. prime interest rate.

In contrast, the nominal late payment interest rate shown on the Kindberg to VATC invoices is for delinquent intra-company repatriation of funds from VATC to Kindberg, and is not tied to any objective benchmark related to the lending market, such as a U.S. prime rate. Thus, it is even further removed from objective commercial criteria.

We are not using the reported rate of 4.6 percent because this Austrian rate is denominated in schillings, and both U.S. and Russian sales are denominated and paid for in U.S. dollars. A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

Since the purchaser of record in the investigation is the first unrelated customer in the United States, the appropriate interest rate reflecting imputed credit expenses by Kindberg through VATC is a rate denominated in U.S. dollars. The New York prime rate plus one percent is the rate set during the POI by which Kindberg's related U.S. sales agent measured the time value of late revenue on U.S. sales. In a parallel manner, the Department's imputed credit expense measures the cost to Kindberg, via VATC, of extending credit to that U.S. customer. Additionally, since sales to Russia are also denominated in U.S. dollars, and since this is the only dollar-denominated interest rate indicated by Kindberg's actual business practices, we are also calculating imputed interest for those sales at the New York prime interest rate plus one percent.

Comment 7—Price Changes on Certain U.S. Sales

The petitioners note that the Department discovered that for certain U.S. sales, VATC did not simply re-invoice the prices recorded in Kindberg's invoice to it, but re-invoiced the first unrelated U.S. customer at a higher price, based on renegotiated extended payment terms and, on one occasion, on extraordinary freight expenses incurred by VATC. The petitioners urge the Department not to make any adjustment to these price changes in its final antidumping calculations.

Kindberg states that for the sales where VATC had to re-invoice the customer, the new payment terms were contained in the purchase orders sent from VATC to Kindberg, but omitted from the invoice sent from Kindberg. Kindberg urges the Department to adjust these U.S. prices upward.

DOC Position

We agree with the petitioners. Kindberg did not identify the invoice reporting error to the Department, rather, this inaccuracy was discovered by the Department. We note, however, that the occasional freight charges incurred were passed on exactly to the U.S. customer and that the upward adjustment to U.S. price for extended payment terms was offset by the increased cost of the extended credit. Thus Kindberg's failure to report the subset of changed VATC invoice prices and related charges had no effect on the margin calculations. Additionally, Kindberg's mistake was inadvertent. For these reasons, we did not make any adjustment to the reported gross price on those sales, nor did we apply partial BIA.

Comment 8—Unincorporated Russian Debit and Credit Memoranda

Citing from the Austrian Sales Verification Report, Kindberg notes that it had not matched several debit and credit memos to the Russian sales that they modified. Kindberg stresses that the net effect of the unincorporated memoranda was an over-reporting of certain third-country sales prices and urges, therefore, that the mistakes identified at verification be corrected.

DOC Position

We disagree with the respondent. First, it is not the Department's practice to make substantial and complicated revisions, nor is it the Department's responsibility to reconstruct a response. Correction of the omission of these debit and credit memoranda would require extensive matching and recalculation of specific prices by matching missing memoranda to invoices through mill orders.

Second, in this specific instance, the net effect of Kindberg's omissions is a marginally higher FMV than the correct amount, which we note is slightly adverse to the respondent. We are therefore keeping the reported third-country prices unchanged for purposes of the final determination.

Comment 9—Double-counting of Transportation Insurance Expenses in U.S. and Russian Indirect Selling Expenses

Kindberg notes that the Department found at verification that Kindberg had double-counted transportation insurance expenses by reporting these individually and also as a sub-component of indirect selling expenses, both for sales to the United States and to Russia. Kindberg urges that the mistakes identified at verification be corrected.

DOC Position

We disagree with the respondent. We agree that, where significant, double-counting may be addressed. We note, however, that the inadvertent inclusion of insurance costs comprises a very minute per-ton amount. Additionally, we note that this small error affects equally both U.S. price and FMV. We did not collect the rather extensive documentation required to correct this minor inclusion. Because it is not the Department's practice to reconstruct major portions of a response, which would be required in order to back out these costs from indirect selling

expenses, we are using the expenses as reported.

Comment 10—Packing Costs

The petitioners argue that the Department confirmed at verification that Kindberg incorrectly included packing costs in its calculation of the variable cost of manufacturing used for COP, CV and difference-in merchandise (DIFMER) calculations. According to the petitioners, it is a well-established principle that packing costs are not a cost of manufacturing, and are not included in the variable costs or the difmer calculation, but should instead be reported separately.

However, they also maintain that for all but one model of OCTG the impact of these misplaced packing costs are immaterial. The petitioners state that for that one remaining model where the packing is in wooden boxes, a uniquely expensive method, the actual costs needed for the margin calculations are not on the record. They therefore urge the Department to assign, as partial BIA, to all U.S. sales of this model, a packing cost based on the difference between the highest total cost (sum of material costs, labor costs and variable overhead) of any U.S. sale, which is packing inclusive, and the total cost for the same model as sold in the third country, which is packing exclusive. Calculating this difference isolates from total COM the packing charges which were only included in COM for the U.S. sales of this model.

Kindberg maintains that the special packing costs for this one U.S. model should not be included in the variable cost of manufacturing or in the calculation of differences in merchandise, but that they should be reported as packing costs based on actual cost. Kindberg does not agree with the petitioners' contention that the highest difference in total manufacturing costs for this model should be used as BIA. Kindberg does not state how it would recommend remedying the incorrect reporting.

DOC Position

We agree with the petitioners that the packing costs should not have been reported as a component of manufacturing costs. We also agree with the petitioners that the packing costs should be removed from the reported manufacturing costs and reported independently as packing charges for the specific model in question. We do not agree with the petitioners' recommendation for partial BIA. We have instead calculated the packing expenses for this model from cost of manufacturing based on the data collected at verification, as noted in greater detail in the June 13, 1995, Office of Accounting memorandum. The Department identified the difference between the average unpacked COM reported in the COP database for this OCTG model when sold to Russia and the average packed COM reported in the CV database for sales to the United States. This data allowed the Department to compute a POI-average packing cost for the U.S. sales of this model.

Cost Comments

Comment 1—Cost of Steel Billets

The petitioners object to the use of transfer prices from Kindberg's related supplier, VA Stahl Donawitz, in determining the cost of production and constructed value. They maintain that the use of the reported transfer prices to determine either COP or CV would be contrary to the Act.

With respect to COP, according to the petitioners, Kindberg never provided cost data for raw material purchased from Donawitz, despite the fact that Kindberg and Donawitz are both under common control. The petitioners question the validity of Kindberg's submission of general cost data pertaining to Donawitz's production of various types of blooms and billets, which the petitioners characterize as being untranslated and incomprehensible. The petitioners maintain that these documents do not establish the COP of the billets purchased by Kindberg. Therefore, the petitioners argue that Kindberg has failed to meet the statutory requirement for the use of transfer prices in COP.

With respect to CV, the petitioners maintain that U.S. law only allows the use of transfer prices if two conditions are met: (1) The transfer price reflects market value, and (2) for major inputs, the transfer price is shown to be above the cost of producing the input. They cite to the Department's administrative review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, 58 FR 39729, 39754–5, July 26, 1993.

The petitioners contend that Kindberg has not fulfilled the first condition because it did not demonstrate that the POI purchases of Donawitz billets were at market value, but instead made a comparison of market prices and transfer prices for the year prior to the POI. The petitioners also argue that Kindberg has also failed to meet the second condition, since they presented no actual COP data on billets, the single most significant input for OCTG production.

To remedy this alleged deficiency, the petitioners recommend that the Department follow the statutory instruction to construct cost on the best evidence available as to what costs would have been if the transaction had occurred between unrelated parties. The petitioners suggest that the Department increase the raw material variable overhead for each control number by an amount equal to the average cost of manufacture reported by Donawitz, multiplied by the statutory ten percent for SG&A.

Kindberg contends that it has provided both a comparative analysis of market prices and Donawitz's average cost of production per ton per billet during the POI for the record in this investigation. According to Kindberg, the information provided demonstrates that the transfer prices are above Donawitz's cost of production and that Donawitz was profitable during the full year 1994. Kindberg claims that the documentation shows specifically that Donawitz sold raw materials to it at a profit. Kindberg therefore urges the Department to utilize the reported transfer prices in its calculation of cost of production and constructed value.

Kindberg maintains that the petitioners' suggestion that the Department should increase the variable overhead cost of raw materials by a hypothetical amount is totally without merit. Kindberg claims that this suggestion was made without citation to administrative precedents, judicial precedents or statutory authority; further, the suggestion runs counter to the antidumping law. Kindberg maintains that the Department is required to, and has a practice of, using actual market prices when related party prices are found to be unreliable. According to Kindberg, the information on record clearly establishes that market prices are lower than those paid by Kindberg to its related party supplier.

DOC Position

We disagree with the petitioners. Kindberg: (1) Was able to show benchmark market prices using both a 1994 contract for purchases of billets from an unrelated party; and (2) provided cost data from Donawitz showing the average cost of producing billets to be below all of the transfer prices reported. Therefore, we used the transfer price from Donawitz to Kindberg for purposes of the final determination.

Comment 2—The Plant Idling Variance

The petitioners maintain that Kindberg's calculation of net cost variance improperly included a reduction in costs calculated to reflect idle plant expenses due to problems with a major contract. The petitioners contend that this element, which Kindberg called its ''Plant-Idling variance'' is not truly a cost variance. According to the petitioners, Kindberg is using this amount to adjust actual costs to hypothetical costs, *i.e.*, those costs which would have been incurred if it had not encountered contract problems and thus had operated its factory at ''normal'' levels in 1994. The petitioners cite to Final Determination of Sales at Less Than Fair Value: Titanium Sponge from Japan, 49 FR 39687, 38689, October 1, 1984, to support their contention that the Department has in the past specifically rejected adjustments to actual costs, where the adjustments were designed to convert actual production costs to those of a ''hypothetical efficient cost model.'' Second, the petitioners maintain that the Department requires respondents to report a fully absorbed cost of production, including costs associated with down time and with low capacity utilization. The petitioners contend that, based on this principle, the Department requires respondents to include depreciation costs of idled equipment and labor costs of idled staff. According to the petitioners, such costs are included in COP regardless of the cause of plant idling.

According to Kindberg, the reported variance includes costs which are not associated with temporary down-time or low capacity utilization or other costs incurred due to general business conditions such as strikes or production problems or factory modernization. Kindberg maintains that the freezing of the contract, particularly for an extended period of time, forced the factory to incur unforeseeable costs that are not normally associated with general business conditions. Kindberg argues that, because these costs do not reflect its actual cost of production, the Department should include this variance in the calculation of cost of production and constructed value.

DOC Position

We disagree with the respondent. We are rejecting the adjustment to fixed factory overhead costs for the ''Plant Idling'' variance. Rejecting this claimed adjustment corrects fixed factory overhead to the levels actually incurred in the POI. The Department's practice is to calculate the respondent's fully absorbed cost of production for the POI. By fully absorbed cost the Department means actual cost incurred in the POI, including period costs such as SG&A, financial expense and all non-operating costs. The purpose of the COP test is to determine if the respondent's home market or third-country price is sufficient to recover all of its costs, including period costs.

Kindberg recognized the total overhead costs as an operating expense in their income statement, not as an extraordinary expense. Under Austrian GAAP, these expenses were not considered extraordinary, and, in fact, they were not reported as extraordinary expenses in Kindberg's financial statements. As noted in Final Results of Antidumping Duty Administrative Review: Color Picture Tubes from Japan (55 FR 37924, September 14, 1990, the Department does not normally accept the use of expected or budgeted production quantities. Although the cause of Kindberg's loss of the export guarantee was unique, the resulting delay in a major sale was not itself an extraordinary event. Moreover, Kindberg did not provide any evidence to establish their normal production level. The Department may normalize production costs in extraordinary circumstances if the respondent provides several years of production data, establishing their normal historical production level. Kindberg only submitted its year-end yield accounts. Without the historical cost data, we would not have been able to analyze a benchmark for the ''normal'' production level of Kindberg, even if we had determined that normalization was appropriate.

Comment 3—The Profit Sharing Variance

The petitioners maintain that Kindberg's calculation of net cost variance improperly included a reduction in costs calculated to adjust for its distribution of profit to employees. The petitioners contend that this element, which Kindberg called its ''profit-sharing variance'' is not truly a cost variance. According to the petitioners, Kindberg is using this amount to remove from the reported manufacturing costs, the expense of paying its employees as mandated by Austrian law. The petitioners cite to the final determinations in the administrative reviews of Porcelain-on-Steel Cooking Ware from Mexico (Mexican Cooking Ware), (60 FR 2378, 2839 January 9, 1995) and (58 FR 43327, 43331–43332, August 16, 1993) as well to the Final Determination of Sales at Less Than Fair Value: Carbon Steel Flat Products from Canada, (58 FR 37099, 37113–37114, July 9, 1993), to support their claim that the Department has consistently required such payment to be included in COP.

Kindberg argues that it properly removed from production costs the bonuses paid to employees under the profit sharing plan. Kindberg states that the Austrian Government sets statutory wage rates and salaries for different jobs in the iron and steel industry and that the profit distribution is a regular incentive given to employees, even if the company incurs a loss. Kindberg argues that the amounts should not be included in the reported costs, because the profit distributions exceed the statutory wages Kindberg is required to pay.

DOC Position

We disagree with respondent. We are rejecting Kindberg's adjustment to manufacturing costs for the ''Profit-Sharing'' variance. Rejecting this variance restates Kindberg's conversion costs to amounts reflecting the actual costs incurred in the POI.

In general, from an economic standpoint, there are several benefits that a company receives through the adoption of a profit sharing plan. The company's fixed wages are reduced allowing it to remain cost efficient in tough economic conditions. The promise of sharing profits in prosperous periods can be used to gain wage concessions from unions. Therefore, profit sharing plans are directly related to wages and salaries.

From an accounting perspective, profit distributions to employees are treated in a manner similar to bonuses. They are typically recorded as an expense and are shown on the income statement. Kindberg included these nominal ''profit-sharing'' distributions as an operating expense on its financial statements. In contrast, dividends, which are true distributions of profit, affect only the equity section of the balance sheet and do not flow through the income statement. This distinction implies that profit sharing distributions are more closely associated with expenses, rather than with earnings. Kindberg admits in its case brief that the profit-sharing distributions are regular incentives to employees and that the distributions increase the operating loss.

Consistent with our determinations in consecutive administrative reviews of Mexican Cooking Ware, the Department determines that these mandatory payments represent compensation to the employees for their efforts in the production of merchandise and the administration of the company.

Comment 4—Allocation of Net Variance

The petitioners take exception to the allocation of Kindberg's net variance. Kindberg divided the total of all of its variances by the total tons produced in the POI. This fixed amount per ton was applied as an offset to each specific per unit standard cost reported to the Department.

The petitioners argue that the Department must apply the cost variances to the cost of manufacturing as a percentage, rather than as a fixed amount per ton. The variance must be applied as a percentage in order to obtain an applied variance proportional to the manufacturing costs. The petitioners argue the fixed amount per ton distorts the reported costs, because it understates the variance applied to products with higher manufacturing costs and overstates the variance applied to products with lower manufacturing costs. The petitioners cite Carbon Steel Alloy Steel Wire Rod from Canada, 59 FR 18791 (April 20, 1994), in which the Department disallowed the use of tonnage to allocate melt shop costs, because it resulted in the same cost per ton regardless of steel grade.

DOC Position

We agree with the petitioners. We have recalculated the variance from standard cost as a percentage of the POI cost of manufacturing and applied the rate to each per-unit cost of manufacturing. The petitioners are correct in their assertion that Kindberg's methodology ''smooths'' costs by applying a smaller proportion of the variance to products with higher production costs. The variance relates to all production costs and should be allocated proportionally among product costs.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1)of the Act 19 USC 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of OCTG from Austria, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of OCTG from Austria that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Voest-Alpine Stahlrohr Kindberg GmbH	12.72
All Others	12.72

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15617 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–816]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Italy

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Stuart Schaag, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 or (202) 482–0192, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly,

these numbers have been deleted from the scope of this investigation.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Case History

Since our preliminary determination (60 FR 6515, February 2, 1995) the following events have occurred. On February 3, 1995, one of the respondents, Dalmine S.p.A. (Dalmine), requested a postponement of the final determination. This request was granted (60 FR 8632, February 15, 1995), and the final was postponed by the Department until no later than June 19, 1995. On May 2, 1995, Dalmine submitted its case brief. On May 3, 1995, petitioner submitted its case brief and on May 10, 1995, petitioner submitted its rebuttal.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act (19 U.S.C. 1677e(c)), we have determined that the use of best information available (BIA) is appropriate for all companies. Given that none of the three named companies responded fully to the Department's questionnaire, we find that no respondents have cooperated in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. If the Department deems a respondent to be non-cooperative, that respondent's final margin for the relevant class or kind of merchandise is the higher of either (1) the highest margin in the petition, or (2) the highest calculated margin of any respondent (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value (54 FR 18992, 19033, May 3, 1989)). The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl, AG et al.* v. *United States,* 822 F. Supp. 789 (CIT 1993).)

In this investigation, the mandatory respondents have refused to cooperate by failing to respond, either entirely, or in large part, to the Department's questionnaire. Therefore, in accordance with our standard practice, the Department has assigned the highest margin in the petition to all respondents. The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Fair Value Comparisons

To determine whether sales of subject merchandise from Italy to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. See Initiation of Antidumping Duty Investigation of Oil Country Tubular Goods Pipe from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (59 FR 37962, July 26, 1994).

Comment 1—Comments Regarding Dalmine S.p.A.

Dalmine urges the Department to reverse its November 4, 1994, decision that Dalmine's home market is viable (see November 4, 1995, Memorandum from Richard W. Moreland to Barbara R. Stafford). As a basis for this reversal, Dalmine refers to arguments made in its November 14, 1994, submission. In this submission, Dalmine challenged the legality of the Department's determination that Dalmine's home market is viable. Dalmine asserted that the Department's standing policy is not to use related party sales in its home market viability calculation. Dalmine also requests that the Department take into account its December 1994 announcement concerning the Department's reconsideration of its policy regarding downstream related party sales (see December 27, 1994 Letter from Roland L. MacDonald, Director, Office of Agreements Compliance, to Dofasco Inc.). In the event that the Department reverses its November 4 viability determination, Dalmine urges the Department to request, review, and verify Dalmine's third country sales data. Although such a task would extend past the Department's deadline for the final determination in this investigation, Dalmine argues that the Department's deadlines are hortatory and not mandatory and, therefore, the Department may take the time that is needed to receive and verify new responses.

Petitioner argues that Dalmine's case brief merely refers to previous submissions that have already been rejected by the Department. Additionally, petitioner argues that downstream sales are not an issue in this investigation and, therefore, Dalmine's request that the Department reconsider its home market viability decision based on the Department's review of its policy regarding the reporting of downstream customers is irrelevant. Petitioner maintains that Dalmine's refusal to comply with the Department's explicit instructions to report home market sales can only be characterized as noncooperative and that the Department has no option but to use the highest margin alleged in the petition as BIA.

DOC Position

We re-affirm our previous decision that Dalmine's home market is viable and that Dalmine's refusal to comply with the Department's request for home market sales information constitutes uncooperative behavior.

In its November 4 determination, the Department decided that the nature of the relationship between Dalmine, its home market customers, and the Government of Italy, was not pertinent to the Department's home market viability analysis. The record contains no information that would cause the Department to change this decision. Additionally, the Department's announcement that it was reviewing its present policy regarding sales to downstream customers has no bearing on its policy to use sales to both related and unrelated parties in its viability analysis.

Comment 2

In order to preserve the viability issue in the event that Dalmine decides to appeal the Department's determination, Dalmine urges the Department to clarify in this notice the extent of Dalmine's cooperation in this investigation and the reasons for Dalmine's decision not to report home market sales data. Specifically, Dalmine requests the Department to acknowledge that Dalmine informed the Department that its home market was not viable and that the Department rejected Dalmine's proposal because it considered Dalmine's home market to be viable. Additionally, Dalmine asks that the Department respond to the legal arguments addressed in Dalmine's November 14 submission and that the Department's analysis take into account the policy announcement that the

Department made on December 27, 1994, regarding the Department's requirement to report downstream related party sales.

Petitioner argues that there is no need for the Department to revisit its decision regarding the viability of Dalmine's home market.

DOC Position

The information regarding the extent of Dalmine's participation in this investigation is already a matter of public record. In the event that Dalmine appeals the Department's actions, the Department's previous decision to request home market information, Dalmine's subsequent arguments concerning the Department's decision, and Dalmine's refusal to supply the Department with requested information are all on record in the official file in the Central Records Unit of the Department.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act (19 USC 1673b(d)(1)), we directed the Customs Service to suspend liquidation of all entries of OCTG from Italy, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of OCTG from Italy that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Dalmine S.p.A.	49.78
Acciaierie Tubificio Arvedi S.p.A.	49.78
General Sider Europa S.p.A.	49.78
All Others	49.78

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 18, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15618 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–835]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Japan

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Stuart Schaag, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–3646 or (202) 482–0192, respectively.

Final Determination

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the Suspension of Liquidation section of this notice.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Case History

There has been no activity in this investigation since the preliminary determination (60 FR 6506, February 2, 1995).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the

Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act (19 U.S.C. 1677e(c)), we have determined that the use of best information available (BIA) is appropriate for both Nippon Steel Corp. and Sumitomo Metal Industries, Ltd. Given that neither of the named companies responded to the Department's questionnaire, we find that no respondents have cooperated in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. If a respondent is non-cooperative, that respondent's final margin for the relevant class or kind of merchandise is the higher of either (1) the highest margin in the petition, or (2) the highest calculated margin of any respondent (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value (54 FR 18992, 19033, May 3, 1989)). The Department's two-tier methodology for assigning BIA conditioned on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied Signal Aerospace Co.* v. *United States,* 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl, AG et al.* v. *United States,* 822 F. Supp. 789 (CIT 1993).)

In this investigation, the two respondents refused to cooperate by failing to respond to the Department's questionnaire. Therefore, in accordance with our standard practice, the Department has assigned the highest margin in the petition to both respondents. The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Fair Value Comparisons

To arrive at the BIA margin referred to above, we compared United States price (USP) to foreign market value (FMV) as reported in the petition. See Initiation of Antidumping Duty Investigation of Oil Country Tubular Goods Pipe from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain (59 FR 37962, July 26, 1994).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act 19 U.S.C. 1673b(d)(1), we directed the Customs Service to suspend liquidation of all entries of OCTG from Japan, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below, for entries of OCTG from Japan that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Nippon Steel Corporation	44.20
Sumitomo Metal Industries, Ltd	44.20
All Others	44.20

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: June 19, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–15619 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–825]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3464, respectively.

Final Determination:

The Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Since the January 26, 1995, preliminary determination (60 FR 6507, February 2, 1995), the following events have occurred.

On February 3, 1995, we issued a supplemental questionnaire to Hyundai Steel Pipe Company, Ltd. (HSP). We received HSP's response on February 27, 1995.

In March 1995, we conducted the sales and cost verifications in Houston, Texas, and Seoul, Korea. We issued the verification reports in April 1995. On May 2 and May 3, 1995, HSP and the petitioners submitted their case briefs, respectively. On May 10, 1995, both parties submitted their rebuttal briefs. A public hearing was held on May 16, 1995.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or

non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information available (BIA) is appropriate for sales of OCTG by Union Steel Manufacturing Company (Union). Given that Union did not respond to the Department's questionnaire, we find that it has not cooperated in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents who cooperate in an investigation, and margins based on more adverse assumptions for those respondents who do not cooperate in an investigation. If a respondent is non-cooperative, that respondent's final margin for the relevant class or kind of merchandise is the higher of either 1) the highest margin in the petition, or 2) the highest calculated margin of any respondent (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determination of Sales at Less Than Fair Value (54 FR 18992, 19033, May 3, 1989)). The Department's two-tier methodology for assigning BIA based on the degree of the respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States,* 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl AG. et al.* v. *the United States,* 822 F. Supp. 789 (CIT 1993).

In this investigation, Union refused to cooperate by failing to respond to the Department's questionnaire. Therefore, in accordance with our standard practice, the Department has assigned the highest margin in the petition to Union. The assigned BIA margin is the same margin that was assigned for the preliminary determination.

Such or Similar Comparisons

We have determined for purposes of the final determination that the OCTG covered by this investigation comprises a single category of ''such or similar'' merchandise within the meaning of section 771(16) of the Act. All comparisons of U.S. to third-country [1] sales involved identical merchandise.

Fair Value Comparisons

To determine whether HSP's sales of OCTG from Korea to the United States were made at less than fair value, we compared United States price (USP) to foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

We calculated USP according to the methdology described in our preliminary determination, with the following exceptions as a result of verification:

1. We removed two types of bank charges from the U.S. indirect selling expense calculation and treated them as a direct expense; we included a third type of bank charge in the indirect selling expense calculation (see Comment 7).
2. We recalculated U.S. and non-U.S. indirect selling expenses;
3. We recalculated inventory carrying costs using HSP's revised cost data and the appropriate interest rates (see Comment 6).
4. We recalculated foreign brokerage and handling expenses.
5. We deducted a related party's interest charge from USP (see Comment 8).

Foreign Market Value

As stated in the preliminary determination, we found that the home market was not viable for sales of OCTG and based FMV on sales to Canada.

Cost of Production (COP) Analysis

As we indicated in our preliminary determination, the Department initiated an investigation to determine whether HSP's sales in Canada were made below their COP. In order to determine whether the third-country prices were below the COP, we calculated the COP based on the sum of HSP's reported cost of materials, fabrication, general expenses, and packing, in accordance with 19 CFR 353.51(c). We did not add duties paid on the coil to the cost of manufacture (COM)(see Comment 3). We made the following adjustments to HSP's COP data:

1. We increased the material costs relating to the settlement received for the purchase of defective coil. We adjusted the settlement amount to account for only that portion that was pertinent to production of the subject merchandise during the POI (see Comment 10);
2. We increased the general and administrative expenses to exclude income and expenses resulting from investment activities of the company (see Comment 11); and
3. We increased the COM to reflect the allocation of overhead on the basis of actual hours rather than standard hours (see Comment 12).

After computing COP, we compared product-specific COP to reported third-country prices that were net of movement charges and direct and indirect selling expenses.

[1] The home market in this case is not viable. Sales to Canada are being used as the basis for FMV and the cost of production analysis.

Results of COP Analysis

In accordance with section 773(b) of the Act, we followed our standard methodology as described in the preliminary determination to determine whether the third country sales of each product were made at prices below their COP.

Based on this methodology, we found that none of HSP's Canadian sales were at prices below the COP.

Third Country Price Comparisons

For third country price to U.S. price comparisons, we calculated FMV according to the methodology described in our preliminary determination, with the following exceptions as a result of verification:

1. We recalculated foreign brokerage and handling expenses.
2. We recalculated U.S. and non-U.S. indirect selling expenses by removing antidumping legal expenses from HSP's calculation.
3. We recalculated inventory carrying costs using HSP's revised cost data and the appropriate interest rates (see Comment 6).
4. We recalculated Canadian credit expenses (see Comment 8).

Currency Conversion

Pursuant to 19 CFR 353.60, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Comment 1—Interested Party Comments: Whether Best Information Available (BIA) Is Appropriate for HSP Based on Transaction-Specific Data Arguments

The petitioners argue that the verification report findings and the record evidence demonstrate that the respondent should have reported vessel-specific (*e.g.,* transaction-specific data) instead of POI average charges and adjustments for its U.S. sales during the POI. In summary, the petitioners maintain that: (1) The respondent was asked for transaction-specific information; (2) the respondent stated that such data would be impossible to provide; (3) the Department verified that the respondent could provide such data; (4) the respondent provided such information at verification; and (5) the transaction-specific data the respondent provided at verification differs from the POI average figures submitted prior to verification. The petitioners maintain that because the respondent could have reported transaction-specific information but failed to do so, the respondent has been uncooperative, significantly impeding the investigation and casting doubt on the reliability of its questionnaire response. The petitioners argue that since the respondent ignored the questionnaire requirement to report transaction-specific information, the Department should resort to the application of adverse BIA.

The respondent maintains that its calculation of weighted-average POI movement expenses for its U.S. sales was reasonable because: (1) It cannot always trace the actual product from Korea to a sale because it does not have access to the records of the stockyard (*e.g.,* an unrelated party) where it stores its OCTG prior to sale; (2) the tracing method outlined in the verification report for determining transaction-specific movement expense data is not always accurate; and (3) sales-specific tracing would have been unduly burdensome. Moreover, the respondent points out that the difference between the transaction-specific movement expenses reviewed at verification and the weighted-average movement expenses reported is *de minimis.* Therefore, the respondent maintains that the Department should accept its movement expense allocation methodology.

DOC Position

We agree with the respondent. We have accepted HPA's average expense reporting methodology because (1) it is representative and non-distortive of transaction-specific data; and (2) it would be contrary to our practice to require an unrelated party that is not a party subject to this proceeding (*i.e.,* the stockyard) to provide information. We disagree with the petitioners that HPA has been uncooperative, that it has significantly impeded the investigation, or that it misled or made misrepresentations to the Department.

The Department's preference is for a respondent to report transaction-specific sales information unless a respondent can demonstrate that doing so is overly burdensome or that its alternative methodology is representative and non-distortive of transaction-specific sales information. (In this case, transaction-specific information is equivalent to vessel-specific information.) HSP's U.S. subsidiary, HPA, maintained from the outset of this investigation that it could not report transaction-specific movement expenses for its sales of OCTG made during the POI because its accounting system does not contain such information. At verification, this statement was clarified to mean that HPA could not physically trace the OCTG through its sales documentation from the vessel, through the stockyard (which is an unrelated party), and then to the ultimate U.S. customer. Though HPA uses stock numbers to record movement of OCTG to and from the stockyard and on sales documentation sent to its U.S. customers, we have determined that HPA used the stock numbers simply as a technique to account for the OCTG it sent to its stockyard (an unrelated party) prior to release to its customers, and for determining what portion of unsold OCTG remained at the stockyard. At no time after HPA had the OCTG delivered to the stockyard from the U.S. port of entry did HPA retain records which would allow it to physically account for the movement of the OCTG from the stockyard to the first unrelated customer.

While the stockyard is required by the American Petroleum Institute (API) to be able to trace, at any time, any piece of OCTG released to HPA's first unrelated customer back to the specific production run, such information could not be confirmed from HPA's accounting system or sales documentation. Only the stockyard's records would likely contain the information to link the actual OCTG removed from a given vessel to an actual HPA sale. However, because the stockyard is an unrelated party to HPA, that information was not obtainable. HPA is therefore correct when it states that its records cannot physically trace the OCTG from the vessel to the customer. For this reason, we do not find that HPA sought to impede the investigation by not providing such data. Thus, the issue of whether it was burdensome for HPA to report transaction-specific information is moot.

Finally, after an analysis of business proprietary data and our findings at verification, we have determined that HPA's methodology of reporting average POI movement expenses is non-distortive and representative of the expenses it incurred during the POI on sales of OCTG. The difference between the vessel-specific movement expenses we requested at verification and the weighted-average movement expenses reported is negligible.

Comment 2—Whether BIA Is Appropriate for HSP Based On Alleged Data Deficiency Arguments

The petitioners maintain that verification revealed several serious deficiencies in the respondent's questionnaire response. For example, the petitioners allege that the

respondent incorrectly included movement expenses, bank charges, and antidumping legal expenses in its indirect selling expenses and that there were serious discrepancies between actual production hours and the standard production hours used to allocate costs. The petitioners maintain that the corrections are so numerous and substantial that the data provided by the respondent is unusable, and argue, therefore, that the Department should assign the petition margin as BIA.

The respondent contends that every expense was verified, as the verification reports make clear. In addition, the respondent points out that it produced complete information which was entirely verified by the Department. Therefore, the respondent maintains that the Department should use its response in the final determination and not resort to BIA.

DOC Position

We agree with the respondent. We tested the respondent's sales databases and established that the errors mentioned above were inadvertent and relatively minor. The respondent either brought these errors to our attention, or we discovered them as a result of the respondent providing all requested information. We were able to correct these errors. The errors mentioned above were not ones which lead us to question the reliability of the response. These are the types of errors the Department generally encounters in a typical investigation and it is the Department's normal practice to correct such minor errors for purposes of its analysis and less-than-fair-value calculations. Therefore, we are using the respondent's response in the final determination and not resorting to BIA.

Comment 3—Exclusion of Duties from the COM

The respondent maintains that the Department must exclude duties paid from the COP and exclude duty drawback from the Canadian price because to do otherwise is contrary to Department practice. The respondent cites *Carlisle Tire & Rubber Co.* v. *United States,* 634 F.Suppl. 419, 424 (CIT 1986), and Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Korea (55 FR 32659, 32666, August 10, 1990) (Sweaters from Korea) in support of its argument.

The petitioners argue that it would be inappropriate to exclude duties from the COP because the drawback received on a majority of the Canadian sales is different from the duties HSP paid on the imported coil incorporated into the exported pipe.

DOC Position

We agree with the respondent. Our practice, as enunciated in Sweaters from Korea, is to calculate a COP exclusive of duties and compare this COP to a duty-exclusive price. Thus, the fact that there may be a difference between the amount of duty paid and the amount of drawback received is irrelevant because neither amount is used for purposes of the COP test involving third country sales. Consequently, other issues which relate to the duty calculation are moot.

Comment 4—Duty Drawback on U.S. Sales

The petitioners contend that the respondent should have calculated U.S. duty drawback using shipment-specific drawback data instead of the average drawback received on all shipments during the period July-December 1993. They further contend that such reporting would not have been burdensome because the respondent provided this information at verification. In addition, the petitioners assert that the respondent's averaging methodology was not reasonable because it does not accurately capture the correct universe of duty drawback received. Therefore, the petitioners request that the Department deny the allocated duty drawback adjustment to U.S. price.

The respondent maintains that in *Laclede Steel Co.* v. *United States,* Slip Op. 94–160 (CIT 1994) (*Laclede*), the CIT upheld HSP's drawback methodology which is virtually identical to the methodology HSP is using in this instant case. The respondent points out that based on *Laclede,* HSP is not required to perform sales-specific calculations of Korean duty drawback. Moreover, the respondent maintains that it cannot trace the amount of drawback received on a particular exportation of OCTG back to a particular imported coil upon which duty has previously been paid because of the very nature of the Korean drawback system. Additionally, the respondent contends that the issue of whether it would have been burdensome to provide transaction-specific data is irrelevant because there is no relationship between coil inputs to the OCTG exports. Finally, the respondent argues that its allocation methodology is reasonable because the amount of drawback assigned to each vessel bears no relationship to the sales that are made of the OCTG transported on that vessel.

DOC Position

We agree with the respondent. Contrary to the petitioners' assertions, we verified that HSP is unable to trace the amount of drawback received upon a particular exportation of OCTG back to a particular imported coil upon which duty has previously been paid because of the nature of the Korean drawback system. Specifically, the Korean duty drawback system is set up such that HSP is allowed to use a FIFO (first in first out) method in matching import permits for raw materials used to produce OCTG to export permits showing OCTG shipments. When it submits its application for duty drawback, HSP is not required by the Korean government to link the amount it paid in duty for a specific amount of imported coil to the OCTG it actually exported.

However, even if HSP were able to provide transaction-specific amounts for duty drawback, the *Laclede* decision is clear that a respondent is not required to report sales-specific calculations for duty drawback relating to sales in a particular market.

Regarding whether HSP's duty drawback allocation methodology is reasonable, we examined at verification alternative allocation methods HSP could have used. We determined, based on verification, that the methodology HSP selected reasonably allocated its duty drawback amounts and was non-distortive based on the following facts: (1) While HSP cannot determine on a sales specific basis which coil imported actually was used to produce a specific product for export, it can in general determine which coil was used to produce U.S.-destined OCTG and Canadian-destined OCTG; (2) HSP applies for duty drawback in the ordinary course of business by taking the oldest coil import permits and linking them to export permits so that it receives all of the drawback due to it; and (3) there was an insignificant difference between using HSP's method and using an alternative method based on the drawback received on OCTG sold during the POI. Regarding petitioners' request that the duty drawback amount be limited to the actual amount of duties included in CV and the COP, this issue is moot since we have excluded duties from the COP calculation and we are not resorting to CV as a basis for FMV.

Therefore, we are accepting the respondent's duty drawback allocation methodology because it is in accordance with the *Laclede* decision and Department practice.

Comment 5—Dual Prices for Identical Merchandise

The petitioners maintain that the respondent failed to adequately support its claim that it can and does charge two different prices to the same customer for the same product on the same day. Absent evidence to the contrary, the petitioners contend that the real reason for the change in prices may relate to differences in physical characteristics or to market conditions. The petitioners argue that if the Department is not going to resort to BIA, it may have to make a difference-in-merchandise or circumstance-of-sale adjustment.

The respondent maintains that the Department thoroughly examined this issue at verification and found no evidence that HPA charges different prices for the same product based on physical characteristics or market conditions. The respondent contends that the petitioners' statements on this issue are unsupported speculation and should be disregarded.

DOC Position

We agree with the respondent. At verification we examined invoices which contained different prices for the same product specification to the same customer. We found that, in fact, HPA will charge two different prices for identical product from the same stock number to the same customer on the same invoice. In looking at how the continuous negotiation process between HPA and its customers works (which is described in the ESP verification report), export documentation from Korea, and import documentation into the United States, we find no reason to suspect that HPA is mislabelling a product's physical characteristics in the invoice. Therefore, we have accepted HPA's reported prices and used them in our analysis.

Comment 6—U.S. Inventory Carrying Costs

HSP sells the OCTG to Hyundai Corporation (HC), a related party (also in Korea), which in turns sells the OCTG to Hyundai Pipe of America (HPA), HSP's U.S. subsidiary.

The petitioners maintain that when HSP calculated U.S. inventory carrying costs, it should have used the won-denominated interest rate applicable while the merchandise was in Korea and then used HC's interest rate before the merchandise entered HPA's inventory.

The respondent contends that the Federal Circuit's decision in *LMI-LaMetalli Industriale* v. *United States*, 912 F.2d 455 (1990), requires that HSP use its subsidiary's, HPA's, U.S. interest rate.

DOC Position

We agree with the petitioners. Respondent's use of the U.S. interest rate to calculate its inventory carrying costs is not in accordance with Department practice (see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand (60 FR 10552, February 27, 1995), and the September 24, 1994, memorandum in that case from Susan Kuhbach, Director, Office of Countervailing Duty Investigations to Barbara R. Stafford, Deputy Assistant Secretary for Investigations). The Department's current practice is to use the interest rate denominated in the currency of the transaction.

A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this instance in won and dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made, and future payments are expected, in a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. This recognizes both the time value of money and the effect of currency fluctuations on repatriating revenue. Such an approach comports with the Federal Circuit's decision in *LMI-La Metalli*, wherein the court noted that ''[i]f the cost of credit is imputed in the first instance to conform with commercial reality, it must be imputed on the basis of usual and reasonable commercial behavior.'' 912 F.2d at 461.

In this instance, HSP sold the merchandise in Korea to the Korean company HC in a won-denominated transaction. In turn, HC sold the merchandise to HPA, the U.S. affiliate, in a dollar-denominated transaction. Finally, HPA sold the merchandise to the first unrelated U.S. customer in a dollar-denominated transaction. Accordingly, we have used (1) the Korean interest rate during the period from production to HSP's sale of the merchandise; and (2) HPA's U.S. interest rate during the period it was held by HPA. For the period of time between HC's purchase of the merchandise and its sale of the merchandise to HPA, we have used an actual expense and not the imputed expense (see Comment 8 for a further discussion).

Comment 7—HPA's Bank Charges

The respondent maintains that the three types of bank charges which it included in its U.S. indirect selling expense calculation are not direct expenses because they cover shipments which include both OCTG and non-subject merchandise. Therefore, the respondent contends that the bank charges are not directly associated with individual products.

The petitioners maintain that the bank charges at issue are direct expenses for both OCTG and non-subject merchandise and can be attributed to specific shipments. Moreover, even though in some cases the charge must be allocated between OCTG and non-subject merchandise within a particular shipment, the charge is still a direct expense because it is a charge HPA incurs regardless of what product is sold.

DOC Position

We agree in part with the petitioners. The respondent incurs the following three types of bank charges on U.S. sales of OCTG: (1) Charges for opening a letter of credit (*e.g.*, L/C open commission); (2) charges for an analysis of its bank account (*e.g.*, account analysis charge); and (3) charges from the bank for checking the sales documents for HPA (*e.g.*, a negotiation commission). Based on our verification findings, it is clear that the account analysis charges are indirect selling expenses because they are not associated with the direct sale of OCTG. As for the L/C open commission, it is a telex charge for opening a letter of credit for each sale. Therefore, it is a direct selling expense. Regarding the negotiation commissions, these are expenses associated with the transfer of sales documentation from HC to HPA and are directly related to the sale of the subject merchandise, as well as non-subject merchandise, because these commissions are the fees that HPA's bank charges HPA for reviewing the sales documentation between HC and HPA. Moreover, HPA's bank determines the amount of the charge based on a percentage of the value of the merchandise. Therefore, we have included the account analysis charges as part of HPA's U.S. indirect selling expense calculation. However, we have removed the negotiation commissions and letter of credit fees from the indirect selling expense calculation and treated these as direct selling expenses. We allocated these direct expenses between the OCTG and the non-subject merchandise based on a percentage of the sales values between HC and HPA.

Comment 8—HC's Interest Charges

HSP reported that it ''sells'' the OCTG to HC, which in turn ''sells'' the OCTG to HPA, HSP's U.S. subsidiary. The respondent maintains that HC pays a certain percentage of the transfer price in interest charges to compensate the Korean bank for the time value of the money resulting from the time lag between the Korean bank's payment to HC and the payment to the Korean bank from the U.S. bank. HSP maintains that these interest charges to finance the internal movement within Hyundai of OCTG while in physical transit from Korea to the United States. Therefore, the respondent contends that, because HPA makes ESP sales out of its U.S. inventory, HC's interest charges cannot be associated with goods which are subject to a later sale.

The respondent contends that this interest charge calculated by HSP is duplicated by HPA's inventory carrying cost calculation and HSP's Canadian credit expense calculation because it compensates the Korean bank for the short delay in HC's receipt of payment under the letter of credit posted by HPA. The respondent also contends that this type of charge is included in HPA's indirect selling expenses and therefore must be removed from them. Otherwise, the respondent maintains that the Department is double counting this expense.

The petitioners maintain that the interest charges and inventory carrying costs must be fully and separately reported and deducted from U.S. price.

DOC Position

We agree in part with the respondent. Based on verification of HPA's ESP sales process, we have determined that HC's interest charges cannot be specifically traced to the U.S. sale of OCTG to the first unrelated customer. Therefore, this charge is clearly associated with the internal movement of the subject merchandise from Korea to the United States and not associated with a specific sale. Accordingly, we have treated this expense as an indirect selling expense in the final determination.

Regarding the respondent's claim that an imputed amount capturing the delay in payment must be deducted from inventory carrying expense and/or credit expense, HPA's bank will not pay HC's bank until HPA provides the shipment documents received after receipt of the OCTG from HC. Therefore, we find that the interest charge is associated with the delay in payment between HC's bank and HPA's bank and that this is a result of the time delay between when HC releases the OCTG and when HPA receives the OCTG. We find that the interest charge represents part of the inventory carrying expense calculation and does not represent an additional expense. Since the deduction of both this interest charge and the time during which the OCTG is in HC's inventory would represent double counting, we have removed the inventory days during which the OCTG is in HC's inventory from the inventory carrying expense calculation.

Regarding the respondent's claim that HC's interest charge amount must be deducted from HPA's indirect selling expenses, we disagree because HC's expenses are not captured in HPA's indirect selling expenses calculation.

Finally, regarding the respondent's claim that the interest charge (which is also incurred on Canadian sales of OCTG), is duplicated by HSP's Canadian credit expense calculation, HPA's bank will not pay HC's bank until the Canadian customer pays HPA and this transaction occurs after the customer receives the shipment documents. However, HC's bank will still pay HC based on the letter of credit opened by HPA, and HC's bank will charge HC an interest charge for the advance receipt of the value of the OCTG. Therefore, we find that the interest charge is an actual credit expense which is associated with receiving payment for the OCTG before the Canadian customer pays HPA for the OCTG. Although this interest charge does not cover the entire credit period (*e.g.*, shipment from Korea until HPA's receipt of payment from the Canadian customer), we have accounted for the additional credit period by imputing a credit expense which is based on the use of HPA's interest rate and the difference between HPA's and HC's sales prices of OCTG to the U.S. market.

Comment 9—Packing Expense

The petitioners contend that HSP has improperly applied its conversion factor to packing expenses. Specifically, the petitioners allege that since HSP allocated packing costs over the total tonnage of OCTG sold rather than produced, it was unnecessary to use a conversion factor to determine the expenses. The actual packing costs have already been allocated on a theoretical weight basis.

The respondent maintains that verification demonstrated that HSP allocated packing costs over the total actual volume of small pipe sales, and then applied a conversion factor to restate the costs on a nominal weight basis.

DOC Position

We agree with the respondent. We find that HSP did not use its conversion factor twice to determine its packing expenses. Verification demonstrated that HSP applied a conversion factor to the actual tonnage of OCTG produced to determine its packing costs. HSP used the quantity figures from its inventory ledger, (which record the actual tonnage), and not its sales ledger, as the basis for its packing expense allocation methodology. Therefore, we have accepted HSP's packing expense methodology.

Comment 10—Settlement Adjustment on Defective Coil Purchase

The petitioners argue that some of the coils on which HSP received settlement for defective material were consumed before the POI. Accordingly, the petitioners maintain that only the settlement revenue received by HSP and associated with coil consumed in the POI should be used to offset materials.

The respondent argues that it received all the settlement payment, which was to compensate HSP for defective material, during the POI, and that it should be offset against HSP's POI coil cost.

DOC Position

We agree with the petitioners. We found at verification that some of the defective material was used in production in 1993. The actual material cost for the POI equals the total net amount paid. This amount equals the amount paid on the material used during the POI, less the proportional amount of the settlement. In January 1994, HSP knew the amount it would receive and it knew the specific materials associated with the settlement. Therefore, we have adjusted the settlement amount for defective material to account for the production that occurred prior to the POI, and have considered only that portion of the settlement pertinent to production during the POI.

Comment 11—Adjustment of G&A Calculation

The petitioners argue that the gains and losses on investment securities and other investment related expense and income items should be excluded from the calculation of general and administrative (G&A) expenses. They contend that all non-operating items must be excluded from the SG&A calculation.

The respondent states the inclusion of investment related items is consistent with its financial statements.

DOC Position

We agree with the petitioners. The Department's practice has been not to include investment-related gains, losses and expenses in the calculation of G&A for purposes of COP or CV calculations. The Department's purpose in COP and CV situations is to determine the cost to produce the subject merchandise. The cost to produce the subject merchandise does not include unrelated production or investment activities. The Department accounts for investment activities which relate to financing a company's working capital as part of the financial expense. The financial expense is calculated on a consolidated company-wide basis. Therefore, we have recalculated G&A expenses by excluding HSP's company-wide investment related items.

Comment 12—Allocation Based on Standard Vs. Actual Hours for Overhead

The petitioners argue that the respondent, by using standard hours rather than actual hours for the allocation of overhead, has miscalculated the allocation of actual costs between subject and non-subject merchandise. The petitioners further argue that if the overhead costs cannot be recalculated on the basis of actual hours, then the submitted cost data should be rejected.

The respondent argues that in Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea (57 FR 42942, September 17, 1992) (Circular Pipe), the Department did not question the use of standard hours as the basis for the allocation of fabrication costs, only depreciation and G&A expenses. The respondent states that, in the instant case, the standard hours approximate the actual hours which were provided at verification. In any event, the respondent provided actual hours.

DOC Position

We agree with the petitioners. The Department's strong preference is to use actual costs for purposes of calculating COM whenever possible. See Final Determination of Sales at Less Than Fair Value: Fresh Chilled Atlantic Salmon from Norway (58 FR 37915, July 14, 1993). After a thorough review of Circular Pipe, it is clear that neither party raised the issue regarding the use of standard hours. Since HSP reported actual hours and we verified these hours, we applied the actual hours to the actual variable and fixed overhead costs to calculate the COM.

Comment 13—Double Use of Conversion Factor

The petitioners argue that HSP has applied the conversion factor which converts the costs of production from an actual to nominal basis, twice: First to material costs and then to total COP and CV. The petitioners maintain that this action causes costs to be understated.

The respondent states that it applied the conversion factor only once at the end of the total cost calculation.

DOC Position

We agree with the respondent that the conversion factor was applied only once. An examination of the cost verification exhibits show that the conversion factor was applied once to the actual material costs to derive the nominal material costs which were then converted to nominal terms. Thus, we agree with the respondent that no adjustment has to be made.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act (19 USC 1673b(d)(1)), we directed the Customs Service to suspend liquidation of all entries of OCTG from Korea, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1995.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margin, as shown below for entries of OCTG from Korea that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Hyundai Steel Pipe Company, Ltd	00.00
Union Steel Manufacturing Company	12.17
All Others	12.17

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15620 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–817]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Mexico

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: John Beck or Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3464 or (202) 482–1673, respectively.

Final Determination:

Department of Commerce (the Department) determines that oil country tubular goods (OCTG) from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination on January 26, 1995, (60 FR 6510, February 2, 1995), the following events have occurred.

In March and April 1995, the Department verified the cost and sales questionnaire responses of Tubos de Acero de Mexico, S.A. (TAMSA).

Verification reports were issued in April and May, 1995. On May 9 and 16, 1995, the interested parties submitted case and rebuttal briefs, respectively. TAMSA submitted revised sales and cost tapes that corrected clerical errors discovered at verification on May 18 and 23, 1995. A public hearing was held on May 19, 1995.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Such or Similar Comparisons

We have determined for purposes of the final determination that OCTG covered by this investigation comprises a single category of ''such or similar'' merchandise within the meaning of section 771(16) of the Act. Where there were no sales of identical merchandise in the third country [1] to compare to U.S. sales, we made similar merchandise comparisons on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether TAMSA's sales of OCTG from Mexico to the United States were made at less than fair value, we compared the U.S. price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

We calculated USP according to the methodology described in our preliminary determination, with the following exceptions:

1. We applied the net financial expense of the consolidated parent to the further manufacturing costs of the related U.S. company, Texas Pipe Threaders (TPT).
2. We made deductions from gross unit price for movement variances that represent the difference between the accrual and actual movement costs.
3. We recalculated inventory carrying cost for the inventory time in the United States using a U.S. interest rate, in accordance with the Department's practice to use the interest rate applicable to the currency of the transaction (see Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand (60 FR 10552, February 27, 1995)).

Foreign Market Value

As stated in the preliminary determination, under 19 CFR 353.48, we found that the home market was not viable for sales of OCTG and based FMV on sales to Saudi Arabia. During the course of this investigation the petitioner questioned the legitimacy of certain transactions made by TAMSA to the Saudi Arabian market. The Department closely examined these transactions at verification and found no reason to alter its decision to use Saudi Arabia as the appropriate market for determining FMV (see Comment 1 in the ''Interested Party Comments'' section of this notice).

Cost of Production Analysis

Based on information contained in the petitioner's allegation that TAMSA is selling OCTG in Saudi Arabia at prices below its cost of production (COP), the Department initiated a COP investigation for the Saudi Arabian sales of TAMSA, under 19 CFR 353.51. This COP investigation was initiated on December 22, 1994. Because TAMSA submitted its cost information on February 1, 1995, which was after the preliminary determination, the Department was unable to use this information for purposes of the preliminary determination.

In order to determine whether the third-country prices were below the COP, we calculated the COP based on the sum of TAMSA's reported cost of materials, fabrication, and general expenses, in accordance with 19 CFR 353.51(c). After computing COP, we compared product-specific COP to reported third-country prices, net of movement charges and direct and indirect selling expenses. We accepted TAMSA's COP data, with the following exceptions:

1. We revised TAMSA's financing expense rate to reflect the first two quarters of 1994 consolidated results (see Interested Party Comment 6).
2. We revised costs for TAMSA's allocation methodology for fixed costs and variances based on standard cost (see Interested Party Comment 7).
3. We revised TAMSA's general and administrative (G&A) expenses to reflect 1994 unconsolidated results (see Interested Party Comment 8).

Results of COP Analysis

Under our standard practice, when we find that less than 10 percent of a

[1] The home market in this case is not viable. Sales to Saudi Arabia are being used as the basis for foreign market value and cost of production analysis.

company's sales are at prices below the COP, we do not disregard any below-cost sales because that company's below-cost sales were not made in substantial quantities. When we find between 10 and 90 percent of the company's sales are at prices below the COP, and the below-cost sales are made over an extended period of time, we disregard only the below-cost sales. When we find that more than 90 percent of the company's sales are at prices below the COP, and the sales were made over an extended period of time, we disregard all sales for that product and calculate FMV based on constructed value (CV), in accordance with 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales were made over an extended period of time, we compare the number of months in which below-cost sales occurred for each product to the number of months of the POI in which that product was sold. If a product was sold in three or more months of the POI, we do not exclude below-cost sales unless there were below-cost sales in at least three months of the POI. When we find that all sales of a product only occurred in one or two months, the number of months in which the sales occurred constitutes the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time is two months, where sales of a product were made in only one month, the extended period of time is one month (see Preliminary Results and Partial Termination of Antidumping Duty Administrative Review: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan (58 FR 69336, 69338, December 10, 1993)).

Following the above type of analysis, we determine that sales below cost were in substantial quantities over an extended period of time, and that there were no remaining sales above cost. Accordingly, we compared USP to CV.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TAMSA's cost of materials, fabrication, general expenses, and profit. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act, we included in CV: (1) TAMSA's revised general expenses because they were greater than the statutory minimum of ten percent of the COM, and (2) for profit, the statutory minimum of eight percent of the sum of COM and general expenses because it was greater than the actual profit, as calculated on a market-specific basis.

We made the same adjustments to TAMSA's reported CV data as to TAMSA's COP data, as described above.

For CV to U.S. price comparisons, we made deductions from CV, where appropriate, for the weighted-average third country direct selling expenses, in accordance with 19 CFR 353.56. We also deducted the weighted-average third country indirect selling expenses. We limited this adjustment by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Currency Conversion

Because certified exchange rates for Mexico were unavailable from the Federal Reserve, we made currency conversions for expenses denominated in Mexican pesos based on the official monthly exchange rates in effect on the dates of the U.S. sales as published by the International Monetary Fund, in accordance with 19 CFR 353.60(a).

Verification

As provided in section 776(b) of the Act, we verified the information used in making our final determination.

Interested Party Comments

Comment 1: Date of Sale Methodology and Home Market Viability.

The petitioner argues that the date of shipment, rather than the date of purchase order, is the appropriate date of sale for all home market transactions. It notes that the Department verified that TAMSA had home market sales that were shipped prior to TAMSA receiving an order, and that this was not revealed prior to verification. The petitioner contends that in Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges from India (58 FR 68853, December 29, 1993), the Department found significant discrepancies between a company's response and the randomly selected documents and, thus, determined that the response had not been verified. It also notes that in the Final Results of Administrative Review of Roller Chain, Other Than Bicycle, from Japan (Roller Chain from Japan) (54 FR 3099, January 23, 1989), the Department used the shipment date as the date of sale since orders were taken by phone and generally shipped before issuance of the sales documentation.

The petitioner further argues that the home market becomes viable when the date of shipment serves as the date of sale. Because TAMSA did not report home market sales, the Department should therefore reject TAMSA's third country sales and use the best information available (BIA) in its final determination. Because the Department has previously recognized that the misreporting of the date of sale warrants the use of BIA, the petitioner asserts that the Department should use the highest margin provided in the petition, 45.22 percent, as BIA (see Final Determination of Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Mexico (58 FR 37192, July 9, 1993) and Final Determinations of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France (59 FR 14136, March 25, 1994)).

TAMSA contends that the Department verified the actual volume and value of TAMSA's home market and third country sales and the basis for the non-viability determination. It argues that the reported date of sale methodology was appropriate because the purchase order date is the date when all substantive terms of sale are finalized.

TAMSA argues that there were a few pre-order shipments in the POI, and those were the result of an ''aberrational'' request by the customer for shipment before the customer issued the written order. It asserts that the Department verified that shipment before receipt of an order is against company policy and is unusual. TAMSA argues that, in the rare instance where shipment occurred prior to the order, it properly reported the date of shipment as the date of sale pursuant to the Department's instructions and precedent that the date of sale cannot be later than the date of shipment.

DOC Position

We agree with TAMSA. The Department generally defines the date of sale as the date when all substantive terms of the sale, particularly price and quantity terms, are agreed to by interested parties (see Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the United Kingdom (52 FR 18992, July 28, 1987)). At verification, we thoroughly examined TAMSA's home market sales process, including numerous sales documents, and found that the price and quantity terms did not change between the date of the purchase order and the date of shipment.

Furthermore, Roller Chain from Japan is not applicable to this investigation because, in that investigation, the Department revised the date of sale because most sales were taken over the phone and shipped prior to the issuance of a purchase order. We verified that, in its home market, TAMSA normally ships merchandise after receipt of a

purchase order and found that, only rarely, were sales shipped prior to receipt of the purchase order.

Thus, based on our findings at verification, we determine that the date of purchase order is the appropriate date of sale, except when date of shipment occurred prior to the purchase order, which occurred rarely. In those instances, date of shipment was the appropriate date of sale. TAMSA, therefore, properly reported its POI sales.

Comment 2: Cancellations.

The petitioner asserts that, in the instances where purchase orders were received prior to the shipment date, a substantial number of those purchase orders in Mexico were cancelled. The petitioner contends that TAMSA erred in its reconciliation of its reported sales to its financial statements at verification because the pre-shipments cancelled orders would not have been recorded as shipments in the financial statements, thus, arguing that TAMSA must have sold and shipped this merchandise during the POI prior to issuing the unexplained cancellations.

In 64K Dynamic Random Access Memory Components from Japan: Final Determination of Sales at Less Than Fair Value (DRAMs from Japan) (51 FR 15943, April 29, 1986), the Department determined that no binding agreement had been entered into as of the purchase order date (because there were significant cancellations) and found that the appropriate date of sale was the shipment date since this was the earliest point in the transaction at which any sort of binding commitment could be inferred. The petitioner thus argues that the purchase order does not constitute a binding commitment between the parties; and, consequently, the Department should find that the shipment date represents the date of sale as it did in DRAMs from Japan.

Moreover, the petitioner contends that if the Department accepts the order date as the basis for determining home market sales and if the Department disallows post-petition credit memos and order cancellations, the home market was viable during the POI. It notes that disallowing post-petition credit memos and order cancellations is consistent with the Department's policy of not allowing rebates which are instituted retroactively after the filing of a petition (see Antidumping Manual and Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Color Negative Photographic Paper from Japan (59 FR 16177, April 6, 1994)).

TAMSA argues that the invoice cancellations did not affect the terms of the purchase order and had no contractual significance. TAMSA states that the amounts in question represent credit memos, corrections to the booking and invoicing processes, or cancelled invoices, not cancellations in the orders, and that they had no effect on the quantity ordered.

TAMSA asserts that DRAMs from Japan does not support the petitioner's date of sale argument. In that investigation, the Department determined that neither party to the purchase order intended it to be a binding agreement or treated it as such. TAMSA argues that this situation does not apply to its home market sales process because the customer's order constitutes the binding sales agreement between the parties, and the Department found there were no changes in the sales terms from the order date to the invoice date. Thus, its date of sale methodology is correct.

DOC Position

We agree with TAMSA. At verification, we found that these ''cancellations'' were, for the most part, changes to invoices (*e.g.*, correcting for a wrong shipment date) or were credit memoranda; they were not similar to post-petition rebates as the petitioner claims.

DRAMs from Japan is inapposite because, in that case, the respondent argued that it did not normally acknowledge purchase orders, but instead stated that its normal acceptance of an order occurs when the order is actually shipped. Furthermore, the Department found, in that case, in addition to cancellations by both parties, that there were frequent price revisions.

At verification, we thoroughly examined TAMSA's sales process and found that the purchase order is the binding agreement; the terms did not change between the order date and the shipment date. Thus, we determine that the order date, when used as the basis for date of sale, was appropriate.

Comment 3: Possible Exclusion of a Certain Saudi Arabian Transaction.

The petitioner argues that a certain Saudi Arabian transaction should be excluded because the date of sale was misreported and incorrectly included in the POI. Because the essential terms of sale, specifically the payment terms, for this transaction were not fixed on the reported date of sale, the Department should determine that the date of sale is outside the POI. The petitioner notes that it is the Department's policy to determine the date of sale to be the date on which all substantive or material terms of sale are agreed upon by the parties (see Antidumping Manual). In Roller Chain from Japan, the Department found that the shipping documents were the first written evidence of the merchandise, price, quantity, and payment terms and, therefore, determined that the shipment date was the appropriate date of sale.

The petitioner also contends that its claim is supported by Mexican Commercial Law and notes that the Department has recognized that this type of foreign contract law analysis is relevant in determining when a sale occurs for the purposes of the antidumping laws (see DRAMs from Japan).

TAMSA argues that the verification report acknowledged that the purchase order by the Saudi customer is the ''culmination of the negotiating process,'' establishing the essential terms of sale, which did not change between order and shipment. It argues that communications between the parties between the quote and the order normally are not referenced in the order, and that it is ''not unusual for negotiation during this period to take place.''

In addition, TAMSA contends that the Department verified that the customer's order constitutes the contract between the parties and that before the order is issued (including the time between bid and order), the parties may conduct negotiations. Since the purchase order is the earliest date of agreement between the parties on the terms of sale, the purchase order date is the proper date of sale.

TAMSA states that the Department normally finds that the purchase order constitutes the date of sale, focusing on the intent of the parties to be bound by the order (see Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan (54 FR 42543, October 17, 1989)). TAMSA notes that, in Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China (60 FR 22359, May 5, 1995), the Department considered the date of sale to be the date on which all substantive terms of sale (normally price and quantity) are agreed to by the parties, and that, in Roller Chain from Japan, the Department found that payment terms are not an essential term of sale.

In DRAMs from Japan, TAMSA maintains that the Department based its date of sale determination on the intent of the parties. TAMSA argues that the opinion by the Mexican lawyer on

Mexican law provided by the petitioner omitted the fact, which the Department verified, that between the quotation and the order there were additional negotiations on the key sales terms in the order, and that the action of the parties illustrate an intent by the parties to contract on the order date.

DOC Position

We agree with TAMSA. The issue regarding the price and quantity differences between the quotation and purchase order was argued extensively by the parties and was examined thoroughly by the Department at verification. At verification, the Department found no written evidence of changes in the sales terms after the purchase order.

The Department normally considers the essential terms of sale to be price and quantity. We believe that, in this case, the term of payment is not an essential term of sale because the terms of payment are similar for all of TAMSA's sales to Saudi Arabia. Furthermore, at verification, the Department examined all relevant sales documentation of the transaction, including the quotation, purchase order, invoices, and letters of credit. We did not find any discrepancies with the documentation. Thus, we are not excluding this transaction from our analysis.

Comment 4: Whether a Certain Saudi Arabian Transaction Was Made Outside the Ordinary Course of Trade.

The petitioner argues that a certain Saudi Arabian transaction should be excluded because it was made outside the ordinary course of trade (i.e., was not made under normal conditions and practices). It cites to Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, including Sulfur Vat Dyes, from the United Kingdom (Sulfur Dyes from the U.K.) (58 FR 3253, January 8, 1993) to support its argument.

TAMSA argues that this Saudi Arabian transaction was consistent with its terms and processes for all of its other Saudi Arabian transactions; thus, it was made in the ordinary course of trade. At verification, the Department examined documentation for the reported Saudi sales and confirmed that they were made with a large, unrelated customer. TAMSA further asserts that the Department verified sales prior and subsequent to the POI, and found that the transaction in question was consistent with the terms and process for other Saudi Arabian sales.

TAMSA argues that this Saudi Arabian transaction was consistent with its practice for other Saudi Arabian transactions. TAMSA argues that the actions of the parties illustrate that the purchase order finalizes the sales terms and concludes the sale; specifically, once it receives an order, it secures a letter of credit guaranteeing payment and begins production based on the terms in the order. Although after the order there are no further contractual communications between the parties until shipment and invoicing, the customer plans and arranges for delivery and payment, and there are no changes to the terms of sale between order and shipment, which TAMSA argues was verified by the Department as the common practice for all Saudi sales.

In Sulfur Dyes, TAMSA maintains that the Department found a sale to be outside the ordinary course of trade because it was larger than other sales and was made at a lower price pursuant to a special agreement. Because the transaction in question was similar to other Saudi Arabian transactions, TAMSA argues that Sulfur Dyes is not applicable to this investigation.

DOC Position

We agree with TAMSA. Under 19 CFR 353.46(b), in determining whether a sale was made in the ordinary course of trade, the Department considers the ''conditions and practices'' which have been normal in the trade of the subject merchandise. At verification, we found no abnormalities in the sales terms as compared to other Saudi Arabian sales. We also verified that the procedures followed in this transaction were consistent with the procedures in other Saudi Arabian transactions. Regarding the delivery time, we do not believe that differences in average time between order and shipment is evidence that the sales were outside the ordinary course of trade. The shipments were made within the period stipulated in the purchase order.

Furthermore, Sulfur Dyes from the U.K. does not apply to this investigation because the sales terms of the transaction in question are not significantly different than the sales terms of TAMSA's other Saudi Arabian transactions. For these reasons, we are not excluding this sale from our analysis.

Comment 5: Possible Extension of the POI.

The petitioner argues that the Department's decision not to extend the POI to capture TAMSA's sales in the home market contradicts the antidumping statute and regulations. The statutory and regulatory provisions establish a preference for the home market as the basis for FMV, and permits the Department to use third country sales data or constructed value only if it has determined that home market sales are small with respect to third country sales.

The petitioner notes that the Department's regulations state that it can extend the POI ''for any additional or alternative period'' that it determines is appropriate. The Department has extended the POI in prior proceedings where the six-month period ''did not adequately reflect the sales practices of the firms subject to the investigation'' (see Preliminary Determination of Sales at Not Less Than Fair Value: Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Hong Kong (Thermostats from Hong Kong) (53 FR 50064, December 13, 1988) and Notice of Final Determination of Sales at Less Than Fair Value: Defrost Timers from Japan (59 FR 1928, January 13, 1994)). If the Department expanded the POI an additional six months, TAMSA's home market sales would be viable.

TAMSA argues that the Department's preference for the home market simply means that it should look first to home market prices, and only select alternatives when the home market is not viable. TAMSA asserts that the Department has already determined that the home market is not viable in its November 3, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford. *SKF USA, Inc.* v. *United States,* 762 F. Supp. 344, page 352 (CIT 1991) acknowledged that ''as home market sales are the statutorily preferred choice for comparison in FMV calculations, the ITA cannot use third country sales without first making a definitive determination that the home market is not viable'' (see also *U.H.F.C. Co.* v. *United States,* 916 F.2d 689, page 696 (Fed. Cir. 1990)).

TAMSA further asserts that the cases cited by the petitioner concern long-term contracts and U.S. and third country sales and do not involve the extension of the POI solely to change home market viability, thus, arguing that those cases do not apply to this investigation.

DOC Position

We agree with TAMSA. According to 19 CFR 353.42(b), the POI will normally include the month in which the petition is filed and the five months prior to the filing of the petition, but the Department has the discretion to examine any other period which it concludes is appropriate.

The Department has previously expanded the POI. In Thermostats from Hong Kong, the home market sales were

inadequate and the Department expanded the POI in order to base FMV on third country sales rather than on constructed value. In Defrost Timers from Japan, the Department extended the POI to include a long-term contract. However, the Department has never extended the POI to change the home market viability ratio.

This investigation is unlike Thermostats from Hong Kong and Defrost Timers from Japan because we have determined that sales to Saudi Arabia is the appropriate basis for calculating FMV and there are no sales made pursuant to long-term contracts.

According to 19 CFR 353.48(a), if the quantity of the subject merchandise sold in the home market is so small in relation to the quantity sold for exportation to third countries (normally less than five percent of the amount sold to third countries) that it is an inadequate basis for FMV, the Department will calculate FMV based on third country sales or constructed value.

We have verified TAMSA's reported home market and third country sales volumes and have determined that the home market is not viable during the POI because the home market sales were less than five percent of sales to countries other than the United States.

For these reasons, we are not extending the period of investigation.

Comment 6: Appropriate Financial Expense.

The petitioner argues that the 1994 financial statements were critically important to this investigation and TAMSA systematically withheld these statements from the Department. The petitioner further asserts that the 1994 financial statements were undeniably available at the time of verification. As proof of this, the petitioner submitted, with its case brief, TAMSA's 1994 financial statements filed with the Mexican securities oversight agency and the Mexico Stock Exchange prior to the completion of verification. The petitioner argues that TAMSA refused to provide 1994 financial statement information because it reflected considerably higher costs than the amounts reported in the submission which were based on 1993 results.

Therefore, the petitioner contends that the Department must use uncooperative BIA in this situation. The petitioner argues that as BIA the COP and CV interest expense should be based on the interest costs of 95 percent from TAMSA's 1994 consolidated financial statements without any adjustment for the extraordinary costs associated with the devaluation of the Mexican currency.

TAMSA asserts that it has fully cooperated with the Department's requests for financial statements. TAMSA refutes the Department's cost verification report, claiming that company officials did not state that 1994 financial statements would be available at a particular time. TAMSA notes that the unaudited, unconsolidated trial balance was presented at the cost verification. At the further manufacturing verification, TAMSA presented a press release which provided summarized unaudited 1994 financial results. Thus, TAMSA contends, it has provided accurate responses to the Department's requests. TAMSA argues that the Department should follow its practice and rely on the most recently available audited financial statements, which in this case would be the 1993 statements, to calculate financial and general and administrative (G&A) expenses. TAMSA notes that in the final determination of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from Thailand (Furfuryl Alcohol from Thailand) (60 FR 22557, May 8, 1995) the Department used the most recent fiscal year for which the respondent had complete and audited financial statements. TAMSA further argues that the dramatic devaluation in the Mexican currency reflected in the 1994 financial statements occurred well after the period of investigation and is not representative of the comparatively stable period experienced in 1993 and the first half of 1994. Finally, TAMSA believes that it would be arbitrary and unjustified to use BIA in this situation.

DOC Position

We agree, in part, with petitioner. In antidumping investigations, we require respondents to provide accurate responses to our requests for information. In this case, the record demonstrates that the Department requested TAMSA's 1994 financial statements. Although the financial statements were not available when TAMSA filed its initial responses to the Department's questionnaires, these statements did become available during the course of the investigation. Indeed, although unaudited, these financial statements were filed with the Mexican Securities Exchange. However, TAMSA failed to provide the 1994 financial data to the Department when it became available, even though the Department specifically requested the information at verification. We believe that a failure to be forthcoming with information during verification is a serious problem.

Section 776(c) of the Act states that the Department will use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required'' (see also 19 CFR 353.37). Accordingly, because TAMSA withheld information requested by the Department, the statute requires us to use BIA for this information.

As BIA, we calculated interest expense using TAMSA's financial statements for the first two quarters of 1994. The January—June 1994 financing expense is substantially higher than the 1993 amount, in part due to the fact that the Mexican peso lost approximately nine percent of its value during the POI. Our finding is adverse because the full effect of the change in the value of the currency that occurred during the POI is reflected in the cost of financing for the first two quarters of the fiscal year. Had it not been necessary to resort to BIA, our calculation methodology would have resulted in a lower financing expense.

However, contrary to petitioner's request, we have not calculated TAMSA's financial expense based on the annual statements for 1994 because (1) the sudden and severe devaluation in December 1994—a drop of over 50 percent in the value of the Mexican peso—makes TAMSA's annual financial results unrepresentative of the POI and severely distortive, and (2) the devaluation occurred well after the POI.

Thus, we reject TAMSA's request that we use 1993 financial data. This information is not the most current information available, is not indicative of the expenses incurred during the POI, and would reward the respondent for not fully cooperating in the investigation.

Finally, TAMSA's reliance on Furfuryl Alcohol from Thailand to support the use of financial expense from the 1993 audited financial statements is misplaced. In that case, respondents fully cooperated with respect to the Department's request for available information, unlike the situation in this investigation.

Comment 7: Allocation Methodology for Nonstandard Costs.

In its normal accounting system, TAMSA calculates, in total, the amount of the price variances, efficiency variance, total depreciation and other fixed costs. It does not normally allocate these costs to individual products. For financial statement purposes, TAMSA includes the total nonstandard costs in the cost of goods sold. For purposes of responding to the Department's questionnaire, TAMSA developed a methodology to allocate nonstandard costs to its submitted per unit COPs and

CVs based on machine time for a single process (the finishing line).

The petitioner argues that TAMSA's allocation methodology for variances, depreciation and other fixed costs (termed ''nonstandard'' costs) distorts actual production costs because it shifts overhead expenses to products which undergo more finishing. This allocation methodology may also shift costs to products purchased from Siderca S.A.I.C., a related entity, if TAMSA is finishing the Siderca-produced products. Furthermore, the relative finishing line time TAMSA used as the allocation basis for variances and fixed costs is the least accurate method for allocating these costs to specific products. The petitioner asserts that finishing costs are only a fraction of the costs incurred in other production processes. The differences resulting from the finishing process will have little or no relationship to product-specific cost differences in the other processes.

As a result, the petitioner argues that the Department should apply BIA. As BIA, the Department should allocate the costs on a per-ton basis over all production. The petitioner discounts the usage of standard costs as a basis for allocation since the major component of standard costs is materials.

TAMSA argues that machine time at the finishing line is the most appropriate basis for allocating nonstandard costs according to accounting theory. Production, and therefore costs, are dependent on the slowest machine in the entire production process. TAMSA asserts that the finishing line is the slowest process and argues that the alternative of allocating nonstandard costs on a per-ton basis ignores all differences in machine usage and physical differences between products. Similarly, it contends that allocating nonstandard costs based on standard costs would ignore the relationship of machine usage for physically different types of products.

DOC Position

We agree with the petitioner that TAMSA's allocation methodology for fixed costs and variances distorts actual production costs because it shifts overhead expenses to products which undergo more finishing. The basic premise that machine time can be a reasonable and appropriate allocation basis for depreciation costs is well substantiated in both accounting (Davidson & Weil, Handbook of Cost Accounting, Prentiĉe Hall, 1978) and Departmental practice (Final Determination of Sales at Less Than Fair Value; Steel Wire Rope from Korea (58 FR 11029, February 23, 1993)). However, TAMSA did not rely on total machine time as the basis for allocation. Instead, TAMSA based its allocation on the standard time for only one production step, the finishing line. Thus, TAMSA's allocation basis did not reflect the machine time for other processes performed. TAMSA's methodology allocated more than just depreciation expenses based on the finishing line time. It also allocated material and energy price variances, efficiency variance, and other fixed costs on the basis of standard finishing line. TAMSA's chosen allocation methodology ignored the cost drivers for the price variances, efficiency variance and other fixed costs. These costs are not driven by machine time, as they are more closely associated with material and transformation costs. For these reasons, machine time is not the appropriate allocation basis for costs other than depreciation.

The petitioner's recommendation of allocating nonstandard costs on a per-ton basis would allocate the same nonstandard cost to each ton produced. This type of allocation would not accurately reflect the processes needed to produce each product, or the differences in the machine time and labor hours for each product. Similarly, it does not capture the specific costs of the materials required to produce different products.

The petitioners argument against using standard cost as the allocation basis for the variances and fixed costs because a large part of the standard costs is material cost is unfounded. The variances being allocated include material price and material efficiency variances. Therefore, the appropriate cost driver for the material variances (materials) is included in the standard costs.

We have used total standard cost as the appropriate allocation basis for the nonstandard costs. Total standard cost factors in machine time, labor hours, direct and indirect material cost and usage, labor cost and usage, energy cost and usage, other variable costs, maintenance, and other services. Therefore, we revised the COP and CV to include nonstandard costs as a percent of total standard costs.

Comment 8: Calculation of G&A Expenses.

TAMSA submitted G&A expenses based upon 1993 financial statements. The petitioner argues that TAMSA should have used G&A expenses from its 1994 financial statements since they encompass the POI. Further, the petitioner argues that the Department should base G&A expenses on BIA because TAMSA has systematically withheld its 1994 consolidated financial statements from the Department (see complete discussion at Comment 6). As BIA, the petitioner recommends that the Department rely on the reported amounts in the company's consolidated 1994 financial statements which were filed with the Mexican securities oversight agency.

TAMSA refutes the petitioner's arguments saying it has fully cooperated with all Department requests. TAMSA asserts that the different format and form of the information filed on the public record with the U.S. and Mexican authorities and the time lag between publication in the United States and filing with the SEC has led to some confusion.

DOC Position

We agree, in part, with the petitioner that it is inappropriate to use the 1993 G&A expenses. (See DOC position regarding Comment 6.) We disagree with the petitioner, however, that BIA is appropriate because TAMSA provided us with the 1994 G&A information that the Department requested. As indicated in the questionnaire, it is the Department's standard practice to calculate G&A based on the financial statements of the producing company that most closely relates to the POI, which, in this investigation, is January 1, 1994 through June 30, 1994. Therefore, the appropriate financial statement for TAMSA's G&A calculation is TAMSA's unconsolidated 1994 financial statement. We used the 1994 G&A expenses from the unconsolidated producing entity.

All other comments concerning G&A are moot, as they concerned the calculation of G&A using the 1993 financial statements.

Comment 9: Depreciation Expenses.

The petitioner argues that TAMSA's reported depreciation expense was based on overstated useful lives and that TAMSA's appraised value of assets was less than the acquisition cost adjusted for inflation. Therefore, the petitioner argues that the submitted depreciation expense was understated. The petitioner contends that TAMSA's depreciation methodology is contradictory to U.S. practice and distorts the POI actual costs. The petitioner concludes that the Department should increase TAMSA's depreciation expense to reflect the difference between TAMSA's average useful life of all assets and its purported U.S. useful life.

TAMSA argues that its method of reporting depreciation expenses is consistent with Mexican GAAP. TAMSA argues that the petitioner has

not provided any evidence to support its assertion that Mexican GAAP distorts costs. The Department verified the asset values and useful lives at the cost verification and has accepted Mexican GAAP's treatment of assets in Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Administrative Review (Cooking Ware from Mexico)(60 FR 2378, January 9, 1995).

DOC Position

We agree with TAMSA. The Department has relied on the revaluations required by Mexican GAAP in other cases, such as Cooking Ware from Mexico. We made no adjustment for the useful life of the assets because there is no evidence that the lives used in the depreciation calculation were overstated. In fact, as reflected in the cost verification report, the Department reviewed the depreciation schedules and calculations and found them to be reasonable. Mexican GAAP requires an annual revaluation of assets. The annual revaluation was performed by an independent appraiser and it calculates the useful life remaining for depreciation expense calculation, and the valuation of the asset. Therefore, the petitioner's assertion that we should use the asset life as prescribed for U.S. income tax depreciation as a surrogate for the asset life determined by the independent appraiser is unfounded.

Comment 10: Periodic Maintenance and Shut-Down Costs.

The petitioner argues that TAMSA's reported costs fail to capture the variance associated with the actual shutdown costs.

The Department should increase the nonstandard costs for the difference between the POI efficiency variance and the entire year efficiency variance. It claims that, since the actual shutdown occurs in August, the appropriate efficiency variance is the annual variance, not the POI variance as used by TAMSA.

TAMSA argues that it properly captured the periodic maintenance and shut-down costs for the POI. TAMSA argues that its accrual for repair and maintenance in the POI was carefully established through a thorough analytical process over a series of months and was approved by plant engineers and management.

DOC Position

We agree with TAMSA. TAMSA accrues a monthly amount for the annual shutdown which occurs in August. The difference between the accrued shutdown expenses and the actual expenses was captured in the efficiency variance. There is no evidence on the record indicating any difference between the accrued and actual plant shutdown costs. The actual expenses for the annual shutdown could be either higher or lower than the accrued amount. The efficiency variance includes elements other than the difference between accrued and actual shutdown costs. It also reflects all other variances in efficiency. The petitioner's argument to use the annual efficiency variance to capture the variance in shutdown costs would have the effect of capturing other variances that did not relate to production in the POI.

Comment 11: CV Interest Offset.

The petitioner asserts that TAMSA improperly included raw materials and semi-finished products and non-customer accounts receivables in the CV interest offset. The petitioner argues that the Department should revise the CV interest offset for the final determination.

TAMSA did not comment on this issue.

DOC Position

We agree with the petitioner. TAMSA's calculation of the CV interest offset was in error. As part of the Department's normal methodology, we allow only finished goods inventory and customer accounts receivable as an offset to CV interest expense. This offset avoids double counting interest expense captured in the imputed inventory carrying cost and the imputed credit expense. We revised the CV financial expense ratio to reflect only the finished goods inventory and the customer accounts receivable as an offset.

Comment 12: Rental Payments in Further Manufacturing Costs.

The petitioner argues that TAMSA's related company which performs further manufacturing in the United States, TPT, reduced its general expenses by net rental income received from Siderca Corp. The petitioner contends that this is inappropriate and the income should be removed.

TAMSA disagrees with the petitioner's assertion and clarifies that the gross rental payments received by TPT are net rental income in excess of expenses. In addition, TAMSA argues that the rental income is directly offset by rent expenses reported on the books of Siderca Corp. TAMSA argues that the petitioner's request would overstate expenses by recognizing the rental expense as a selling expense and by not recognizing the offsetting rental revenue as a reduction to further manufacturing G&A.

DOC Position

We agree with TAMSA. The Department verified that the rental payments made by Siderca are reflected as a selling expense on its books. The depreciation, utilities, taxes, and other expenses associated with the rental property are reflected on TPT's books. If we disallowed the rental income offset, the expenses of the entities as a whole would be overstated.

Comment 13: Financial Expenses in Further Manufacturing Costs.

The petitioner argues that TAMSA failed to add financial expenses to the further manufacturing cost of unrelated companies. The petitioner argues that the consolidated interest expense of TAMSA should be applied to the amount charged to TAMSA by the unrelated further manufacturer.

TAMSA argues that it properly reported the amount charged by the unrelated further manufacturers. The fee it was charged includes an amount for financial expense, because it must be assumed that the unrelated further manufacturer charges an amount that would cover all of its costs, including financial costs. TAMSA also argues that it properly included the financial expenses of TIC and Siderca Corp. as selling expenses and TPT's financial expense as a further manufacturing cost on merchandise processed by TPT.

DOC Position

We agree with TAMSA. We verified that TAMSA included the amount charged by the unrelated further manufacturers in its submitted costs. This fee includes financing and G&A costs incurred by the unrelated further manufacturer. If we added TAMSA's financing costs to the costs reported for the unrelated company, we would be burdening an arm's-length transaction with inappropriate costs. For products further manufactured by TPT, TAMSA included TPT's G&A, and we added the consolidated parents financial expense, pursuant to the Department's practice (see Final Determination of Sales at Less Than Fair Value: New Minivans from Japan (57 FR 21937, May 26, 1992)).

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margins, as shown below for entries of OCTG from Mexico that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Tubos Acero de Mexico, S.A. ..	23.79
All Others	23.79

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15621 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–469–806]

Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Spain

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or William Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4162 or 482–0116, respectively.

Final Determination

We determine that oil country tubular goods (OCTG) from Spain are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination of sales at less than fair value in this investigation on January 26, 1995 (60 FR 6516, February 2, 1995), the following events have occurred. On February 8, 1995, (60 FR 8632, February 15, 1995) the Department postponed the final determination in accordance with section 735(a)(2) of the Act and 19 CFR 353.20(b)(1).

In March 1995, the Department conducted its sales and cost verifications of the respondent, Tubos Reunidos (''TR'') in Spain. Verification reports were issued in April and May 1995.

On May 9, 1995, the petitioners and TR submitted case briefs. Rebuttal briefs were submitted by both parties on May 16, 1995. On May 17, 1995, the Department held a public hearing.

Scope of the Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1994, through June 30, 1994.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Best Information Available (BIA)

We have determined that TR's questionnaire responses provide an inadequate basis for estimating dumping margins. At verification, we discovered significant omissions, discrepancies, and a large number of errors in TR's responses, as well as an overall lack of support for certain of TR's sales data. Instead of reporting the actual prices charged to the first unrelated U.S. customers, as requested by the Department, TR incorrectly reported the U.S. prices invoiced to its related subsidiary, and failed to provide adequate support documentation at verification for the actual prices invoiced to the U.S. customers. TR omitted reporting all charges in the U.S. market for freight, guarantee and return credits and did not provide adequate support documentation at verification for these charges. TR also omitted reporting the sale of certain OCTG products, and provided no evidence at verification that the sales of these products were not covered by the scope of this investigation. In its responses, TR stated that its home market was not viable with respect to the sale of the

subject merchandise. However, the sales of certain OCTG products discovered at verification indicate a viable home market, thereby making the use of a third country market, instead of the home market as a basis for determining foreign market value, questionable. Finally, in addition to the significant omissions, the charges and adjustments reported by TR were replete with discrepancies and errors, making it impossible for the Department to conduct a complete verification of TR's responses.

In order to determine whether sales are made in the United States at less than fair value, it is critical that the Department be provided with accurate and reliable sales information to be used in its analysis. Because of the inaccuracies discovered in TR's submitted information, the Department was unable to verify that information, as required by section 776(1) of the Act. That section of the Act provides that, if the Department is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted, it shall use BIA as the basis for its determination. Consequently, we have based this determination on BIA.

In determining what rate to use as BIA, the Department follows a two-tiered BIA methodology, whereby the Department may impose the most adverse rate upon those respondents who refuse to cooperate or otherwise impede the proceeding, or assign a lower rate for those respondents who have cooperated in an investigation. When a company is determined to be uncooperative, it has been the Department's practice to apply the highest rate alleged in the petition as BIA. When a company is determined to be cooperative, it has been the Department's practice to apply as BIA the higher of: (1) The average of the margins in the petition; or (2) the calculated margin for another firm for the same class or kind of merchandise from the same country. This methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States,* Slip Op. 93–1049 (Fed Cir. June 22, 1993); see also *Krupp Stahl AG. et al* v. *the United States,* Slip Op. 93–84 (CIT May 26, 1993).)

In spite of the numerous errors in its response, we have determined that TR was cooperative during this proceeding and have assigned to it a cooperative BIA margin of 11.95 percent, based on the average of the margins alleged in the petition. For further information on the use of a cooperative BIA margin, see the ''DOC Position'' section of this notice.

Verification

As provided in section 776(b) of the Act, we attempted to verify TR's information for purposes of the final determination. However, given the significant discrepancies encountered at verification, the use of the respondent's information in the final determination was not possible.

Interested Party Comments

Comment 1—Use of Total Uncooperative BIA

The petitioners maintain that because of the gravity of the mistakes made by TR, the Department should assign to TR an uncooperative BIA margin of 18.6 percent. They point to the verification report which shows that TR failed to report the actual price as invoiced to the first unrelated U.S. customer, and note that many other discrepancies and omissions were found by the Department at verification.

TR maintains that the record clearly reflects that it has cooperated fully with the Department in this investigation, submitting hundreds of pages of responses to the Department questionnaires and supplemental questionnaires within the time allowed. According to the respondent, due to the tight time constraints of antidumping investigations, a number of errors have been made, many of which came to light in preparing documentation for verification. TR maintains that it promptly and fully disclosed the errors to the Department as soon as the respondent became aware of such errors.

Moreover, TR contends that only following receipt of the verification outline on March 7, 1995, did TR's officials, in the course of preparing the payment documentation for verification, see the need to refer to the actual invoices re-issued by TR America, inclusive of the inland freight. TR maintains that, even if it had realized the need earlier to report to the Department the actual invoiced prices inclusive of the U.S. inland freight expenses, it would not have changed the way in which the sales listing was ultimately prepared. TR states that, in order to be able to provide a timely response to the Department's questionnaire, it was necessary to report sales data as it was reflected in TR's computer in Spain. Furthermore, TR argues that it was appropriate not to report sales of class ''C'' OCTG and couplings stock because these products are not covered in the scope of the investigation. Finally, TR claims that the errors and discrepancies discovered for the remaining sales data are insignificant and offset each other. Therefore, the respondent requests that the Department use the information gathered at verification as a basis for TR's margin calculation in the final determination.

DOC Position

As discussed in the BIA section of this notice, the discrepancies found in TR's response render it unusable. The Department, however, disagrees with the petitioners on assigning TR a non-cooperative BIA margin. Although much of the information found to be deficient could not be remedied at verification, TR made a good faith effort by responding to the Department's questionnaire, by submitting a verifiable cost of production questionnaire response, and by attempting to cooperate at the sales verification. We also believe that the inaccuracy of TR's responses is the result of inadvertent errors in its reporting, and poor verification preparation, not a lack of cooperation on the part of the respondent. Thus, we believe that assigning TR a cooperative BIA margin is appropriate.

Because this final determination is based on BIA, all other comments are moot.

Suspension of Liquidation

Pursuant to the results of this final determination, we will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below for entries of OCTG from Spain that are entered, or withdrawn from warehouse, for consumption from the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Tubos Reunidos S.A	11.95
All Others	11.95

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 75 days of the publication of this notice, in accordance with section 735(b)(3) of the Act. If the ITC determines that material injury or threat of material injury does not exist,

the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: June 19, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15622 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–475–817]

Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods (''OCTG'') From Italy

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

EFFECTIVE DATE: June 28, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Wilkniss, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588.

Final Determination

The Department determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (''the Act''), are being provided to manufacturers, producers, or exporters in Italy of OCTG. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations), which has been withdrawn, are provided solely for further explanation of the Department's CVD practice.

Case History

Since the publication of the preliminary determination in the **Federal Register** (59 FR 61870, December 2, 1994), the following events have occurred.

On December 23, 1994, we aligned the final countervailing duty determination in this investigation with the final determination in the companion antidumping investigation of OCTG from Italy (59 FR 66295).

We conducted verification of the responses submitted on behalf of the Government of Italy (''GOI''), and Dalmine S.p.A. (''Dalmine'') from January 22 through January 27, 1995.

On April 19, 1995, we postponed the final determination in this case to June 19, 1995 (60 FR 19571).

On May 2, 1995 we received a case brief from respondent. Neither petitioner nor respondent requested a hearing in this investigation.

Scope of Investigation

For purposes of this investigation, OCTG are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

After the publication of the preliminary determination, we found that HTSUS item numbers 7304.20.10.00, 7304.20.20.00, 7304.20.30.00, 7304.20.40.00, 7304.20.50.10, 7304.20.50.50, 7304.20.60.10, 7304.20.60.50, and 7304.20.80.00 were no longer valid HTSUS item numbers. Accordingly, these numbers have been deleted from the scope definition.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Injury Test

Because Italy is a ''country under the Agreement'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (''ITC'') is required to determine whether imports of OCTG from Italy materially injure, or threaten material injury to, a U.S. industry. On August 3, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Italy of the subject merchandise (59 FR 42286, August 17, 1994).

Corporate History of Respondent Dalmine

Prior to its liquidation in 1988, Finsider S.p.A. (''Finsider'') was the holding company for all state-owned steel companies in Italy, including Dalmine. Dalmine was an operating company wholly owned by Finsider. After Finsider's liquidation, a new government-owned holding company, ILVA S.p.A. (''ILVA''), was created. ILVA took over the former Finsider companies, among them Dalmine, which became a subsidiary of ILVA in 1989 when Finsider's shareholding in Dalmine was transferred to ILVA.

Between 1990 and 1993, Dalmine itself was radically restructured. Dalmine became a financial holding company, with industrial, trading, and service shareholdings. As part of its restructuring, Dalmine made several asset purchases, sold two of its subsidiaries to private parties, and closed several manufacturing facilities. As of December 31, 1993, the Dalmine Group consisted of a holding company (Dalmine S.p.A.), four wholly-owned, and one majority-owned, manufacturing

companies, and a number of sales and service subsidiaries.

During the POI, ILVA was owned by the Istituto per la Ricostruzione Industriale (''IRI''), a holding company which was wholly-owned by the GOI.

Spin-offs

In its questionnaire response, Dalmine reported that between 1990 and 1991, as part of its overall restructuring process, the company twice sold ''productive units'' to private buyers. According to Dalmine, these sales involved facilities that do not produce the subject merchandise. In the preliminary determination, we determined that the amount of potentially spun-off benefits was insignificant. We did not learn anything at verification that would lead us to reverse this determination. Therefore, we have not reduced the subsidies allocated to sales of the subject merchandise. (See Final Concurrence Memorandum dated June 19, 1995).

Equityworthiness

Petitioner has alleged that Dalmine was unequityworthy in 1989, the year it received an indirect equity infusion from the GOI, through ILVA S.p.A. (''ILVA''), and that the equity infusion was, therefore, inconsistent with commercial considerations.

In accordance with § 355.44(e)(1) of the Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (''Proposed Regulations''), 54 FR 23366, May 31, 1989)), we preliminarily determined that ILVA's purchase of Dalmine's shares was consistent with commercial considerations because Dalmine provided evidence that private investors, unrelated to Dalmine or the GOI, purchased a significant percentage of the 1989 equity offering, on the same terms as ILVA. We did not learn anything at verification that would lead us to reverse this finding. Therefore, the Department determines that ILVA's purchase of Dalmine's shares was consistent with commercial considerations.

Creditworthiness

Petitioner has alleged that Dalmine was uncreditworthy in every year between 1979 and 1993. In accordance with § 355.44(b)(6)(i) of the *Proposed Regulations*, we preliminarily determined that Dalmine was creditworthy from 1979 to 1993. In making this determination we examined Dalmine's current, quick, times interest earned, and debt-to-equity ratios, in addition to its profit margin. Specifically, although a number of the financial indicators are weak for certain years, none of the indicators are weak over the medium or long term, and when examined together on a yearly basis, the indicators support the determination that Dalmine was creditworthy in every year examined. (See also Creditworthy Memorandum, November 18, 1994). In addition, Dalmine received long-term, commercial loans from private lenders in several of the years examined.

We did not learn anything new at verification that would lead us to reconsider our preliminary determination. Therefore, we continue to find that Dalmine was creditworthy from 1979 to 1993.

Benchmarks and Discount Rates

Dalmine did not take out any long-term, fixed-rate, lire-denominated loans in any of the years of the government loans under investigation. Therefore, in accordance with § 355.44(b)(4) of the *Proposed Regulations*, in our preliminary determination we used, as the benchmark interest rate, the Bank of Italy reference rate which was determined in Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy (''Certain Steel from Italy''), 58 FR, 37327 (July 9, 1993), to be both the best approximation of the cost of long-term borrowing in Italy and the only long-term fixed interest rate commonly available in Italy. We also used this rate as the discount rate for allocating over time the benefit from non-recurring grants for the same reasons as explained in Final Affirmative Countervailing Duty Determination: Certain Steel Products from Spain, 58 FR 37374, 37376 (July 9, 1993).

At verification, we learned that the Bank of Italy reference rate reflects the cost for Italian banks to borrow long-term funds. Therefore, the reference rate does not incorporate the mark-up a bank would charge a corporate client when making a long-term loan. Long-term corporate interest rate data is not available in Italy. Accordingly, we have adjusted the reference rate used in the preliminary determination upward to reflect the mark-up an Italian bank would charge a corporate customer.

In order to approximate this mark-up, we calculated the difference between the average short-term corporate borrowing rate in Italy and the average interest rate on short-term Italian government debt, for each year in which Dalmine received long-term lire loans or non-recurring grants from the government. We then added this mark-up to the Italian reference rate used in the preliminary determination to approximate an average long-term corporate benchmark interest rate. We also used these rates as the discount rates for allocating over time the benefit from non-recurring grants. See Certain Steel Products from Spain, 58 FR at 37376.

For long-term loans denominated in other currencies, we used, as the benchmark interest rate, an average long-term fixed interest rate for loans denominated in the same currency. (See section E—Article 54 Loans below.)

Calculation Methodology

For purposes of this determination, the period for which we are measuring subsidies (the POI) is calendar year 1993. In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the benefit attributable to the POI for each countervailable program, using the methodologies described in each program section below. For each program, we then divided the benefit attributable to Dalmine in the POI by Dalmine's total sales revenue, as none of the programs was limited to either certain subsidiaries or products of Dalmine. Next, we added the benefits for all programs, including the benefits for programs which were not allocated over time, to arrive at Dalmine's total subsidy rate. Because Dalmine is the only respondent company in this investigation, this rate is also the country-wide rate.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and comments by interested parties, we determine the following:

I. Programs Determined to be Countervailable

A. Benefits Provided under Law 675/77

Law 675/77 was enacted to bring about restructuring and reconversion in the following industrial sectors: (1) Electronic technology; (2) the manufacturing industry; (3) the agro-food industry; (4) the chemical industry; (5) the steel industry; (6) the pulp and paper industry; (7) the fashion sector; and (8) the automobile and aviation sectors. Law 675/77 also sought to promote optimal exploitation of energy resources, and ecological and environmental recovery.

A primary goal of this legislation was to bring all government industrial assistance programs under a single law in order to develop a system to replace indiscriminate and random public intervention by the GOI. Other goals

were (1) to reorganize and develop the industrial sector as a whole; (2) to increase employment in the South; and (3) to maintain employment in depressed areas. Among other measures taken, the Interministerial Committee for the Coordination of Industrial Policy (''CIPI'') was created as a result of Law 675/77. CIPI approves individual projects in each of the industrial sectors listed above.

Six main programs were provided under Law 675/77: (1) Interest contributions on bank loans; (2) mortgage loans provided by the Ministry of Industry at subsidized interest rates; (3) interest contributions on funds raised by bond issues; (4) capital grants for projects in the South; (5) personnel retraining grants; and (6) VAT reductions on purchases of capital goods by companies in the South. Dalmine reported that it received benefits under items (1), (2), and (5) above.

In its response, the GOI asserts that the steel and automobile industries did not receive a ''disproportionate'' share of benefits associated with interest contributions when the extent of investment in those industries is compared to the extent of investment in other industries. However, in keeping with past practice, we did not consider the level of investment in the the individual industries receiving benefits under Law 675/77. Instead, we followed the analysis outlined in Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy (Grain-Oriented Electrical Steel), 59 FR 18357 (April 18, 1994), and Final Affirmative Countervailing Duty Determination: Certain Steel Products from Brazil, 58 FR 37295, 37295 (July 9, 1993), of comparing the share of benefits received by the steel industry to the collective share of benefits provided to other users of the programs.

According to the information provided by the GOI, of the eight industrial sectors eligible for benefits under Law 675/77, the two dominant users of the interest contribution program were (1) the Italian auto industry which accounted for 34 percent of the benefits, and (2) the Italian steel industry which accounted for 33 percent of the benefits. Likewise, with respect to the mortgage loans, the two dominant users were the auto and steel industries which received 45 percent and 31 percent of the benefits, respectively.

In light of the above evidence, we determine that the steel industry was a dominant user of both the interest contribution and the mortgage loan programs under Law 675/77. (See section 355.43(b)(2)(iii) of the Proposed Regulations). Therefore, we determine that benefits received by Dalmine under these programs are being provided to a specific enterprise or industry or group of enterprises or industries. On this basis, we find Law 675/77 financing to be countervailable to the extent that it is granted on terms inconsistent with commercial considerations.

Under the interest contribution program, Italian commercial banks provided loans to industries designated under Law 675/77. The interest owed by the recipient companies was partially offset by interest contributions from the GOI. Dalmine received bank loans with interest contributions under Law 675/77 which were outstanding in the POI.

Because the GOI interest contributions were automatically available when the loans were taken out, we consider the contributions to constitute reductions in the interest rates charged, rather than grants (see Certain Steel from Italy at 37335).

At verification, we established that Dalmine had repaid each of the loans it received under this program in June 1994. We further found that Dalmine had not yet received a portion of the interest contributions originally owed to it by the GOI under this program, due to delays in GOI approval of several Dalmine internal asset transfers. Finally, we established that Dalmine had paid interest on each of the loans during the loan grace periods, contrary to what Dalmine reported in its questionnaire responses.

Dalmine argues that the GOI terminated the subsidized loan portion of this program in 1982, and that Dalmine repaid each of the loans in June 1994, after the POI, but before the publication of the preliminary determination. Consequently, Dalmine contends, no further benefits can accrue to Dalmine under this program. Therefore, according to Dalmine, the Department should, in accordance with the Department's policy to take program-wide changes into account in setting the duty deposit rate, set Dalmine's deposit rate for this program to zero.

Contrary to Dalmine's assertion, we determine that the termination of the subsidized loan portion of this program does not constitute a program-wide change as defined in § 355.50(b)(1) of the *Proposed Regulations*. Specifically, although Dalmine has repaid the loans it received under the program, there could be other Italian companies with loans that are still outstanding. Therefore, despite termination of the program in 1982, there may still be residual benefits under the program. Under our program-wide change policy, the change at issue cannot be limited to individual firms. Consequently, we determine that the ''termination'' of the subsidized loan portion of this program does not constitute a program-wide change. See Final Affirmative Countervailing Duty Determination and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Argentina (Argentine Pipe), 53 FR 37619 (September 27, 1988); § 355.50(b)(1) of the *Proposed Regulations*.

Alternatively, Dalmine claims that the Department should recalculate the benefits under this program to reflect the delayed receipt of GOI interest contributions, as well as Dalmine's payment of grace period interest.

With respect to the grace period, we have adjusted our calculations to reflect that Dalmine paid interest during that time, as established at verification. However, we are treating the interest contributions as countervailable on the date Dalmine made the corresponding interest payments, despite any delay in receipt by Dalmine. This is because Dalmine's entitlement to the interest contributions was automatic when it made the interest payments. Thus, we find, for purposes of benefit calculation, that the interest contributions were received at the time the interest payments were made. See Steel Wire Nails from New Zealand, 52 FR 37196 (1987).

Under the mortgage loan program, the GOI provides long-term loans at subsidized interest rates. Dalmine received financing under this program which was outstanding in the POI.

To determine whether these programs conferred a benefit, we compared the effective interest rate paid by Dalmine to the benchmark interest rate, discussed above. Based on this comparison, we determine that the financing provided under these programs is inconsistent with commercial considerations, i.e., on terms more favorable than the benchmark financing.

To calculate the benefit from these programs, we used our standard long-term loan methodology as described in § 355.49(c)(1) of the *Proposed Regulations*. We then divided the benefit allocated to the POI for each program by Dalmine's total sales in 1993. On this basis, we determine the net subsidy from these programs to be 0.46 percent ad valorem for all manufacturers, producers, and exporters in Italy of the subject merchandise.

With respect to retraining grants provided to Dalmine under Law 675/77, it is the Department's practice to treat

training benefits as recurring grants. (See Certain Steel General Issues Appendix at 37226). Since the only grant reported under this program was received by Dalmine in 1986, any benefit to Dalmine as a result of this grant cannot be attributed to the POI. Therefore, we determine that retraining benefits provided under Law 675/77 conferred no benefit to Dalmine during the POI.

B. Grants Under Law 193/84

According to the GOI, Articles 2, 3, and 4 of Law 193/84 provide for subsidies to close steel plants. As stated in Art. 20 of Law N. 46 of 17/2/1982, steel enterprises, including enterprises producing seamless pipes, welded pipes, conduits and welded pipes for water and gas, are the recipients of these subsidies. As benefits under this program are limited to the steel industry, we determine that Law 193/84 is *de jure* specific and, therefore, countervailable.

At verification, we found that Dalmine received an additional benefit under this program not reported in its questionnaire responses. We have included this additional benefit in our calculation of the benefits received by Dalmine under this program.

To calculate the benefit during the POI, we used our standard grant methodology (see § 355.49(b) of the Proposed Regulations). We then divided the benefits attributable to Dalmine under Law 193/84 in the POI by Dalmine's total sales. On this basis, we determine the estimated net subsidy to be 0.81 percent *ad valorem* for all manufacturers, producers, and exporters in Italy of the subject merchandise.

C. Exchange Rate Guarantee Program

This program, which was enacted by Law 796/76, provides exchange rate guarantees on foreign currency loans from the European Coal and Steel Community (''ECSC'') and The Council of European Resettlement Fund (''CER''). Under the program, repayment amounts are calculated by reference to the exchange rate in effect at the time the loan is agreed upon. The program sets a ceiling and a floor on repayment to limit the effect on the borrower of exchange rate changes over time. For example, if the lire depreciates five percent against the DM (the currency in which the loan is taken out), borrowers would normally find that they would have to repay five percent more (in lire terms). However, under the Exchange Rate Guarantee Program, the ceiling would act to limit the increased repayment amount to two percent. There is also a floor in the program which would apply if the lire appreciated against the DM. The floor would limit any windfall to the borrower.

In Grain-Oriented Electrical Steel, the Department found this program to be not countervailable because of incomplete information regarding the specificity of the program. The Department stated that, because the determination was reached while lacking certain important information, the finding of non-countervailability would not carry over to future investigations.

In this investigation, information provided by the GOI shows that the steel industry received 25% of the benefits under the program. Furthermore, at verification, we found that in the years Dalmine took out loans on which it received exchange rate guarantees under this program, the steel industry received virtually all the benefits under the program. Based on this information, the Department determines that the steel industry was a dominant user of exchange rate guarantees under Law 796/76 and, thus, that benefits received by Dalmine under this law are being provided to a specific enterprise or industry or group of enterprises or industries. (*See* § 355.43(b)(2)(iii) of the *Proposed Regulations*). Therefore, we determine that the exchange rate guarantees offered under the program are countervailable to the extent they are provided on terms inconsistent with commercial considerations.

Dalmine provided information that it could have purchased an exchange rate guarantee from commercial sources. However, Dalmine's information pertained to 1993, not to the period when the government guarantees were provided. The GOI's response indicates that commercial exchange rate guarantees were not available in 1986, the year in which the loans and the guarantees were received. Therefore, we determine the benefit to be the total amount of payments to Dalmine made during the POI by the GOI. (Because the amount the government will pay in any given year will not be known until that year, benefits can only be calculated on a year-by-year basis.) We divided the GOI's payments in 1993 by Dalmine's 1993 total sales. On this basis, we determine the estimated net subsidy from this program to be 0.20 percent ad valorem for all manufacturers, producers, and exporters in Italy of the subject merchandise.

II. Programs Determined To Be Not Countervailable

A. 1988/89 Equity Infusion

In November 1989, Dalmine completed an equity rights offering which allowed existing shareholders to purchase 7 new shares for every 10 shares they already owned. The new shares were offered at a price of LIT 300 per share. At that time, ILVA owned 81.7 percent of Dalmine's equity, with the remaining 18.3 percent owned by private investors. Pursuant to the rights offering, ILVA subscribed to its full allotment of the new shares issued. The remainder of the new shares were purchased by private shareholders. All shares were purchased at LIT 300 per share.

Petitioner argues that, although Dalmine's shares were nominally publicly traded, the vast majority of Dalmine shares were indirectly owned by the GOI and, therefore, shares were not purchased in adequate volume by private investors to establish a valid benchmark. Specifically, petitioner contends that, in 1991, ILVA owned 99.9 percent of Dalmine and, therefore, Dalmine's shares were in fact not publicly traded. Consequently, because essentially no private purchases were being made, the market price at the time of the equity infusion cannot serve as a valid benchmark. Furthermore, petitioner asserts that it is highly likely that the remaining shares not purchased by ILVA were purchased indirectly by the GOI through other holding companies.

In response to our questionnaire, Dalmine provided a list of all purchasers of shares in the 1989 offering. There was no evidence to indicate that the shares not purchased by ILVA were purchased by other government controlled or owned entities, as petitioner suggests. Moreover, the extent of ILVA's ownership in 1991 is not relevant to the choice of a benchmark for the equity investment in 1989.

Therefore, in our preliminarily determination, we determined that, because 18.3 percent of the equity infusion was purchased by private shareholders, the sale of these shares provides the market-determined price for Dalmine's equity. Furthermore, in accordance with § 355.44(e)(1) of the Department's *Proposed Regulations*, we preliminarily determined that the equity infusion is not countervailable because the market-determined price for equity purchased from Dalmine is not less than the price paid by ILVA for the same form of equity. We did not learn anything at verification that would lead

us to reconsider our preliminary determination. Therefore, we continue to find that the equity infusion is not countervailable.

B. European Social Fund (''ESF'') Grants

The ESF was established by the 1957 European Economic Community Treaty to increase employment and help raise worker living standards.

As described in Grain-Oriented Electrical Steel, the ESF receives its funds from the EC's general budget of which the main revenue sources are customs duties, agricultural levies, value-added taxes collected by the member states, and other member state contributions.

The member states are responsible for selecting the projects to be funded by the EC. The EC then disburses the grants to the member states which manage the funds and implement the projects. According to the EC, ESF grants are available to (1) people over 25 who have been unemployed for more than 12 months; (2) people under 25 who have reached the minimum school-leaving age and who are seeking a job; and (3) certain workers in rural areas and regions characterized by industrial decline or lagging development.

The GOI has stated that the ESF grants received by Italy have been used for vocational training. Certain regions in the South are also eligible for private sector re-entry and retraining schemes. Since 1990, the vocational training grants have been available to unemployed youths and long-term unemployed adults all over Italy, according to the GOI. Before 1990, however, the GOI gave preference to certain regions in Italy.

In Grain-Oriented Electrical Steel, we determined that this program was not regionally specific and not otherwise limited to a specific enterprise or industry, or group of enterprises or industries. Furthermore, we noted that to the extent there is a regional preference (*i.e.*, southern Italy) in the distribution of ESF benefits, it has not resulted in a countervailable benefit to the production of the subject merchandise, which is produced in northern Italy.

Information provided by the GOI in this investigation is consistent with the information provided in Grain-Oriented Electrical Steel. Therefore, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore, is not countervailable.

C. ECSC Article 54 Loans

Under Article 54 of the 1951 ECSC Treaty, the European Commission provides loans directly to iron and steel companies for modernization and the purchase of new equipment. The loans finance up to 50 percent of an investment project. The remaining financing needs must be met from other sources. The Article 54 loan program is financed by loans taken by the Commission, which are then re-lent to iron and steel companies in the member states at a slightly higher interest rate than that at which the Commission obtained them.

Consistent with the Department's finding in Grain-Oriented Electrical Steel, we determine that this program is limited to the iron and steel industry. As a result, loans under this program are specific.

Of the Article 54 loans Dalmine had outstanding during the POI, some were denominated in U.S. dollars and others were in Dutch guilders (''NLG''). To determine whether the loans were provided on terms inconsistent with commercial considerations, we used the benchmark interest rates for the currencies in which the loans were denominated. That is, for the U.S. dollar loans we used the average interest rate on long-term fixed-rate U.S. dollar loans obtained in the United States, as reported by the Federal Reserve. For the NLG denominated loan, we used the average long-term bond rate for private borrowers in the Netherlands, as reported by the Organization for Economic Cooperation and Development (''OECD'').

Because the interest rates paid on Dalmine's Article 54 loans are higher than the benchmark interest rates, the Department determines that loans provided under this program are not inconsistent with commercial considerations and, therefore, not countervailable.

D. 1989 Provisional Payment in Connection with 1989 Equity Infusion

In March 1989, ILVA made a payment to Dalmine in anticipation of purchasing new shares in Dalmine. The payment was provisional in nature because EC authorization of the capital increase was necessary and, if authorization was not granted, the money would have been repaid to ILVA. The capital increase was not finalized until November 1989, due to delays in EC approval. At that time, the payment became equity capital.

Consistent with the Department's position in Grain-Oriented Electrical Steel, we determine that the funds provided by ILVA to Dalmine are countervailable.

During the period March-November 1989, Dalmine had use of the money and paid no interest on it. Therefore, we have treated the funds provided by ILVA to Dalmine as an interest-free short-term loan from March 1989 to November 1989.

Because any benefit from this interest-free loan would be allocable entirely to 1989, no benefit is attributable to the POI.

III. Programs Determined To Be Not Used

We established at verification that the following programs were not used during the POI.

1. *Preferential IMI Export Financing Under Law 227/77.*
2. *Preferential Insurance Under Law 227/77.*
3. *Retraining Grants under Law 181/89.*
4. *Benefits under ECSC Article 56.*

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of OCTG from Italy, which were entered or withdrawn from warehouse for consumption, on or after December 2, 1994, the date our preliminary determination was published in the **Federal Register**. This final countervailing duty determination was aligned with the final antidumping duty determination of OCTG from Italy, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the GATT subsidies Code, provisional measures cannot be imposed for more than 120 days without a final affirmative determination of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 1, 1995, but to continue the suspension of liquidation

of all entries, or withdrawals from warehouse, for consumption of the subject merchandise between November 28, 1994, and March 31, 1995. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated below.

OCTG

Country-Wide *Ad Valorem* Rate 1.47 percent

ITC Notification

In accordance with section 705(c) of the Act, we have notified the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury does exist, the Department will issue a countervailing duty order.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act and 19 CFR 355.20(a)(4).

Dated: June 29, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–15623 Filed 6–27–95; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Wednesday
June 28, 1995

Part V

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 400

Refugee Resettlement Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

45 CFR Part 400

Refugee Resettlement Program: Requirements for Employability Services, Job Search, and Employment; Refugee Medical Assistance; Refugee Social Services; Targeted Assistance Services; and Federal Funding for Administrative Costs

AGENCY: Administration for Children and Families (ACF), Office of Refugee Resettlement, HHS.

ACTION: Final rule.

SUMMARY: This rule amends or clarifies current requirements governing employability services, job search, employment, refugee medical assistance, social services, and Federal funding for State administrative costs and would establish requirements for the targeted assistance program.

A proposed rule was published in the **Federal Register** on August 12, 1994 (59 FR 41417). Some changes have been made and clarifications provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade S.W., 6th Floor, Washington, D.C. 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401–9253.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act (INA) to create a domestic refugee resettlement program to provide assistance and services to refugees resettling in the United States. With the enactment of this legislation, the Office of Refugee Resettlement (ORR) issued a series of regulations, at 45 CFR Part 400, to establish comprehensive requirements for a State-administered Refugee Resettlement Program (RRP), beginning with the publication on September 9, 1980 (45 FR 59318) of a regulation governing State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841); grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures, published January 30, 1986 (51 FR 3904); and cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463).

Discussion of Changes

The changes made in this final regulation, as compared with the proposed rule published on August 12, 1994, are as follows:

1. The proposal to limit the definition of case management to the referral and tracking of refugee participation in employment-related services only has been withdrawn.

2. Section 400.104 has been revised to allow a refugee medical assistance (RMA) recipient who becomes employed to continue to receive RMA for the full time-eligibility period, regardless of whether the recipient obtains private medical coverage, as long as the RMA payment is reduced by the amount of the third party payment.

3. Section 400.145 has been revised to more clearly state that refugee women must have the same opportunities as men to participate in all services funded under the refugee program, including job placement services.

4. The eligibility period for social services has been changed from the proposed 36 months to 60 months, consistent with the eligibility period for targeted assistance. In addition, referral and interpreter services are exempted from the time-limitation in both social services and targeted assistance.

5. The proposed revision to § 400.155(f) has been withdrawn; translation and interpreter services will continue to be allowable regardless of whether such services are available from another source.

6. Section 400.156(d) has been revised to require the provision of refugee-specific services designed to meet refugee needs in lieu of requiring a separate refugee-specific service system in which refugees are the only client group served.

7. We have added a provision under § 400.156 which requires the development of a family self-sufficiency plan for any refugee who participates in refugee program-funded employment-related services.

8. We have added language to § 400.301 which establishes that a replacement designee must adhere to the same regulations that apply to a State-administered program, with the exception of certain specified provisions.

Description of the Regulation

This rule clarifies some current policies, amends others, and sets forth regulatory requirements for the targeted assistance program (TAP).

In recent years, annual refugee admissions have been high, resulting in an expanding pool of refugees in need of services. As of September 30, 1993, 1.6 million refugees had been resettled in the U.S. since 1975. All of these refugees, with the exception of those who have become U.S. citizens, are eligible to receive refugee program services. At the same time, the level of funds appropriated for services has remained essentially unchanged, making it difficult to serve all refugees in need of services with available resources. It is not uncommon, for example, for English language training classes, funded by the refugee program, to have waiting lists so that refugees who arrive in the country are not able to access English language training without a delay. Nine major States have indicated that there are currently waiting lists for refugee services, especially for English language training, in their States.

We believe the increased demand for services makes it necessary to sharpen the program's priorities. Resources in the refugee program are no longer sufficient to provide the level of services needed to assist refugees for an open-ended period of time to become self-sufficient. We have learned from experience in the refugee program that the greatest impact that services can have on a refugee's social adjustment and economic well-being occurs during a refugee's initial years in the United States. These initial services often define a refugee's future experience.

Findings from several studies indicate that comprehensive services, provided soon after a refugee's arrival in the U.S., increase the likelihood of early employment. Under commission from ORR in 1992, Dr. Robert L. Bach, in an examination of data from the Oregon Refugee Early Employment Project (REEP), found that refugees who received job services or pre-employment training in the first 90 days reduced the time to their initial job by almost two months. Dr. Bach's analysis indicated that each job service provided in the first 90 days increased the probability of employment by three percent. A study of the Oregon REEP, conducted by the Refugee Policy Group (RPG) and published in 1989, found that REEP set up client/caseworker ratios that permitted a staff-intensive approach early in the resettlement experience, an element which in large part, according

to RPG, was crucial to REEP's achievement of earlier employment. Similarly, performance reported for the first year of the United States Catholic Conference (USCC) Wilson/Fish project in San Diego indicated that the project was able to reduce the average length of time on cash assistance by over two months through the provision of early comprehensive services aimed at employment.

After the initial years, we believe the effect of services on the achievement of economic self-support diminishes significantly. A report, entitled ''Progress Toward Economic Self-Sufficiency Among Southeast Asian Refugees'', prepared for ORR in July 1989 by Dr. Robert L. Bach and Rita Argiros, presented findings, based on an analysis of data from the ORR Annual Survey of Southeast Asian Refugees, which underlined the importance of service interventions in the first few years. Bach and Argiros found that the longer a refugee remains out of the labor force, the less likely he or she is to begin to search for a job or find a job in a subsequent year. The most significant move into the labor force occurs in the first and second years, followed by a steady decline in the probability of entering the labor force for those who delayed their initial job search.

We believe it is important, therefore, to target refugee program resources on the provision of comprehensive refugee-specific services to refugees during their first few years of resettlement in order to provide new refugees with the best foundation for economic independence in the future. We believe that after this initial period of special assistance, refugees should be treated like other U.S. residents and have access to the same assistance and service programs that are available to other eligible populations. Thus we have decided to limit service eligibility for refugee social services to refugees who have been in the U.S. 60 months (5 years) or less, effective October 1, 1995.

Similarly, service eligibility for the targeted assistance program will be limited to refugees who have been in the U.S. 60 months or less, effective on the same date. The 5-year limitation on service eligibility is consistent with the 5-year U.S. residency requirement for U.S. citizenship. Once refugees become U.S. citizens, they are no longer eligible for services under the refugee program.

In regard to the provision of refugee social services and targeted assistance, we believe that States and local entities should be given greater flexibility to design appropriate services to fit local refugee needs. The program's emphasis on the provision of employment services to achieve economic self-support, however, will remain. However, we are eliminating the job search requirements currently contained in § 400.80 and the requirement contained in § 400.146 that requires a State to use at least 85 percent of its social service grants to provide employability services if the State's welfare dependency rate is 55 percent or more.

To ensure that refugees receive maximum benefit and maximum results from services provided during the time-limited service eligibility period, it is essential that services be provided in the most efficacious and appropriate manner possible. To accomplish this, program experience dictates that certain principles require greater emphasis in the provision of services to refugees: (1) Services should be provided in a manner that is linguistically and culturally compatible with a refugee's background; (2) refugee-specific services, designed for refugees, should be provided during the initial years of resettlement; (3) English language instruction should be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services; and (4) as required by the Refugee Act, refugee women should have the same opportunities as men to participate in training and instruction.

Under current policy, if a refugee who is receiving refugee medical assistance becomes ineligible solely because of increased earnings from employment, the refugee's medical assistance is extended for a period of 4 months or until the refugee reaches the end of the RMA time-eligibility period (currently the first 8 months after a refugee's arrival in the U.S.), whichever occurs first. The distinction between RMA and extended RMA has caused confusion in some States, with the effect of extended RMA being inappropriately denied to some eligible refugees. In addition, current policy generates administrative costs because eligibility workers need to make separate determinations of refugee eligibility for extended RMA once a refugee becomes ineligible due to increased earnings from employment.

In order to alleviate this confusion, we are removing the distinction between RMA and extended RMA by eliminating the extended RMA provision and by making RMA available to eligible refugees for the full period of time-eligibility determined by the Director in accordance with § 400.204 beginning with the first month the refugee entered the U.S., regardless of whether a refugee receives increased earnings from employment.

Thus, under the 8-month eligibility period currently in effect, once a refugee is determined to be eligible for RMA at time of application, the refugee will be able to continue to receive RMA for a refugee's first 8 months in the U.S. regardless of whether a refugee receives increased earnings from employment during that period of time. This provision replaces the current 4-month extended RMA coverage for employed refugees. We believe this change will make the administration of RMA less confusing to States and, therefore, less subject to error than the current extended RMA provision. At the same time, this change will better ensure continued medical coverage to refugees for a clearly specified period of time.

To summarize, the policy changes are intended to: (1) Ensure that comprehensive refugee-specific services are provided to both refugee men and women within the first few years after arrival in the United States for the purpose of accelerating family economic independence and acculturation; (2) establish a time-eligibility limitation for the receipt of refugee social services and targeted assistance services so that funds will be concentrated on recently arrived refugees to help ensure that employable refugees are placed in jobs as soon as possible after their arrival in the U.S.; (3) increase State and local flexibility in the provision of services; and (4) replace the current 4-month extended RMA provision for employed refugees with a provision that would make RMA available for the full period (currently 8 months) of time-eligibility to RMA recipients, regardless of whether a refugee becomes employed.

In addition, the regulation limits the administrative costs a State may claim to those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. This rule also establishes procedures to be used when a State withdraws from the refugee program. Finally, this rule sets forth basic requirements for the administration of the targeted assistance program which has been in operation since FY 1983.

Consistent with the preceding actions, 45 CFR 400.1, 400.4, 400.5, 400.9, 400.11, 400.13, 400.62, 400.70, 400.71, 400.75, 400.76, 400.79, 400.80, 400.82, 400.83, 400.94, 400.100, 400.104, 400.106, 400.107, 400.140, 400.141, 400.145, 400.146, 400.147, 400.152, 400.153, 400.154, 400.155, 400.156, 400.203, 400.204, 400.206, 400.207, 400.210, and subpart K are amended or removed and a new 400.212 and subpart L are added.

Subpart A—Introduction

Section 400.1(a) is amended to provide that 45 CFR Part 400 prescribes requirements concerning grants to States and other public and private non-profit agencies, wherever applicable, under title IV of the Immigration and Nationality Act.

Subpart B—Grants to States for Refugee Resettlement

Section 400.4(b) is amended to require that a State must certify no later than 30 days after the beginning of each fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State is required to submit a proposed amendment to the plan for ORR review and approval in accordance with § 400.8.

Section 400.5(h) is revised to expand the types of agencies that a State must meet with on a quarterly basis to plan and coordinate the placement of refugees in advance of their arrival. This revision requires the inclusion of local community service agencies and other agencies that serve refugees in these quarterly meetings. Section 400.5(h), as revised, also advises States that currently have an approved exemption to this requirement that existing exemptions will expire 90 days after the effective date of this rule. Any State wishing an exemption may apply to ORR. An approved exemption will remain in effect for three years, at which time a State may reapply. A number of States were granted exemptions to this requirement in the early years of the program on the basis of the absence of problems associated with the planning and coordination of refugee placement or the small number of refugees in those States. We believe it is time to review these exemptions, given the passage of time, changing refugee flows, and changing circumstances in the States. A State wishing to request an exemption to the provisions regarding the holding or frequency of meetings under § 400.5(h) must set forth the reasons why the State considers these meetings unnecessary because of the absence of problems associated with the planning and coordination of refugee placement. These requests should be submitted in writing to the Director of ORR.

Section 400.11(b) is amended to clarify that States would be required to submit yearly estimates for reimbursable costs for cash and medical assistance, costs for unaccompanied minors, and related administrative costs for the fiscal year in accordance with guidelines prescribed by the Director of ORR.

Section 400.11(b)(2) is amended by requiring that the annual social services plan that a State must submit to ORR must be developed on the basis of a local consultative process. Section 400.11(b)(2) is also amended by changing the submission date for the plan from a date that is no later than 45 days prior to the beginning of the State's planning cycle for social services to a date that is to be prescribed by the Director of ORR.

Section 400.11(b)(3) is amended by removing the word ''quarterly'' before the word ''estimates''.

Section 400.11(c) is amended by requiring that final financial reports must be submitted in accordance with the requirements specified under § 400.210. The language regarding the submission of quarterly financial reports remains unchanged; quarterly reports will continue to be due 30 days after the end of each quarter. Thus States must submit fourth-quarter reports by October 30 of each year, instead of the current deadline of December 30 of each year. ORR needs to receive end-of-year financial data from States soon after the end of the fiscal year to enable more timely forecasting for the next fiscal year. Adjustments may continue to be made, under § 400.210, until one year after the end of the fiscal year in the case of grants for cash assistance, medical assistance, and related administrative costs, and 2 years in the case of grants for social services and targeted assistance.

Section 400.13(d) is revised to prohibit the charging of case management costs against the cash assistance, medical assistance, and administrative costs (CMA) grant. This revision conforms to priorities established by ORR in FY 1991.

Subpart E—Refugee Cash Assistance

Section 400.62 is amended to require that refugee cash assistance (RCA) begin on the same date, in relation to the date of application, as assistance under the program of aid to families with dependent children (AFDC) would begin under the State's plan for AFDC. For example, if a State has opted under its AFDC plan to provide assistance no later than the date of authorization or 30 days after the receipt of an application, whichever is earlier, then that same rule will apply regarding RCA. This provision prohibits a State from adopting this rule for AFDC but paying assistance retroactive to the date of application for RCA. This provision thus assures that RCA and AFDC applications and assistance in a given State are treated equitably.

Subpart F—Requirements for Employability Services, Job Search, and Employment

Section 400.70 is revised by removing references to refugees who are applicants or recipients of AFDC or GA.

Section 400.71 is amended by adding a definition of the term ''Family self-sufficiency plan''.

Section 400.75(a)(1) is amended by requiring, as a condition for receipt of refugee cash assistance, that a refugee who is not exempt under § 400.76 must participate in employment services within 30 days of receipt of aid.

Section 400.76(a)(7) is amended by exempting from participation in employment services and acceptance of appropriate employment, a parent or other caretaker relative of a child under age 3, rather than age 6, who provides full-time care of the child.

Section 400.76(a)(9) is amended by exempting a pregnant woman from registration and participation in employment services if the child is expected to be born within the next 6 months, instead of the next 3 months.

The proposed changes in §§ 400.76(a)(7) and (a)(9) would make ORR policy consistent with the requirements of the Job Opportunities and Basic Skills Training (JOBS) program contained in the Family Support Act of 1988, Pub. L. No. 100–485 (42 U.S.C. § 602(a)(19)).

Section 400.79(a) is amended to emphasize that an employability plan must be developed as part of a family self-sufficiency plan where applicable for each non-exempted recipient of refugee cash assistance in a filing unit.

Section 400.80 is revised by replacing the existing job search requirement with the provision that a State must require job search for employable refugees where appropriate. Other references in the regulation to job search at §§ 400.75(a)(2), 400.76(b), 400.79(c)(3), 400.82, and 400.156(a) are removed.

Section 400.82(b)(3) is amended by removing the paragraph on conciliation.

Section 400.83 is amended by adding the paragraph on conciliation from § 400.82 and changing the heading to ''Conciliation and fair hearings''.

Subpart G—Refugee Medical Assistance

Section 400.94(a) is amended by clarifying that a State must determine Medicaid eligibility under its Medicaid State plan for each individual member of a family unit that applies for medical assistance. This is to clarify that if any individual in a family unit is eligible for medical assistance under a State's title XIX plan, then the State must provide that assistance under Medicaid and not

RMA. For example, under sections 1902(a)(10) and 1902(l) of the Social Security Act, certain children under age 19 who were born after September 30, 1983, may be eligible for Medicaid even though their parents are eligible for refugee medical assistance. Assistance may not be provided to such children under RMA if they are eligible under Medicaid.

Section 400.100(d) is amended to clarify that only those recipients of refugee cash assistance who are not eligible for Medicaid are eligible for refugee medical assistance.

Section 400.104 is revised by removing the existing provision for extended RMA for recipients who receive increased earnings from employment and replacing it with a provision that would enable RMA recipients who receive earnings from employment to continue to receive RMA until they reach the end of their time-eligibility period, in accordance with § 400.100(b). The provision also requires that in cases where a refugee obtains private medical coverage, any payment of RMA for that individual must be reduced by the amount of the third party payment. Section 400.106 is amended to clarify that a State may provide additional medical services to refugees who are determined eligible under § 400.94 only to the extent that sufficient appropriated funds are available to enable ORR to reimburse costs for refugee Medicaid recipients. Beginning in FY 1991, ORR had to cease reimbursements to States for the costs of assistance to refugee recipients of AFDC, SSI, and Medicaid due to insufficient appropriated funds. We want to make clear that additional services under § 400.106 may not be provided to refugee Medicaid recipients with refugee funding as long as appropriated funds continue to be insufficient to enable ORR reimbursements to States for these costs.

Section 400.107 is amended by replacing the words ''health assessments'' with the words ''medical screening'', the term used in the INA.

Subpart I—Refugee Social Services

Section 400.140 is amended to clarify that the requirements in subpart I apply only to formula allocation grants to States.

Section 400.141 is amended by removing references to title XX social services. We have removed references to title XX services in this section and in §§ 400.152, 400.153, and 400.155 in order to limit the scope of services allowable under refugee social services to those services that are most in keeping with the goals and priorities of the refugee program.

Section 400.145 is amended by adding the requirement that a State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.

Section 400.146 is revised by removing the current requirement that a State must use at least 85 percent of its social service grants to provide employability services if a State's dependency rate is 55 percent or more and by replacing it with a general requirement that a State must use its social service grants primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. The proposed revision is intended to provide States greater flexibility in determining how to best allocate refugee resources in keeping with refugee service needs. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

Section 400.147 is revised by establishing client priorities for services in the following order of priority, except in the most extreme circumstances: (1) All newly arriving refugees during their first year in the U.S., who apply for services; (2) refugees who are receiving cash assistance; (3) unemployed refugees who are not receiving cash assistance; and (4) employed refugees in need of services to retain employment or to attain economic independence. Assignment of first priority to newly arriving refugees is intended to ensure that these refugees receive timely services and are not placed on waiting lists for core refugee services.

Section 400.152 is amended by removing references to title XX services and by revising paragraph (b) to limit the provision of social services, with the exception of referral and interpreter services, to refugees who have been in the U.S. for 60 months or less, except that refugees who are receiving employability services, as defined in § 400.154(a), as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S. As of the effective date of this requirement, the time-limitation on services will apply regardless of which fiscal year of funding is used to provide the services.

Section 400.153 regarding the provision of title XX social services is removed and reserved.

Section 400.154 is amended by adding the development of a family self-sufficiency plan as an allowable service under § 400.154(a). Section 400.154 is also amended to clarify under § 400.154(g) that day care as an allowable service means day care for children. Section 400.154 is further amended by revising paragraph (h) to allow transportation as a job-related expense and by removing the note after paragraph (j) which allows case management costs to be charged against the CMA grant. Because of funding limitations, case management costs may not currently be charged against the CMA grant.

Section 400.155(b) is amended to clarify that outreach services may include activities designed to explain the purpose of available services and to facilitate access to these services.

Section 400.155(c)(1) is amended to clarify that assessment and short-term counseling may be provided to families as well as individual persons.

Section 400.155(d) is amended to clarify that day care as an allowable service means day care for children.

Section 400.155(h) is revised by removing title XX social services from the list of allowable services under refugee social services and by adding, as an allowable service subject to the approval of the Director of ORR, any additional service aimed at strengthening the ability of refugee individuals, families, and refugee communities to achieve and maintain economic self-sufficiency, family stability, and community integration. An example of an allowable service under this provision would be the provision of technical assistance and organizational development training to strengthen the capability of refugee mutual assistance associations (MAAs) to provide employment-related and other services to refugees.

Section 400.156 is amended by revising the heading to read ''Service requirements'' and by amending § 400.156(b) to clarify that, in planning services, States must take into account the reception and placement (R & P) services provided by resettlement agencies in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative. Section 400.156 is also amended by adding new requirements that States must implement: (1) English

language instruction must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services; (2) refugee-specific services must be provided, except in the case of vocational or job skills training, on-the-job training (OJT), or English language training, which are specifically designed to meet refugee needs and are in keeping with the rules and objectives of the refugee program; (3) services must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background; (4) services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women; and (5) a family self-sufficiency plan must be developed for anyone who receives employment-related services funded under this part. Providing services in a manner that is culturally and linguistically compatible means that an agency providing services funded under this part must employ or contract with staff who (1) speak the native language of and (2) are either from the same ethnic background as, or are culturally knowledgeable of, the refugee populations the agency serves.

Subpart J—Federal Funding

Sections 400.203 and 400.204 are amended by clarifying that Federal funding is available for the cash and medical assistance programs described in these sections only to the extent that sufficient funds are appropriated. We have added this clarification in light of the steady decline in Federal refugee funding for the State share of aid to families with dependent children (AFDC), supplemental security income (SSI), Medicaid, and general assistance (GA) which began in FY 1986 and has resulted since FY 1991 in no ORR reimbursement to States for the State share of these programs due to insufficient appropriated funds.

Section 400.206 is amended by changing the heading to ''Federal funding for social services and targeted assistance services'' and by adding a paragraph on Federal funding for targeted assistance services.

Section 400.207 is revised to clarify that Federal funding is available for reasonable and identifiable administrative costs of providing only those assistance and service programs for which Federal funding is currently made available under the refugee program. Thus Federal funding under 45 CFR Part 400 is not available at this time for administrative costs related to the provision of AFDC, Medicaid, GA, or SSI to refugees. This section is further revised to limit the administrative costs that a State may claim to those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families.

Section 400.10 is revised to clarify time limits for obligating and expending funds as well as for submitting final financial reports on expenditures of CMA grants and social service and targeted assistance grants.

Subpart J is amended to prohibit the use of funds under this part for travel outside the United States, without the written approval of the Director.

Subpart K—Waivers

Subpart K is amended by revising the heading to read ''Waivers and Withdrawals'' and by revising § 400.300 to allow for a more flexible waiver policy in keeping with Executive Order No. 12875, issued on October 26, 1993, which calls for increased flexibility for State and local waivers. In addition, a new § 400.301 is added which requires that if a State decides to cease participation in the refugee program, the State must provide 120 days advance notice to the Director before withdrawing from the program. Section 400.301 clarifies that in order to participate in the refugee program, a State is expected to operate all components of the refugee program. In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted only under extraordinary circumstances and if it is in the best interest of the Government. Section 400.301 also provides that when a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and/or services, as appropriate, to refugees in that State. Pursuant to the statutory authority in 412(c)(1)(A) and 412(e)(1) of the INA to provide grants to, and contracts with, public or private non-profit agencies for services, cash assistance, and medical assistance to refugees, the Director may authorize a designee to administer the refugee program in place of a State when the State chooses not to participate in the refugee program. This authority is different from the statutory authority in 412(e)(7) of the INA which permits the Director to authorize the development and implementation of alternative projects under the Fish/Wilson program. Section 301 further establishes that a replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i), 400.94(a), 400.94(b), 400.94(c), and subpart L.

Subpart L—Targeted Assistance

Section 400.310 establishes that the basis and scope of this subpart is to set forth requirements concerning formula allocation grants to States under 412(c)(2) of the INA for targeted assistance.

Section 400.311 establishes a definition for ''targeted assistance grants''.

Section 400.312 requires that a State must provide any individual wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.

Section 400.313 requires that a State must use its targeted assistance grant primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

Section 400.314 establishes client priorities for targeted assistance services in the following order of priority, except in the most extreme circumstances: (1) Cash assistance recipients, particularly long-term recipients; (2) unemployed refugees who are not receiving cash assistance; and (3) employed refugees in need of services to retain employment or to attain economic independence.

Section 400.315 establishes that the same standards and criteria that are applied in the determination of eligibility for refugee social services under §§ 400.150 and 400.152(a) shall be applied in the determination of eligibility for targeted assistance services. Section 400.315 limits the provision of targeted assistance services, except referral and interpreter services, to refugees who have been in the U.S. for 60 months or less, except that refugees who are receiving employability services, as defined in § 400.316, as of September 30, 1995, as

part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S. As of the effective date of this requirement, the time-limitation on services will apply regardless of which fiscal year of funding is used to provide the services.

Section 400.316 establishes that a State may provide the same scope of services under targeted assistance as may be provided under refugee social services under §§ 400.154 and 400.155, with the exception of § 400.155(h). Since the purpose of the targeted assistance program is to direct resources to localities that have large refugee populations and high use of public assistance by refugees, our intent is to focus the use of targeted assistance funds on employability services aimed at economic self-sufficiency, while providing States and counties some flexibility to use the funds for non-employment-related services. Thus, we have included the non-employment-related services that are allowable under § 400.155, but have not included the new category of services that has been added under § 400.155(h), which includes services to strengthen family and community.

Section 400.317 establishes that a State must adhere to the same limitations and restrictions in the provision of targeted assistance services as are applied to the provision of refugee social services under § 400.156.

Section 400.318 establishes that eligible grantees under the targeted assistance program are those agencies of State governments which are responsible for the refugee program under § 400.5 in States containing counties which qualify for targeted assistance awards. Section 400.318 also establishes that the use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

Section 400.319 establishes that a State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal year, only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula. Section 400.319 also establishes that a State must assure that not less than 95 percent of the total award to the State is made available to the qualified county or counties, except in those cases where the qualified county or counties have agreed to let the State administer the targeted assistance program in the county's stead.

Discussion of Comments Received

Fifty-two letters of comments were received in response to the notice of proposed rulemaking published in the **Federal Register** on August 12, 1994. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance associations, and refugee service providers. These comments were taken into consideration in the development of this final rule.

The comments are summarized below and are followed in each case by the Department's response.

Effective Date

Comment: Six commenters expressed concern over the effective date for the regulation of October 1, 1994, which appeared in the NPRM. Two of the commenters suggested that the rule should be effective no sooner than 90 days after the issuance of the final regulation. Another commenter suggested an effective date that would allow sufficient time for careful consideration of the comments.

Response: The inclusion in the NPRM of an October 1, 1994, effective date for a final rule was an error. We want to assure the commenters that ORR had no intention of imposing an October 1, 1994, effective date. The effective date for this final rule will be October 1, 1995.

Comments on Subpart A

§ 400.2: *Comment:* Eight commenters expressed opposition to limiting the definition of case management to the referral and tracking of refugee participation in employability services. One commenter supported the proposed elimination of case management for non-employment-related purposes. Commenters expressed concern that the narrowed definition would remove the ability to case manage a wide range of services needed to fully assist refugee families to overcome barriers to self-sufficiency. Several commenters were concerned that the proposed change in definition would preclude coordinating services for the entire family, regardless of employability status. One commenter pointed out that the proposed change runs counter to ORR's emphasis on strengthening families.

Response: After considering these comments, we have decided to drop the change in definition and allow case management to continue to be used to refer and track refugee participation in non-employment-related services, as well as employment-related services. However, we feel strongly that case management should be provided in combination with a package of services leading to employment and self-sufficiency.

Comments on Subpart B

§ 400.4(b): *Comment:* One commenter objected to the requirement that a State must certify no later than 30 days after the beginning of each fiscal year that the approved State plan is current and continues in effect. The commenter recommended that States be given 90 days to provide certification.

Response: If a State requires more time to prepare the certification, since the due date will remain the same each year and thus will be known, a State can allow itself the time it needs by simply starting the preparation as early as needed before the due date.

§ 400.5(h): *Comment:* We received 5 comments on this provision. One commenter objected to the inclusion of local community service agencies in quarterly meetings as impractical and unwieldy. Another commenter, while agreeing with this provision, recommended giving States the flexibility to request meeting less frequently or using telephone conference calls to better use State resources to meet the needs of local communities in the most appropriate manner. A third commenter also called for flexibility, suggesting that meetings should be scheduled in a manner that accommodates State and local resources and activities. One commenter expressed concern that administrative costs would be greatly increased in carrying out these meetings when the numbers of refugees being placed in the State are expected to diminish. Another commenter felt that ORR should clarify the State's role and responsibilities in this effort. The commenter pointed out that the State can facilitate planning efforts and can act in an oversight capacity regarding resettlement within the State, but it cannot enforce coordination efforts.

Response: We believe the benefit of including local community service agencies in quarterly meetings to enable all agencies that serve refugees to be informed and prepared for anticipated arrivals more than offsets any logistical difficulties a State may experience in

organizing such meetings. Regarding flexibility with respect to the frequency and holding of meetings, we are certainly willing to work with States to consider alternative approaches, as necessary. If a State believes it has good reason for holding fewer meetings, using conference calls in lieu of meetings, or using other alternatives to quarterly meetings, a State may request an exemption to this requirement, as described in this provision.

Regarding the State's role under this provision, we agree with the commenter that the State's role is to facilitate coordination, not to enforce it.

§ 400.11(b): *Comment:* One commenter recommended an effective date of October 1, 1995, for submission of a yearly CMA estimate. The commenter also requested input into the development of the form.

Response: We agree with the commenter; the effective date for this provision is October 1, 1995. As § 400.11(b) indicates, States will have to submit yearly CMA estimates in accordance with guidelines prescribed by the Director of ORR, in lieu of a form. As ORR develops these guidelines, States will have an opportunity to provide input and review before the guidelines are made final.

§ 400.11(b)(2): *Comment:* Seven commenters commented on this provision. One commenter objected to the change in due date for the annual services plan since no replacement date was indicated in the NPRM. Two commenters felt a specific date needs to be given. Another commenter agreed with changing the due date. One commenter wondered if the due date for submission will change periodically for all States or whether the due date could vary for each State. While one commenter supported the emphasis on a local consultative process in the planning of services, another commenter recommended the inclusion of a waiver option regarding local consultation. The commenter recommended that States be given the option of determining an appropriate process for local input in the planning process. One commenter suggested that ORR strongly encourage the inclusion of State and local health departments in the ongoing planning of refugee resettlement services. Another commenter, requesting clarification, pointed out that ORR State Letter 94–13 indicates that the Annual Services Plan is to be submitted on the revised Quarterly Performance Plan (QPR), thus eliminating the Annual Services Plan. Another commenter wanted clarification on whether ORR wants the services plan to reflect prospective services planned, based on a needs assessment, or actual services funded. The commenter recommended reporting actual services funded.

Response: The Annual Services Plan has not been eliminated. ORR State Letter 94–13 simply instructs States to submit the Annual Services Plan in Schedule A, as part of the fourth quarter QPR submission. Therefore, the new due date for the Annual Services Plan is November 15 of each year, as stated in ORR State Letter 94–13. Regarding whether the services plan should reflect services planned, based on a needs assessment, or actual services funded, the instructions for Schedule A of the QPR ask for a reporting of actual services funded.

We do not agree with the commenter's suggestion that States should be allowed the option of waiving local consultation in the development of a services plan. Regarding States having the option of determining an appropriate process for local input in the planning process, it is up to each State to determine what process it wants to use; the method for obtaining local consultation is not prescribed. We agree that State and local health departments should be included in the local consultation process in the planning of services and we strongly encourage States to do so.

§ 400.11(b)(3): *Comment:* One commenter indicated that it is unclear what the phrase ''quarterly estimates required in paragraph (b)(1)'' refers to when § 400.11(b)(1) requires a yearly, not quarterly, estimate.

Response: We thank the commenter for pointing out this discrepancy. We have revised this provision by deleting the word ''quarterly''.

§ 400.11(c): *Comment:* Six commenters addressed this provision. One commenter objected to the 30-day due date for the 4th quarter financial report and recommended a 90-day due date. Another commenter concurred. One commenter suggested a 45-day or 60-day due date. One commenter pointed out that RMA expenditure claims are difficult to obtain within the 30-day time frame and that States need 12 months after the end of the fiscal year to liquidate all obligations incurred through the end of the fiscal year. Another commenter indicated that the due date would require the State to estimate CMA expenditures with two months less of actual expenditure data, resulting in less accurate reporting. Another commenter expressed concern that this rule change could have an impact on Federal funding for the State. This commenter was concerned that contract obligations might be outstanding and recommended that the close-out date should continue to be December 30 of each year.

Response: Since States will continue to have until one year after the end of the fiscal year in which the Department awarded the grant to liquidate obligations and to submit a final financial report for CMA, and two years after the end of the fiscal year in which the Department awarded the grant to liquidate obligations and to submit a final financial report for social services and targeted assistance formula funds, we do not see a compelling reason to change the 30-day due date for the 4th quarter financial report. We understand that States may have to base their 4th quarter report on a shorter period of actual expenditure data than was the case under the current due date. The 30-day due date for the 4th quarter report will have no impact on Federal funding to the State and should have no impact on the time frame for liquidating obligations and closing out contracts since the one-year and two-year time frames described above and as stated in § 400.210 remain in effect.

§ 400.13(d): *Comment:* Three commenters expressed concern about this provision. Two commenters felt that States should be allowed to charge case management costs to CMA. One of the commenters felt that the program would be well-served by using CMA funds for this purpose especially in light of the early employment emphasis of the regulations. Another commenter recommended that States be allowed to use CMA funds to purchase equipment, software, and consultation services to establish and maintain a case management system. One commenter expressed concern that the prohibition against using CMA funds for case management could cause a State to spend State funds for some case workers and other administrative costs in the CMA program. In one State, State law has prohibited the expenditure of State funds for the refugee program. The CMA restriction could cause the State to be liable for possible Federal exceptions.

Response: In FY 1991, ORR established priorities for reimbursement under CMA since insufficient appropriated funds were available to reimburse costs in all CMA categories. The priority areas to be reimbursed included costs for (1) unaccompanied minors, including any allowable administrative costs of the unaccompanied minors program, (2) RCA and RMA costs and associated administrative costs, and (3) allowable administrative costs incurred for the overall management of the State refugee program. Lower priority categories included (4) the State share of allowable

costs for AFDC, Medicaid, SSI, and foster care payments under title IV–E of the Social Security Act and lastly (5) case management costs during an RCA recipient's first 12 months in the U.S. or an AFDC recipient's first 4 months in the U.S. Since FY 1991, ORR has not had sufficient appropriated funds available to reimburse States for the costs of either category (4) or (5). Thus the prohibition against using CMA funds for case management has been in effect since FY 1991. We do not anticipate any increase in the level of appropriated funds for CMA in the foreseeable future to enable any change in policy regarding reimbursable CMA categories.

Regarding the commenter's concern about liability for possible Federal exceptions, the commenter is right to be concerned. If the State has been inappropriately charging case management costs to CMA, the State is indeed at risk of possible audit disallowances.

Comments on Subpart C

§ 400.25: *Comment:* One commenter observed that § 400.25 which states that a State may not impose requirements as to duration of residence as a condition of participation in the State's program of assistance or services may be in conflict with the 36- and 60-month time-limitation proposed for social services and targeted assistance.

Response: This provision is not in conflict with the time-limitation requirement for services in §§ 400.152 and 400.315. The prohibition against duration of residence requirements in § 400.25 means that a State may not impose a requirement that a refugee must have resided in the State for a required period of time before qualifying for assistance or services.

Comments on Subpart E

§ 400.62: *Comment:* Two commenters expressed support for making the RCA start date in relation to the date of application congruent with AFDC policy, while another commenter objected to this requirement, expressing concern that this requirement would be in conflict with State law in his State because the Home Relief program, which corresponds to the refugee program, has a different requirement than the AFDC program. The commenter recommended deleting this requirement or allowing for a waiver. One of the commenters suggested that ORR and the States should provide clear direction and training to ensure that clients are not penalized by faulty enrollment or eligibility determination procedures that result in delays in receipt of assistance.

Response: Regardless of whether there might be a conflict with State law, a State would be expected to comply with this Federal requirement. The commenter's point regarding the need for clear direction and training to avoid delays in receipt of assistance is well-taken. We agree that States should take measures to ensure that eligibility determination procedures result in timely receipt of assistance.

Comments on Subpart F

§§ 400.71 and 400.79: *Comment:* Two commenters requested clarification on the definition of what constitutes a family. Another commenter recommended that States be allowed to define family broadly to include everyone in a household. One commenter felt that the concept of family self-sufficiency plans needs to be defined more fully to ensure some consistency in the implementation of this provision. One commenter said that family self-sufficiency plans are welcome as long as all employable family members are included in the plan. Another commenter asked whether family self-sufficiency plans would only be required for RCA clients or be required for refugee AFDC clients as well. One commenter requested clarification on whether individual employability plans must also be developed for recipients of AFDC and GA. One commenter felt that it is unclear what should be included in a family self-sufficiency plan and how States should monitor the development and implementation of such a plan. Another commenter suggested putting out guidelines to providers to give them concrete strategies regarding the development of family self-sufficiency plans.

Response: In order to be consistent with how ORR counts families who move off aid, we define a family as those individuals included in a cash assistance filing unit whose needs are taken into account when determining the payment level for the filing unit. Using this definition, a family could constitute a one-person unit as in many RCA cases. States have the flexibility, however, to define family more broadly to include everyone in a household if it so chooses.

We define a family self-sufficiency plan as a plan that includes (1) a determination of the total amount of income a particular family would have to earn to exceed its cash grant and move into self-support without suffering a monetary penalty; (2) a strategy and timetable for obtaining that level of family income through the placement in employment of sufficient numbers of employable family members at sufficient wage levels; and (3) employability plans for every employable member of the family, as a part of (2). Providers should focus on the family, not the individual refugee, as the unit of intervention. Individual employability plans for members of the same family, therefore, should be kept together as part of the family self-sufficiency plan under one case file. We believe family self-sufficiency plans should be developed with the involvement of every employable family member, not just the primary wage earner, to the extent possible.

We appreciate the commenter raising the question of whether family self-sufficiency plans are to be required only for RCA recipients or for refugee AFDC recipients as well. We intend family self-sufficiency plans to be required for anyone who receives employment-related services funded by the refugee program, including recipients of RCA, AFDC, SSI, and GA, as well as refugees who are not receiving cash assistance but who apply for employment-related services. Thus, while references to family self-sufficiency plans in §§ 400.71 and 400.79 apply only to RCA recipients, we have added a provision under § 400.156(g) which requires the development of a family self-sufficiency plan for anyone who participates in refugee program-funded employment-related services. We would expect agencies to coordinate the development of family self-sufficiency plans to avoid duplication of effort if a family self-sufficiency plan for a refugee client already exists.

States should monitor the development and implementation of family self-sufficiency plans in the same manner as they would monitor the development and implementation of employability plans: by conducting a case file review as part of a State's on-site monitoring.

ORR does not plan to issue national guidelines on family self-sufficiency planning. However, some States have developed guidance on family self-sufficiency planning for use within their States.

§ 400.75: *Comment:* One commenter wondered if the requirement for participation in employment services within 30 days of receipt of aid could be required of refugees on AFDC as well. Another commenter asked if non-compliance would result in a client sanction or a negative program review. One commenter expressed concern that the level of funding might be inadequate, resulting in employment

services only to RCA refugees to the exclusion of AFDC recipients. The commenter recommended requiring participation in employment services within 30 days of receipt of aid only if funding is available. Another commenter was concerned that the level of funding might be insufficient to provide services to all RCA refugees and recommended that the rule be revised to require States to include an assurance in their State plan that newly arrived refugees will be enrolled promptly in employment services.

Response: The provisions under subpart F, including the requirement for participation in employment services within 30 days of receipt of aid, apply only to RCA recipients; these regulations do not apply to recipients of AFDC. The AFDC program, administered by the Office of Family Assistance, is governed by separate regulations under 45 CFR Chapter II. However, we refer the commenter to 45 CFR 233.100(a)(6), which requires that within 30 days after the receipt of aid under the AFDC-UP program, unemployed principal earners will participate or apply for participation in a JOBS program.

Non-compliance with § 400.75 would result in a client sanction or a negative program review. Regarding funding availability, we believe it would be a rare situation where service funds would not be sufficient to provide services to all RCA recipients in accordance with § 400.75.

§ 400.76: *Comment:* Two commenters strongly supported ORR's proposal to make exemption requirements consistent with JOBS requirements, while two commenters opposed exempting a parent or caretaker who has a child under 3 years of age and opposed exempting pregnant women from registration and participation in employment services if the child is expected to be born within 6 months. One of the commenters felt that welfare parents should be required to use child care, as non-welfare parents do, in order to work. The commenter also expressed the view that since many non-welfare women continue to work until their 8th month of pregnancy, welfare recipients should not be exempted from participation because of pregnancy. Two commenters expressed concern about the availability of affordable day care. One commenter was concerned that a single parent would not be able to afford day care costs. Another commenter felt that ORR should take into consideration the possible hardship that families may experience finding suitable child care for non-school age refugee children.

Response: We believe the criteria for exemptions from participation in the refugee program should be as consistent as possible with the criteria for exemptions in the JOBS program in order to maintain equity among welfare clients. While we recognize the potential problems that some refugee families may experience finding suitable and affordable child care, we believe there are a number of options available to refugee families for securing subsidized child care through ORR-funded day care or through the JOBS program.

§ 400.80: *Comment:* Six commenters wrote in support of elimination of the job search requirement. We received no comments opposing elimination of this requirement.

Response: We continue to believe that job search is an appropriate activity for certain types of refugees and should be required as part of a refugee's employability plan in such cases. Therefore, we have decided to modify § 400.80 accordingly instead of totally eliminating this requirement. A refugee who refuses to carry out job search would be subject to sanction, in accordance with § 400.77, if job search is a required service in the refugee's employability plan.

§ 400.83: *Comment:* One commenter recommended that since one State has already obtained ORR approval to modify its timeframe for the conciliation period, this provision should be revised to accommodate the State's method of handling the conciliation period.

Response: A revision is not necessary. The State in question was granted a waiver to this provision a few years ago. This waiver is not affected by this regulation.

§ 400.94(a): *Comment:* One commenter was opposed to requiring refugees to be screened for Medicaid eligibility first. Another commenter expressed concern that the requirement to determine the Medicaid eligibility of every individual in an RMA family instead of making a single determination for the family as a unit could have the potential for increased administrative costs as a result of implementing this new method of determination.

Response: The revision in § 400.94(a) does not represent a change in policy; it is simply a clarification of a regulation that has been in effect since its publication as a final rule in the **Federal Register** (54 FR 5480) on February 3, 1989. Therefore, States that are not making Medicaid eligibility determinations for refugees who apply for medical assistance, or are not making Medicaid determinations for each member in a family unit, should take immediate steps to comply with the requirements under § 400.94(a).

§ 400.100(d): *Comment:* One commenter objected to the provision that only those recipients of RCA who are not eligible for Medicaid are eligible for RMA. The commenter expressed concern that RMA may be eliminated in one State because all RCA recipients in the State are eligible for Medical Assistance (MA). The commenter also questioned whether this provision refers to all MA benefits or only Federally mandated or reimbursed MA benefits. Another commenter pointed out that it is essential to ensure that refugees on RMA who are eligible for partial Medicaid benefits are not denied RMA coverage for medical treatment that is not covered by the partial Medicaid coverage.

Response: This provision is simply a restatement or clarification of current policy and refers only to Federally reimbursed benefits under title XIX of the Social Security Act. Regarding RMA coverage for refugees who are eligible for partial Medicaid benefits, since § 400.100(d) does not represent a change in policy, States should continue handling these cases as they do under current policy.

§ 400.104: *Comment:* Twenty-four commenters indicated support for this provision. Two commenters questioned whether a refugee would be required to accept private insurance, if the employer offered the insurance at a cost. One commenter asked if States would be required to impose penalties for refusal to accept private medical coverage. In cases where private insurance only covers the employee, one commenter wondered whether remaining family members would be able to continue on RMA. Three commenters recommended that instead of terminating RMA once private insurance is obtained, RMA could be billed only after any and all private insurance payments were accessed, as is the arrangement in the Medicaid program. One commenter noted that the proposed rule suggests that RMA recipients would be eligible for RMA through the 8th month, regardless of the reason for their ineligibility. The commenter questioned whether RMA recipients would be eligible for continued RMA if they began receiving unearned income or acquired excess resources that would make them ineligible for RMA.

Response: An RMA recipient who becomes employed would not be required to accept health insurance offered by his/her employer; if an RMA recipient chooses not to accept private

insurance, his/her eligibility for continued RMA would not be affected. If an employed RMA recipient obtains private health insurance which covers self only, the remaining family members, if they were RMA recipients, could continue to receive RMA for the full time-eligibility period. Unearned income or excess resources would only be a factor in determining initial eligibility for RMA; once a refugee becomes an RMA recipient, however, he/she would be eligible for continued RMA regardless of whether he/she began receiving unearned income or acquired excess resources.

After considering the commenters' recommendation, we have revised the rule to allow an RMA recipient who becomes employed to continue to receive RMA for the full time-eligibility period, regardless of whether the recipient obtains private medical coverage. However, we have revised this provision to require in cases where a refugee obtains private medical coverage, that RMA payment must take into consideration any third party payments. This policy is similar to Medicaid policy set forth in Medicaid regulations at 42 CFR 433.139.

§ 400.106: *Comment:* One commenter asked for clarification as follows: The preamble states that ''* * * additional services under § 400.106 *may not* (emphasis added) be provided to refugee Medicaid recipients with refugee funding as long as appropriated funds continue to be insufficient to enable ORR reimbursements to States for these costs,'' while the actual proposed regulation states that ''the State *may* (emphasis added) provide to refugees who are determined eligible under §§ 400.94, only to the extent that sufficient funds are appropriated, or 400.100 of this part the same services through public facilities.''

Response: The meaning is the same; the main point is that appropriated funds have not been sufficient to enable ORR reimbursement for refugees eligible under § 400.94 (Medicaid) since FY 1991, thus additional medical services to refugee Medicaid recipients under § 400.106 may not be provided with ORR funding.

§ 400.107: *Comment:* Four commenters recommended the continued use of the term ''health assessment'' instead of the term ''medical screening'', while one commenter supported the change of wording. One commenter felt it was unclear whether the change in terms implied a change in definition. Two commenters stated that the use of the term ''medical screening'' implies that health assessments can only be done by physicians when in practice non-physician health care providers are the primary resource used for conducting health assessments. One commenter expressed concern that the term ''medical screening'' may blur the distinction between initial assessment and actual provision of medical care. The commenter felt that the term implied a more comprehensive service than will be provided and that it is important to distinguish that a public health setting is not a comprehensive care delivery setting. Two other commenters felt that the word ''screening'' is inaccurate to describe the set of health services needed in domestic resettlement. A screening should be understood as one component of a more comprehensive set of services. One commenter requested that ORR provide a definition of medical screening which would allow current practices to continue.

Finally, one commenter indicated that a review of the Immigration and Nationality Act did not reveal the use of the term ''medical screening'' in relation to domestic health assessments.

Response: We have chosen to use the term ''medical screening'' in place of the term ''health assessment'' simply to be consistent with the language of the INA. Section 412(b)(5) of the INA authorizes the Director ''to make grants to, and enter into contracts with, State and local health agencies for payments to meet their costs of providing medical screening and initial medical treatment to refugees.'' The use of the term ''medical screening'' is in no way intended to suggest that ORR believes that health assessments/medical screenings must be performed by physicians instead of non-physician health care personnel.

We have been working with State refugee health coordinators and the Centers for Disease Control and Prevention during the past year to develop a medical screening protocol, as required under § 400.107(a)(1), that clearly defines what are allowable services under medical screening. We intend to issue this protocol later this fiscal year.

Comments on Subpart I

§§ 400.141, 400.152, and 400.153: *Comment:* One commenter felt that the elimination of title XX services as allowable for refugee program funding would be damaging to the community. One commenter recommended that references to title XX be retained in ORR regulations to enable refugees to access services which they might not otherwise to able to access because of the absence of bilingual staff and limited resources. Another commenter supported the elimination of title XX services. One commenter assumed that the elimination of title XX services from the list of allowable services was intended to increase State and local flexibility in the provision of services. The commenter questioned whether flexibility would, in fact, be increased or whether the elimination would serve as an impediment to flexibility. Another commenter questioned what title XX services ORR considers inappropriate.

Response: As we indicated in the NPRM, the purpose of eliminating title XX services from the list of allowable services that may be provided with ORR funding is to limit the scope of refugee program services to those services that are most in keeping with the goals and priorities of the refugee program. Our intention is to sharpen the focus of refugee funding, not necessarily to increase State flexibility. We do not believe that the full range of allowable services under the title XX program is consonant with the major priorities of the refugee program. We have included in our list of allowable refugee social services those title XX services which we believe fit with the goals and purpose of the refugee program. However, there are other title XX services that we believe go beyond ORR priorities. For example, ORR does not believe that title XX services such as preparation and delivery of meals and day care services for adults fall within the main priorities of employment and economic self-sufficiency in the refugee program. While we believe there are refugees who may need these services, we believe these services should be accessed through the State's title XX program instead of through the refugee program. At the same time we agree with the commenter that refugees often have difficulty accessing mainstream services because of the lack of culturally and linguistically appropriate services. ORR intends to work with other Federal programs over the next few years to increase refugee access to these services. We strongly encourage States to do the same at the State level.

§ 400.145: *Comment:* Six commenters wrote in support of requiring States to insure that women have the same opportunities as men to participate in training and instruction, as required in the Immigration and Nationality Act. One commenter, however, wondered why equal opportunity for employment placement was not included. The commenter also expressed concern that unless child care and transportation are provided for women, equal opportunity for services would be moot. Another commenter, while supporting the

provision, cautioned that ORR, in monitoring this requirement, should not assume that equal opportunity necessarily results in equal participation. The commenter felt that ORR tends to equate unequal participation with unequal access. Another commenter suggested that in light of the proposed time-limitation for service eligibility, the regulation should clearly state that pregnant women who wish to participate in employment services should have access to them, even though they may be exempt from participation under § 400.76(a)(9). One commenter suggested that services to women should be provided within the context of a family self-sufficiency plan.

Response: We agree that refugee women should have equal opportunity to participate in all services, including employment placements. In the proposed rule, we used the phrase ''to participate in training and instruction'' to be consistent with the language in the INA. However, to more clearly convey our intent to provide women equal opportunity for all services, we have revised § 400.145 in the final rule to read: ''A State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.''

We concur that services to women should be provided within the context of a family self-sufficiency plan, as should services to refugee men and other employable members of a family. As part of that self-sufficiency plan, we would expect States to make sure that service providers make every effort to arrange transportation and child care for those women who are not able to participate in services without such assistance. We agree with the commenter that without these supportive services equal access to services would be unattainable for many women.

We also agree with the comment that equal access does not necessarily result in equal participation. The emphasis, in our mind, is on providing to refugee women the same opportunity to participate in services as refugee men have. We understand that providing access to services does not guarantee that refugee women will necessarily choose to participate in services or employment placement due to certain cultural constraints. On the other hand, since ORR regulations require that all employable refugee women, with the exception of those who meet the exemption requirements of § 400.76, must participate in employment services, we would not expect to see a great disparity in participation between refugee men and women.

Given the time-limitations for service eligibility that will go into effect with this final regulation, we agree with the comment that pregnant women who wish to participate in employment services may access these services, even though they may be exempt. Section 400.75(b) already requires that a State must permit anyone in any of the exempted categories under § 400.76 to register for employment services if he/she so chooses.

§ 400.146: *Comment:* Eight commenters concurred with the elimination of the 85/15 rule that required any State with a refugee welfare dependency rate of 55% or more to use 85% of its social service funds for employability services and no more than 15% of its social service funds for non-employment-related services.

Three commenters wrote in support of the requirement that employment services must be designed to enable refugees to obtain jobs with less than one year's participation in services. Another commenter disagreed with the prohibition against vocational training that lasts for more than a year or education programs that are not intended to lead to employment within a year, stating that many refugees receiving AFDC will not be able to become self-sufficient in one year due to limited English language ability and job skills. The commenter requested a later effective date if this provision were made final. One commenter requested clarification on whether ESL is considered an educational program and if the one year starts at the beginning of the educational program or at the end of the educational program. Another commenter recommended that a percentage of funds be allowed for the purchase of selected long-term training for qualified refugees as long as the training leads to employment soon after training is completed.

Response: This rule does not require refugees to become self-sufficient with less than one year's participation in services. Section 400.146 requires that services be designed to help a refugee to become employed, not necessarily self-sufficient, with less than one year's participation in services. We recognize that a refugee's first job may not provide sufficient wages to enable self-support; nonetheless, we believe that that first job is an essential step towards self-sufficiency and should occur as soon as possible. Section 400.146 permits the continued provision of services to a refugee for more than one year, as needed, to move a refugee and his or her family to full self-support. We believe the prohibition against training programs that last for more than a year or educational programs that are not intended to lead to employment within a year is reasonable, given limited resources, and is in keeping with the refugee program's statutory requirement that refugees be placed in employment as soon as possible after arrival in the U.S.

We consider ESL to be an educational program that may be provided for more than a year as long as other services designed to lead to employment within one year are being provided concurrently to a refugee as part of an overall self-sufficiency plan. Under the requirements of § 400.146, it would be unacceptable to provide only ESL to a refugee, without the provision of other employment-related services that are intended to lead to employment within one year, since ESL alone is unlikely to enable a refugee to obtain employment with less than one year's participation in ESL. The one year starts at the beginning of the educational program, not at the end.

§ 400.147: *Comment:* Four commenters supported the proposed client priorities. Two commenters agreed that new arrivals should be given first priority. One commenter recommended limiting first priority to all newly arriving refugees on cash assistance during their first year in the U.S. The commenter noted that while § 400.147 places refugees on cash assistance on a lower priority than newly arrived refugees, § 400.75 requires that RCA recipients who are not exempt must participate in employment services within 30 days of receipt of aid. The commenter expressed concern that some counties might not have sufficient funds to serve the top two priority groups. Another commenter asked why RCA clients couldn't be given the same priority status as the first priority group since RCA recipients are within their first year of residence in the U.S. Another commenter recommended that second priority be given to serving employed refugees in need of services to maintain employment so that these refugees would not be tempted to lose their jobs in order to become a higher priority for services. Another commenter noted that according to the proposed client priorities, a newly arrived refugee in priority group #1 who is employed and making $25,000 a year and who wants to upgrade his job, would receive services before a client in priority group #3 who is time-expired, unemployed, and living on the streets but anxious to work. Another commenter wrote that he interprets the priority order to mean that (1) refugees

within their first year of residence in the U.S. and receiving cash assistance will have priority over refugees within their first year of residence who are not receiving cash assistance; and (2) refugees within their first year of residence who are not receiving cash assistance will have priority, regardless of their employment status, over refugees receiving cash assistance, but residing in the U.S. longer than one year. The commenter recommends that maximum flexibility be given to States and local service providers in applying these priorities.

Response: To clarify, the first priority group includes both refugees receiving cash assistance, including RCA and AFDC recipients, during their first year in the U.S. and refugees who are not receiving cash assistance during their first year in the U.S. who apply for services. For refugees in their first year in the U.S., we are not making a distinction in terms of priority between refugees on cash assistance and refugees not on cash assistance. We believe that most States and counties would have sufficient refugee funds to serve all first-year refugees, regardless of cash assistance status. However, if for some reason sufficient funds are not available to serve both first year cash assistance and non-cash assistance clients, common sense would suggest that priority be given to RCA recipients for service in order to meet the requirements of § 400.75.

The commenter is correct that refugees in their first year in the U.S. who are not receiving cash assistance are a higher priority, regardless of their employment status, than refugees receiving cash assistance but residing in the U.S. longer than one year. While this rule will require States to follow these priorities, we recognize there may be some instances where States and providers will need to exercise their best judgement in determining who is in greater need of services on a case-by-case basis. We, therefore, have added the phrase ''except in certain individual extreme circumstances'' at § 400.147 regarding client priorities for the social services program and at § 400.314 regarding client priorities for the targeted assistance program. For example, it may be the best judgement of a provider that a refugee recipient of cash assistance in need of a job who has been in the U.S. for more than a year needs to be served before a refugee in priority group #1 who is earning enough to support his/her family and is not in danger of being laid off, but wants a job upgrade.

Regarding the case of the first-year refugee earning $25,000 a year having priority over the time-expired refugee in priority group #3 who is unemployed, if the refugee is time-expired in terms of being in the U.S. longer than the time frames specified in §§ 400.152 and 400.315, that refugee would not be eligible to receive services funded by the refugee program except those services specified under §§ 400.152(b) and 400.315(b). If, however, the refugee in priority group #3 is not time-expired, and if $25,000 a year is sufficient to enable the first-year refugee to support his/her family, common sense would suggest that you serve the refugee in priority #3.

We do not agree with the commenter who believes that second priority should be given to employed refugees who have been in the U.S. more than one year (priority #4) to avoid the possibility of refugees needing to lose their jobs in order to become a higher priority for services. We do not believe that this scenario is likely to become a problem.

§ 400.152(b) and 400.315: *Comment:* Nineteen commenters opposed the proposed time-limitation for refugee social services and targeted assistance services, while 11 commenters wrote in support of the proposed limitation. One commenter felt that the time-limitation should be advisory, not mandatory. One commenter agreed with the longer time-limitation for targeted assistance, while another commenter supported the staggered implementation of the time-limitation. One commenter felt that limitations on service eligibility impose a needed discipline on providers and recipients alike.

A variety of concerns was expressed regarding the proposed time-limitation: the time-limitation might preclude refugee women, who delay participating in services due to cultural reasons, from accessing services at a later date; the time-limitation will result in the most needy populations being abandoned without a safety net; it will leave a significant number of refugees and entrants without the means to achieve true economic self-sufficiency; the long-term refugee welfare population will no longer receive the services they need; many community-based organizations will fold due to lack of funding; refugee adjustment services, such as mental health and family counseling are required beyond 3 years and will not be provided due to limited State and local resources; many refugees will continue to need bilingual services which are only provided through the refugee program; the time-limitation will pass fiscal responsibility to State and local governments that do not have the resources to serve this population; the time-limitation has the potential of provoking adverse public reaction to the presence of refugees if certain services are not provided to post-36-month refugees with refugee program funding; the limitation will result in bilingual workers having to meet the needs of the time-expired refugees during their lunch break, after regular work hours, or on weekends; and the time-limitation on services will severely limit MAA eligibility for refugee social service funding.

Two commenters questioned limiting services in all States based on the existence of waiting lists in just a few States. One commenter also questioned making a regulatory change for refugees in the 1990s based on study findings primarily of Southeast Asians in the 1980s. One commenter questioned ORR's authority to limit eligibility for services for entrants, citing title V, § 501(d) of the Refugee Education Assistance Act of 1980, which states: ''* * * the authorities provided in this section are applicable to assistance and services provided with respect to Cuban and Haitian entrants at any time after their arrival in the United States * * *.'' Another commenter felt that if ORR ensures that discretionary social service and TAP funds respond to the needs of refugees over 36 months, appropriate attention will have been given to this population.

Several commenters cited problems with having different eligibility periods for social services and targeted assistance. One commenter felt that this difference would create an inequitable situation in service availability between States that have TAP grants and those that do not, and would also create inequity in service availability among communities within a State. Another commenter pointed out that having two different time periods for the provision of social services and TAP, which are often provided by the same agency to the same client, would likely generate considerable confusion for both the refugees and the agencies. One commenter felt it is inconsistent to permit impacted communities to provide employment services for 5 years but not allow other communities to do so. Another commenter indicated that the 36-month time limit for social services would place great stress on TAP funds, since staffing for the post-36 month population would have to be funded solely with TAP funding. One commenter felt that the time limit would force voluntary agencies to place new arrivals only in urban areas where targeted assistance is available. Another commenter felt the two eligibility periods would make data collection

more complex and cumbersome at the agency and State level. One commenter raised the question of when, if a client is served by a dually funded program (social services and TAP), would the refugee cease to be eligible for services—at 36 months or at 60 months. Another commenter asked whether clients who are in the U.S. less than 60 months at the start of the fiscal year, who pass the 60-month mark during the fiscal year, would be allowed to complete the service plan.

Four commenters expressed concern about the lack of refugee access to mainstream services. One commenter was concerned that adding refugee clients to mainstream service systems would have a negative impact on the existing service system, in light of decreasing funds in mainstream programs. Two commenters emphasized that if refugees are to be treated like other U.S. residents and have access to the same assistance and service programs available to other populations after the first 3 years in the U.S., it is incumbent upon ORR to foster interagency cooperation at the Federal level to ensure that refugees have equal access to mainstream programs. One commenter made the point that if we achieved the two goals of obtaining equal access for refugees to mainstream services and achieving citizenship, we wouldn't need to impose a time-limitation on refugee services.

One commenter requested clarification on whether discretionary grants provided by ORR would be subject to the 36-month and 60-month limitation on eligibility. Another commenter requested clarification on whether the time-limitation applies to all services or only to those services listed under § 400.154.

Several commenters offered alternative recommendations to the proposed time-limitations: One commenter recommended allowing the States the flexibility to provide services as they are needed within the priorities described in § 400.147; another commenter recommended adding post-36-month refugees as the last priority under § 400.147; several commenters recommended that a State be allowed the flexibility to serve deserving clients beyond 36 months if a State is able to meet the needs of new arrivals as indicated by an effective and efficient job placement rate; another commenter recommended that the time-limitation should not apply to outreach and crisis services; one commenter recommended excluding community strengthening activities from the time-limitation, while another commenter recommended that services such as mental health services should be excluded from the time-limitation.

One commenter recommended that the time-limitations should be waived for each county that is impacted with Lao-Hmong, Cambodian, or Soviet Pentecostal refugees, while another commenter recommended a waiver to States that have a substantial time-expired welfare population and can demonstrate that they are able to enroll newly arrived refugees in employment services within 30 days of receipt of aid.

Five commenters recommended that, if a time-limited eligibility period must be established, the same time limit of 5 years should apply to both refugee social services and targeted assistance, in congruence with the 5-year residency requirement for citizenship. One of the commenters alternatively suggested that TAP funding be restricted to clients who are not served through refugee social service funding. One commenter proposed that the time-limitation be extended to 60 months for elderly refugees who apply for non-employment-related services such as social adjustment, health, and mental health services. Another commenter recommended that if a time limit must be imposed it should be no less than 10 years after arrival in the U.S. Two commenters recommended allowing a State to spend no more than a fixed percentage of a State's refugee funding on services for post-36-month refugees. One of the commenters suggested allowing a certain percentage of funding for post-36-month refugees only in non-targeted assistance areas.

Response: We continue to believe in the necessity and efficacy of limiting eligibility for services funded by the refugee program to a specified time period after a refugee arrives in the U.S. However, after considering the comments, we have made two revisions to the time-limitation provision: (1) We have extended the eligibility period for social services from 36 months to 60 months, in congruence with the proposed time-limitation for the targeted assistance program and with the 5-year residency requirement for U.S. citizenship; and (2) we are exempting referral and interpreter services from the time-limitation in both programs to enable referral of post-60-month refugees to mainstream services and emergency interpreter services regardless of time in the country. By extending the social services time-limitation to 60 months, refugees will have a longer time to access the services needed to attain self-sufficiency and States and providers will be spared the difficulty of administering different eligibility periods for social services and targeted assistance. We believe these changes will go a long way towards alleviating many of the areas of concern to commenters, while maintaining the time-limitation principle.

On the question of whether title V, section 501(d) of the Refugee Education Assistance Act of 1980 would prohibit ORR from limiting eligibility for services to a certain time period for Cuban and Haitian entrants, the intent of section 501(d) needs to be examined within the context of section 501(a)(1). Section 501(a)(1) states that ''[t]he President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act.'' Regarding this provision, the legislative history states that ''it is the intent of the Congress that services provided pursuant to this section shall be provided to Cuban and Haitian entrants by the same agencies, under the same conditions, and to the same extent, that assistance is provided to persons determined to be refugees in accordance with the terms of the Refugee Act of 1980.'' 126 Cong. Rec. 28470 (September 30, 1980). This indicates that Congress clearly intended that Cuban and Haitian entrants should receive the same benefits that refugees receive pursuant to the INA. We believe the only way to interpret section 501(d) in a way that makes sense in conjunction with section 501(a)(1) is that benefits provided to entrants should not be any more constrained by time barriers than benefits provided to refugees. If interpreted the way the commenter suggests, Cuban and Haitian entrants would receive more extensive services than refugees because services would only be time-limited for refugees. Congress clearly did not intend such unequal treatment.

To clarify, the time limitation applies to all services, not just to those services listed under § 400.154. The time limitation, however, does not apply to services funded with ORR discretionary grants, including both social service discretionary and targeted assistance 10% discretionary grants.

The concerns about the lack of refugee access to mainstream services are well taken. We agree with the commenters' suggestion that more has to be done at the Federal level with other programs to ensure better access by refugees to mainstream programs. We are making it an ORR priority to work with other Federal agencies and mainstream programs over the next two years to increase access and quality of services for refugees.

§ 400.154: *Comment:* Two commenters who supported elimination of job search as a mandatory requirement recommended that job search be included as an allowable employment service. One commenter also recommended including the development of family self-sufficiency plans as an allowable service. Another commenter recommended adding job-related expenses as an allowable employability service. One commenter asked whether match grant clients are excluded from all employment-related services listed under § 400.154. One commenter wrote in support of the day care definition in § 400.154.

Response: Job search is already included as an allowable employability service under § 400.154(a). We have revised § 400.154 to include the development of family self-sufficiency plans as an allowable service under § 400.154(a). Regarding job-related expenses, we believe the most important job-related expenses to include as allowable services are child care and transportation expenses. Child care as a job-related expense is already allowable under § 400.154 and we have amended § 400.154(h) to allow transportation as a job-related expense.

Match grant clients are not excluded from participating in the employment-related services listed under this provision.

§ 400.155: *Comment:* Two commenters expressed concern about the proposed change to § 400.155(f). One of the commenters was concerned that the change in language implies that translation and interpreter services may not be provided as a distinct service in its own right; thus translation/interpretation for a refugee in traffic court or juvenile court might not be allowable under this provision. The commenter recommended that translation and interpreter services be allowed to remain as distinct adjustment services. The other commenter objected to the proposed change to § 400.155(f), arguing that the provision as amended would reduce a State's ability to fund refugee mutual assistance associations for services such as interpreter services. The commenter also felt that by restricting interpreter services to instances in which these services are not available from any other source, ORR would be hampering the desirable goal of assisting refugees to take advantage of mainstream services.

One commenter requested clarification on proposed § 400.155(g) regarding the process for submission, the criteria that will be used to approve additional services, and whether requests will be reviewed uniformly or on a case-by-case basis. Another commenter asked whether volunteer coordination and training for ESL tutors, for example, would require special approval under proposed § 400.155(g). One commenter suggested that technical assistance to strengthen MAA capability is not a direct service and thus would more appropriately be supported through ORR's discretionary program.

One commenter suggested that fraud prevention education should be addressed through refugee orientation and acculturation services.

Response: We have decided to drop the proposed revision to § 400.155(f). Translation and interpreter services will continue to be allowable under § 400.155(f) regardless of whether such services are available from another source.

If a State wishes to provide additional services under proposed § 400.155(g), which now will be § 400.155(h), the State should submit as part of its annual services plan a request which describes the proposed services, documents the absence of waiting lists in the State for core refugee services (employment services, ESL, job training, and case management), demonstrates that the proposed services fit the purpose of strengthening the ability of refugee individuals, families, and refugee communities to achieve and maintain economic self-sufficiency, family stability, and community integration, documents the need for such services, and describes the results the State expects to achieve with the provision of these services.

Volunteer coordination and training for ESL tutors would not require special approval under § 400.155(h). We do not agree with the comment regarding technical assistance to strengthen the capability of MAAs; we believe this is an appropriate activity under § 400.155(h).

Fraud prevention education is allowable as a consumer education service under § 400.155(c)(3).

§ 400.156: *Comment:* One commenter requested clarification of the meaning of the phrase ''to the maximum extent feasible''. The commenter recommended adding the words ''as determined by the State'' after the words ''to the maximum extent feasible''. Another commenter felt that the phrase ''to the maximum extent feasible'' regarding the hiring of bilingual women on staff would provide a convenient out for agencies.

Two commenters requested flexibility regarding the applicability and feasibility of §§ 400.156 (c), (d), (e), and (f). One of the commenters suggested changing the phrase ''must be provided'' to ''should be provided'' to allow some flexibility.

Response: We have revised section 400.156 by removing the phrase ''to the maximum extent feasible'' in paragraphs (c) and (d) because we believe that in the refugee program, ESL should always be provided concurrently with other employment-related services or employment and that services should always be refugee-specific services designed for refugees and in keeping with the rules and objectives of the refugee program, with the exception of those services stated in § 400.156(d). The phrase ''to the maximum extent feasible'' is retained in paragraphs (e) and (f) and means that these requirements must be carried out to the fullest extent possible, while recognizing that there may be some circumstances where it may not be feasible or possible to require full compliance with this requirement. For example, it may not be feasible for a service agency to provide linguistically and culturally compatible services for a new ethnic group that includes only 2 individuals. Thus, while we believe these requirements must be met in most cases, we recognize there may be some exceptions where it may be unreasonable, and perhaps not in the best interests of the program, to require full compliance. The use of the phrase ''to the maximum extent feasible'' should not provide a convenient out regarding the hiring of bilingual women. The phrase acknowledges that there may some exceptions when it may not be feasible; but it does not open the door to non-compliance.

We believe the phrase ''to the maximum extent feasible'' provides sufficient flexibility regarding feasibility. We do not agree with the suggestion to replace the word ''must'' with the word ''should''.

§ 400.156(b): *Comment:* One commenter asked for a definition of seamless services and examples to show that they work. Another commenter, while commenting that the provision of seamless services between reception and placement (R & P) services and State-administered social services is a laudable goal, noted that voluntary agencies provide R & P services under contract with their national offices through a Department of State (DOS) contract. The commenter suggested that a similar requirement should be included in the DOS agreement. Another commenter recommended that coordination as called for under § 400.156(b) should be expressed in a State plan and should reflect policies that ensure service continuity from R & P through self-sufficiency. The

commenter recommended that the case management authority of the voluntary agencies should be respected as refugees move through the service system.

Response: Seamless services means that there is a relationship and a continuum between R & P services and State-funded services and an absence of service gaps or service duplication. This works because avoidance of service duplication results in a more efficient use of resources, and an absence of service gaps results in better service to refugees.

We will forward to the Department of State the commenter's recommendation to add a requirement on seamless services in the R & P agreement.

We do not believe it is necessary to require States to address the coordination required in this provision in State plans. Section 400.11(b)(2), as revised, requires States to develop annual social services plans on the basis of a local consultative process. This would be the logical vehicle for carrying out the coordination required under § 400.156(b).

We believe the case management authority of voluntary agencies should be respected in those cases where the voluntary agency continues to be a refugee family's principal provider as it moves through the service system. In cases where a refugee family's principal provider is another agency, such as an MAA or other organization, the case management authority of that agency should be respected regarding that particular family.

Section 400.156(c): *Comment:* Seven commenters indicated support for the provision of ESL concurrent with employment-related services. Another commenter emphasized that ESL concurrent with employment-related services is not appropriate for all populations. Another commenter wondered in the case of an ESL program where job readiness activities are part of the curriculum and/or the ESL student is also looking for job training, whether these activities constitute employment services. Another commenter wondered whether a student enrolled in an ESL program, who is employed, may attend another ESL program after he/she completes the current ESL program. One commenter recommended that this provision should be expanded to allow for worksite ESL and literacy as desirable services.

Response: We do not believe there is any refugee population that would not benefit, in most cases, from participation in ESL concurrent with participation in other employment-related services. We believe this is an appropriate arrangement for all employable refugees, regardless of ethnic background. The purpose of requiring that ESL be provided concurrently, instead of sequentially, with other employment-related services is to ensure that refugees receive a comprehensive set of services needed to maximize a refugee's chance of becoming employed and self-sufficient in a timely manner. Therefore, the example of enrollment in an ESL class only, even though job readiness activities are a part of the curriculum, as well as the example of an ESL student who happens also to be looking for job training, would not, in our view, constitute ESL concurrent with other services and would not meet the requirement under § 400.156(c).

It is perfectly allowable for an ESL student, who is employed, to enroll in another ESL program after he/she completes the current ESL program. Worksite ESL and literacy are currently allowable under § 400.154.

§ 400.156(d): *Comment:* Ten commenters indicated support for providing services through refugee-specific service systems, while 6 commenters opposed making this a requirement. One commenter recommended making this provision an option instead of a requirement. One commenter noted that the proposed rule would preclude funding to a refugee service unit in a JTPA agency, a refugee mutual assistance association (MAA) that serves refugees along with immigrants and citizens, or a school that provides ESL. Several commenters felt that their current service system effectively provides services tailored to refugees while ensuring refugee access to suitable mainstream programs. They felt that such combined programs have resulted in the leveraging of mainstream program dollars and services in a beneficial way for refugees. One commenter argued that States that can demonstrate effective use of mainstream resources to provide culturally compatible services focused on early employment should be allowed to continue to use these systems. Another commenter felt that as Federal resources diminish, it is particularly incumbent upon States to utilize other resources and to mainstream refugees where possible and where appropriate for the client. One commenter stressed the importance of making clear that this provision is not intended to relieve mainstream providers of their obligation to serve refugees seeking other than employment services or those refugees who have been in the U.S. beyond the 36-month time period.

Response: We concur with the commenters concerns and have revised § 400.156(d) to require the provision of refugee-specific services and have eliminated the requirement that services must be provided through a separate refugee-specific service system in which refugees are the only client group served. We believe this change will address all of the commenters' concerns. The revised provision will allow funding to a refugee service unit in a mainstream agency such as a JTPA agency; it will allow funding to an MAA that serves refugees along with immigrants and citizens, or to a school that provides ESL; and it will not preclude the leveraging of mainstream funds for refugees or the use of mainstream systems that have demonstrated the ability to provide refugee-specific services.

Specifically, § 400.156(d), as revised, requires the provision of refugee-specific services which must be designed to meet the needs of refugees and must be in keeping with the rules and objectives of the refugee program. There are, however, some exceptions to which this requirement does not apply; the following services are exempt from this rule: Vocational or job skills training and on-the-job training (OJT) which involves the purchase of slots for refugees in mainstream programs; and English language training. We do not believe it would be cost-efficient or necessary to require refugee-specific vocational training or OJT. Nor do we feel it is as essential for ESL to be designed specifically for refugees as long as the ESL is effectively designed for non-English speaking populations in general and is provided concurrently with other employment services to refugees.

§ 400.156(e): *Comment*: Five commenters wrote in support of the proposed rule to require culturally and linguistically compatible services. Two commenters cautioned that while culturally and linguistically compatible services can be provided for large groups, it is not possible to do for all groups; it would be too expensive and impractical to provide for just a few refugees of a particular background. One commenter recommended adding language to this provision that would permit the use of ''qualified'' volunteers. Another commenter asked how providers can be expected to lay off staff with 15 years' experience just because the ethnic groups they represent no longer need services. One commenter felt that the expertise of existing ethnic staff should not be discarded as new refugee populations arrive. The commenter felt that volunteers can often support the cultural and linguistic needs of new populations in concert

with experienced staff who may not represent the ethnicity of the new groups.

One commenter suggested that a requirement should be included in the Department of State R & P agreement with voluntary agencies which would require these agencies to work together to facilitate the cluster resettlement of refugees of the same language background so that States and localities can develop culturally and linguistically compatible services.

Response: We learned early in the refugee program that it was important to use bilingual staff who were culturally compatible with the refugee groups being served in order to provide effective resettlement services to these groups. We believe the new incoming groups deserve the same consideration as the earlier groups. It is important to balance the expertise of current staff, regardless of ethnicity, with the linguistic and cultural needs of the new populations. We expect States and providers to be as responsive as possible in carrying out this provision by incorporating the new ethnic groups on staff as much as is needed, either through new hires, contract employment, or when appropriate, through the use of qualified volunteers, while maintaining the expertise of existing staff as much as possible. If volunteers are to be used, we feel strongly that these volunteers need to be properly trained by the agency to ensure that refugees are receiving appropriate and useful bilingual services.

We will forward the commenter's recommendation regarding the cluster resettlement of refugees to the Department of State.

§ 400.156(f): *Comment*: One commenter felt that the principle of equal access for refugee women, which is critical, should not be translated into the rigid staffing pattern suggested by the language in § 400.156(f).

Response: We believe that access to services and communication between client and provider improve significantly for refugee women when there are bilingual women on staff to provide services to these clients. For this reason it is important to ensure that women are adequately represented on service agency staff.

Comments on Subpart J

§§ 400.203 and 400.204: *Comment*: One commenter expressed concern that the policy of reimbursing States for only those cash and medical assistance costs for which ORR has sufficient appropriated funds has the potential of transferring costs for non-reimbursed expenditures to States.

Response: ORR has not had sufficient appropriated funds to cover the costs of all the cash and medical assistance programs listed in §§ 400.203 and 400.204 since FY 1991 and has, since FY 1991, only reimbursed States for the costs of RCA, RMA, State administration, and the unaccompanied minors program. The commenter is correct that the costs for non-reimbursed expenditures have been born by the States.

§ 400.207: *Comment*: One commenter felt it is unclear what change is proposed in this provision. Another commenter questioned who will determine ''reasonableness'' and felt there should be an appeals process if ACF and the States do not agree on what is allowed. Another commenter recommended that ACF should publish its definition of reasonable and allowable costs and provide States and other interested parties a chance to comment. One commenter felt that ORR should be consistent with the requirements in a variety of OMB Circulars regarding allowable administrative expenses. The commenter further recommended that if ORR decides to further limit allowable administrative costs, it should specify these limitations in rule form.

Two commenters expressed concern that the language in this provision would prohibit States from claiming costs for overall State coordination activities and recommended that ORR clarify in the final rule that overall State coordination and management of the refugee program are allowable costs under § 400.207. One commenter felt that reimbursable costs for State coordination should not be restricted to the 3-year time-limited population since a State Coordinator's work involves coordination beyond the funded services to the time-limited population. Two commenters were concerned that the proposed language in this provision implies that ORR intends to impose percentage limitations on State administrative costs. The commenters pointed out that percentage limitations would make it very difficult for States with small funding allocations to operate. One commenter supported limiting administrative costs a State may charge to refugee social services and to targeted assistance. Two commenters opposed the limitation of Federal reimbursement for only those programs for which funding is currently available under the refugee program, which eliminates reimbursement for administrative costs related to categorical programs such as AFDC and Medicaid. The commenters felt this limitation is unfair since States are required to determine eligibility for AFDC and Medicaid prior to determining RCA/RMA eligibility, which requires extra staff time, resulting in increased State costs.

Response: States may continue to claim administrative costs for the overall management and coordination of the refugee program as they always have. No change was intended to prohibit the claiming of costs for coordination and oversight activities; administrative costs for these activities are allowable under § 400.13(c). Reimbursement of costs for a State Coordinator's oversight activities is not limited to the 3 or 5-year time-eligible population. We also have no intentions of imposing an administrative cap or percentage limitation on State administrative costs. We do intend to review the issue of what constitutes reasonable and allowable administrative costs in the refugee program and, if needed, to develop guidelines defining reasonable and allowable costs in consultation with States. The guidelines, if developed, will be consistent with the requirements in relevant OMB Circulars regarding allowable administrative costs and will be distributed to States for review and comment.

Comments on Subpart K

§ 400.301: *Comment*: One commenter recommended that the advance notice that a State must provide ORR before withdrawing from the refugee program should be 90 days instead of the proposed 120 days. The commenter felt that ORR should not require a longer period of advance notice than the 90-day notice that ORR provides for changes in the RCA/RMA eligibility period. Another commenter recommended that the final rule should clarify that the Director's designation of an alternate agency does not preclude a Wilson/Fish demonstration and operates only as an interim arrangement to ensure service continuity to refugees. Another commenter recommended that if a State withdraws, ORR must make sure that the replacement designee adheres to the same standards as a State-run program, is monitored according to the same standards as a State-run program, and that all assistance and services provided are equitable with State-provided assistance and services. The commenter requested clarification on whether suspension of assistance payments by a State due to a lack of Federal funding would be considered withdrawing from the program or withdrawing from part of the program, without proper notice.

Response: We believe 120 days notice is a reasonable period of time to require when a State is planning to drop out of the program. The purpose of requiring the advance notice is to allow enough time to enable ORR to make alternative arrangements to ensure that refugees in that State continue to receive assistance and services without a break in service. The commenter is correct that the designation of a replacement agency does not preclude the possibility of a Wilson/Fish demonstration project at a later date. Regarding whether a replacement designee would operate as an interim arrangement, the replacement designee would administer the provision of assistance and services to refugees in the State for a period of time allowable in accordance with Federal grant-making rules, followed by the selection of an agency through a competitive grant process.

The replacement designee will be required to adhere to the same ORR regulations that apply to a State-administered program, with the exception of certain provisions described under § 400.301 of this regulation. Certain provisions are excepted because they apply only to States and become moot when a State withdraws and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

ORR would not consider the suspension of RCA/RMA assistance payments by a State due to a lack of Federal funding to be a withdrawal from the program, unless the State indicated that it intended to withdraw from the refugee program.

Comments on Subpart L

Comment: Two commenters wrote in support of establishing regulations for the targeted assistance program (TAP). Another commenter asked for clarification on whether TAP regulations would apply to FY 1994 dollars used for the FY 1995 program.

Response: These regulations would apply to whatever dollars are being used to provide services on October 1, 1995, the effective date of this final rule.

§ 400.312: *Comment:* One commenter felt that the requirement to provide any client with targeted assistance-funded services places an undue burden on a limited funding stream. Another commenter asked what a State's responsibility is if a client is eligible for TAP services but there is insufficient funding to provide services to lower priority applicants. One commenter felt that the language regarding the opportunity to apply for TAP services is vague regarding eligible persons and should be revised to be more specific by stipulating that a State must provide any individual wishing to apply for services who has been in the U.S. 60 months or less the opportunity to do so. Another commenter recommended adding the words ''or agencies'' after the word ''individuals'' to read: ''* * * a State must provide any individual or agencies wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.''

Response: This provision parallels the language regarding social services in the current regulation under § 400.145 which has been in effect since 1989. The provision simply allows any refugee to have the opportunity to apply for services and to have his/her eligibility for services determined, nothing more. Eligibility would be determined based on the eligibility requirements in this regulation, including the time-eligibility requirement. This provision does not require a State to provide services to all individuals who apply for services. If a State does not have sufficient funds to serve lower-priority applicants, it is not required to do so. We do not agree with the suggestion to add the words ''or agencies'' to this provision. To do so would be inappropriate since agencies do not apply for services under the refugee program; only clients do.

§ 400.313: *Comment:* One commenter recommended that ESL and adult basic education should be allowed to be provided as long as these activities are provided concurrently with other employment services and are within an employment plan designed to lead to employment within one year.

Response: These services are allowed under the targeted assistance program if they are provided concurrently with other employment services designed to lead to employment within one year.

§ 400.314: *Comment:* One commenter felt that the client priorities for the targeted assistance program do not address the 60-month time limit. The commenter recommended adding language to this provision that specifies ''refugees who have been in the U.S. less than 61 months''. One commenter indicated that the proposed client priorities are not fully consistent with client priorities that were approved for one State's TAP program. Another commenter indicated that the priority #1 emphasis on long-term recipients seemed to be contradictory to the proposed time-limitation of 60 months for the targeted assistance program. Another commenter expressed concern that the TAP formula allocations may not be adequate to cover the additional service costs of the persistently unemployable welfare population in certain States, which raises the specter of cost shifts from the Federal government to the States.

Response: The 60-month eligibility time limit for targeted assistance is included under § 400.315, ''General eligibility requirements''; these requirements apply to the client priorities under § 400.314, as well as to all sections under subpart L. The reference to long-term recipients in priority #1 refers to recipients who have been on welfare for a number of years within the 60-month time limit. We would consider an individual who has been a welfare recipient for 3–5 years a long-term recipient. The commenter's concern that the TAP formula allocation in certain States may not be adequate to cover the service costs for the persistently unemployable welfare population, the population in priority #1, is somewhat puzzling, since long-term welfare recipients have always been a priority group for TAP services. It would seem that States would have a better chance of covering the service costs for a 60-month time-limited welfare population with TAP funds than for a welfare population that has been in the U.S. for an open-ended period of time. The State whose approved client priorities may be different from those listed in this provision will be required to adhere to the new client priorities when this rule becomes effective.

§ 400.316: *Comment:* One commenter questioned why services to strengthen families and communities were not included as an allowable service under TAP when one of the client priorities is long-term cash assistance recipients. Another commenter recommended that assistance to emerging refugee community leadership to develop their own resources should be an allowable service under TAP, particularly in light of the proposed time-limitations. One commenter stressed that services designed to employ women must include child care. The commenter felt that there is a need to renew limited funding for child care under the targeted assistance program.

Response: As we explained in the August 12, 1994, NPRM, services to strengthen families and communities, including assistance to refugee community leadership, were not included in the list of allowable services under the targeted assistance program because we wished to focus the use of TAP funds on employability services aimed at helping refugees become self-supporting. We feel this focus is

particularly important since the targeted assistance program is the last opportunity to use refugee program dollars to help long-term welfare recipients and other unemployed refugees into employment before they become time-ineligible for our program. Services to strengthen families and communities and to develop refugee leadership may be provided through refugee social service funds and ORR discretionary programs.

We agree that services that are designed to employ women must include child care services. We expect States to emphasize to their providers the need to arrange for child care as part of a family's self-sufficiency plan. Targeted assistance funding has always been available for child care. We have given special emphasis each year to the need for child care services in the notice of targeted assistance allocations to States.

§ 400.319: *Comment:* Four commenters objected to the proposed requirement that States with more than one qualifying TAP county that wish to allocate differently from the formula allocations presented in the ORR TAP notice, must allocate TAP funds based on the most recent 5-year refugee population. One commenter supported this requirement and recommended that States should not be allowed to allocate TAP funds based solely on the numbers of refugees receiving welfare. Two commenters suggested that States should be authorized to allocate social services and targeted assistance funds using welfare data.

Response: We believe it makes sense to require a State that wishes to re-allocate TAP funds to do so based on a population formula that is consistent with the population the TAP program is allowed to serve. Since this rule will limit eligibility for TAP services to refugees who have been in the U.S. 5 years or less, it is reasonable to require that funds be allocated based on the most recent 5-year refugee population. States may use welfare data as an additional factor, but not as the sole factor, in the allocation of targeted assistance funds if they so choose, without additional authorization; however, we do not require them to do so. A State that chooses to use welfare data in its allocation formula may not assign a greater weight to welfare data than it has assigned to population data.

General Comments

Comment: One commenter noted that the proposed rule does not allow for an MAA set-aside. The commenter recommended that there should be at least a 10–20% set-aside for MAAs and that specific language be included which ensures that States and counties give funding priority to MAAs for service provision. The commenter also recommended that the regulation should include language that ensures that MAAs are treated as full partners in all refugee programs. Another commenter urged ORR to consider allocating resources for capacity building in communities that have an over-36-month refugee population. The commenter felt it would be particularly helpful to strengthen MAAs in order to better serve their communities.

Response: We do not believe that regulatory language is the appropriate way to ensure full and equal participation by MAAs in the refugee program. We plan to review our policy on MAAs and to develop a more comprehensive strategy regarding refugee community development over the next few years in order to help refugee communities develop their capacity to be viable, self-sustaining communities. As part of this effort, we will be reviewing the social service and targeted assistance allocations notices to determine if changes are needed to better ensure service funding to qualified MAAs.

Comment: One commenter recommended that ORR and JOBS staff consult to amend any JOBS regulations that may impede refugee AFDC recipients from enrollment in JOBS services. The commenter recommended allowing States with large refugee populations the option to make refugee AFDC recipients a JOBS target group.

Response: We intend to consult with JOBS staff on these issues.

Comment: One commenter expressed concern about the impact that the implementation of the proposed rule will have on the changes to the quarterly performance report (QPR) that ORR is proposing. The commenter recommended that ORR wait to make changes in the QPR reporting form until final decisions are reached on the proposed rule.

Response: Implementation of this rule will not have an adverse impact on the revised QPR. The final QPR form will be consistent, rather than at odds, with the new regulatory requirements.

Regulatory Procedures

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: January 9, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: May 17, 1995.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.1 [Amended]

2. Section 400.1(a) is amended by adding the words ''and other public and private non-profit agencies, wherever applicable'' after the word ''States''.

3. Section 400.4(b) is revised to read as follows:

§ 400.4 Purpose of the plan.

* * * * *

(b) A State must certify no later than 30 days after the beginning of each Federal fiscal year that the approved State plan is current and continues in effect. If a State wishes to change its plan, a State must submit a proposed amendment to the plan. The proposed amendment will be reviewed and approved or disapproved in accordance with § 400.8.

4. Section 400.5(h) is revised to read as follows:

§ 400.5 Content of the plan.

* * * * *

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary resettlement agencies, local community service agencies, and other agencies that serve refugees meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugees' arrival. All existing exemptions to this requirement will expire 90 days after the effective date of this rule. Any State that wishes to be exempted from the provisions regarding the holding and frequency of meetings may apply by submitting a written request to the Director. The request must set forth the reasons why the State considers these meetings unnecessary because of the absence of problems associated with the planning and coordination of refugee placement. An approved exemption will remain in effect for three years, at which time a State may reapply.

§ 400.9 [Amended]

5. Section 400.9(g) is amended to correct the spelling of the word ''initiable'' to ''initial''.

§ 400.11 [Amended]

6. Section 400.11(b)(1) is amended by removing the words ''on a form'' after the word ''year'' at the end of the paragraph and adding in their place the words ''in accordance with guidelines''.

7. Section 400.11(b)(2) is amended by adding the words ''developed on the basis of a local consultative process'' after the word ''plan'' and by removing the words ''no later than 45 days prior to the beginning of the State's annual planning cycle for social services'' and adding the words ''and at a time'' after the word ''form''.

8. Section 400.11(b)(3) is amended by removing the word ''quarterly'' before the word ''estimates''.

9. Section 400.11(c) is amended by adding a period ''.'' after the word ''quarter'', removing the remainder of the sentence, beginning with the word ''except'' and ending with the word ''year'', and replacing it with a new sentence that reads as follows:

* * * * *

(c) * * * Final financial reports must be submitted in accordance with the requirements described in § 400.210.

* * * * *

§ 400.13 [Amended]

10. Section 400.13(a) is amended by adding the words ''Refugee Resettlement Program'' before the word ''RRP'' and placing the word ''RRP'' in parentheses.

11. Section 400.13(d) is revised to read as follows:

§ 400.13 Cost allocation.

* * * * *

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant.

12. Section 400.62 is amended by adding a new paragraph (c) to read as follows:

§ 400.62 Need standards and payment levels.

* * * * *

(c) The date refugee cash assistance begins must be the same date, in relation to the date of application, as assistance would begin under a State's plan for AFDC under § 206.10(a)(6) of this title.

Subpart F—Requirements for Employability Services and Employment

13. The heading of subpart F is revised to read as set forth above.

14. Section 400.70 is revised to read as follows:

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services or targeted assistance, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee cash assistance must comply with the requirements in this subpart.

§ 400.71 [Amended]

15. Section 400.71 is amended by alphabetically adding the definition for the term ''family self-sufficiency plan'' to read as follows:

* * * * *

Family self-sufficiency plan means a plan that addresses the employment-related service needs of the employable members in a family for the purpose of enabling the family to become self-supporting through the employment of one or more family members.

* * * * *

§ 400.75 [Amended]

16. Section 400.75(a)(1) is amended by adding the words '', within 30 days of receipt of aid,'' after the word ''and''. Section 400.75(a)(2) is removed and paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are redesignated as paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively.

17. Section 400.76 is amended by revising paragraph (a)(7) to read as follows:

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) * * *

(7) A parent or other caretaker relative of a child under age 3 who personally provides full-time care of the child with only very brief and infrequent absences from the child. Only one parent or other relative in a case may be exempt under this paragraph.

* * * * *

18. Section 400.76(a)(9) is amended by removing the number ''3'' and adding in its place the number ''6''.

19. Section 400.76(b) is amended by removing the words ''carrying out job search,'' after the word ''programs,''.

§ 400.79 [Amended]

20. Section 400.79(a) is amended by adding the words ''as part of a family self-sufficiency plan where applicable'' after the words ''must be developed'' and by adding the words ''in a filing unit'' after the words ''refugee cash assistance''.

21. Section 400.79(c)(3) is removed.

22. Section 400.80 is revised to read as follows:

§ 400.80 Job search requirements.

A State must require job search for employable refugees where appropriate.

§ 400.82 [Amended]

23. The heading in section 400.82 and the undesignated centerhead immediately preceding it are amended by removing the words ''to carry out job search or'' after the word ''refusal'' in the title.

24. Section 400.82(a) is amended by removing the words ''to carry out job search,'' after the word ''services,''.

25. Section 400.82 is amended by removing paragraph (b)(3)(iii).

26. The heading of § 400.83 is revised to read as set forth below.

27. Section 400.83 is amended by redesignating the current text as paragraph (b) and by adding a new paragraph (a) to read as follows:

§ 400.83 Conciliation and fair hearings.

(a) A conciliation period prior to the imposition of sanctions must be provided for in accordance with the following time-limitations: The conciliation effort shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by conciliation.

* * * * *

§ 400.94 [Amended]

28. Section 400.94(a) is amended by removing the words ''refugees who apply'' and adding in their place the words ''each individual member of a family unit that applies'' before the words ''for medical assistance''.

§ 400.100 [Amended]

29. Section 400.100(d) is amended by adding the words ''who are not eligible for Medicaid'' after the words ''cash assistance''.

30. Section 400.104 is revised to read as follows:

§ 400.104 Continued coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving refugee medical assistance receives increased earnings from employment, the increased earnings shall not affect the refugee's continued medical assistance eligibility. The refugee shall continue to receive refugee medical assistance until he/she reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b). In cases where a refugee obtains private medical coverage, any payment of RMA for that individual must be reduced by the amount of the third party payment.

§ 400.106 [Amended]

31. Section 400.106 is amended by adding the words '', only to the extent that sufficient funds are appropriated,'' after the words ''§§ 400.94''.

§ 400.107 [Amended]

32. The heading of § 400.107 is amended by removing the words ''Health assessments'' and adding in their place the words ''Medical screening''.

33. Section 400.107(a) is amended by removing the words ''a health assessment'' and adding in their place the words ''medical screening'' and by replacing the word ''assessment'' with the word ''screening'' each time the word ''assessment'' is used.

§ 400.140 [Amended]

34. Section 400.140 is amended by adding the words ''formula allocation'' before the word ''grants''.

§ 400.141 [Amended]

35. Section 400.141 is amended by removing the words ''any title XX social service as defined below or'' from the first paragraph and by removing the second paragraph.

36. Section 400.145 is amended by adding a new paragraph (c) that reads as follows:

§ 400.145 Opportunity to apply for services.

* * * * *

(c) A State must insure that women have the same opportunities as men to participate in all services funded under this part, including job placement services.

37. Section 400.146 is revised to read as follows:

§ 400.146 Use of funds.

The State must use its social service grants primarily for employability services designed to enable refugees to obtain jobs within one year of becoming enrolled in services in order to achieve economic self-sufficiency as soon as possible. Social services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Social service funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

38. Section 400.147 is revised to read as follows:

§ 400.147 Priority in provision of services.

A State must plan its social service program and allocate its social service funds in such a manner that services are provided to refugees in the following order of priority, except in certain individual extreme circumstances:

(a) All newly arriving refugees during their first year in the U.S., who apply for services;

(b) Refugees who are receiving cash assistance;

(c) Unemployed refugees who are not receiving cash assistance; and

(d) Employed refugees in need of services to retain employment or to attain economic independence.

39. The heading of § 400.152 is revised to read as set forth below.

40. Section 400.152(b) is revised to read as follows:

§ 400.152 Limitations on eligibility for services.

* * * * *

(b) A State may not provide services under this subpart, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months, except that refugees who are receiving employability services, as defined in § 400.154, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S.

§ 400.153 [Removed]

41. Section 400.153 is removed.

§ 400.154 [Amended]

42. Section 400.154(a) is amended by adding the words ''a family self-sufficiency plan and'' after the words ''development of''.

43. Section 400.154(g) is amended by adding the words *''for children''* after the words ''Day care''.

44. Section 400.154(h) is amended by adding the words ''or for the acceptance or retention of employment'' after the words ''employability service''.

45. Section 400.154 is amended by removing the note after paragraph (j).

46. Section 400.155(b) is amended by adding the words '', to explain the purpose of these services, and facilitate access to these services'' after the words ''available services'' at the end of the paragraph.

47. Section 400.155(c)(1) is amended by adding the words ''or families'' after the word ''persons'' and before the word ''in''.

48. Section 400.155(d) is amended by adding the words *''for children''* after the words ''Day care''.

49. Section 400.155(h) is revised to read as follows:

§ 400.155 Other services.

* * * * *

(h) *Any additional service,* upon submission to and approval by the Director of ORR, aimed at strengthening and supporting the ability of a refugee individual, family, or refugee community to achieve and maintain economic self-sufficiency, family stability, or community integration which has been demonstrated as

effective and is not available from any other funding source.

§ 400.156 [Amended]

50. Section 400.156 is amended by revising the heading to read as set forth below:

51. Section 400.156(a) is amended by removing the words ''job search and'' after the word ''refugee''.

52. Section 400.156(b) is amended by removing the words ''and not duplicate the provision of such services to such refugee'' after the word ''sponsors'' and adding in their place the words ''in order to ensure the provision of seamless, coordinated services to refugees that are not duplicative''.

53. Section 400.156 is amended by adding new paragraphs (c), (d), (e), (f) and (g) that read as follows:

§ 400.156 Service requirements.

* * * * *

(c) English language instruction funded under this part must be provided in a concurrent, rather than sequential, time period with employment or with other employment-related services.

(d) Services funded under this part must be refugee-specific services which are designed specifically to meet refugee needs and are in keeping with the rules and objectives of the refugee program, except that vocational or job skills training, on-the-job training, or English language training need not be refugee-specific.

(e) Services funded under this part must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background.

(f) Services funded under this part must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs to ensure adequate service access by refugee women.

(g) A family self-sufficiency plan must be developed for anyone who receives employment-related services funded under this part.

§ 400.203 [Amended]

54. Section 400.203 is amended by adding the words ''To the extent that sufficient funds are appropriated,'' before the words ''Federal funding'' at the beginning of paragraphs (a) and (c).

§ 400.204 [Amended]

55. Section 400.204 is amended by adding the words ''To the extent that sufficient funds are appropriated,'' before the words ''Federal funding'' at the beginning of paragraphs (a) and (c).

56. Sections 400.206 is amended by revising the section heading as set forth below, by designating the existing paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 400.206 Federal funding for social services and targeted assistance services.

* * * * *

(b) Federal funding is available for targeted assistance services as set forth in subpart L of this part, including reasonable and necessary identifiable State administrative costs of providing such services, not to exceed 5 percent of the total targeted assistance award to the State.

57. Section 400.207 is revised to read as follows:

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary identifiable administrative costs of providing assistance and services under this part only for those assistance and service programs set forth in §§ 400.203 through 400.205 for which Federal funding is currently made available under the refugee program. A State may claim only those costs that are determined to be reasonable and allowable as defined by the Administration for Children and Families. Such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

58. Section 400.210 is revised to read as follows:

§ 400.210 Time limits for obligating and expending funds and for filing State claims.

Federal funding is available for a State's expenditures for assistance and services to eligible refugees for which the following time limits are met:

(a) *CMA grants,* as described at § 400.11(a)(1) of this part:

(1) Except for services for unaccompanied minors, a State must use its CMA grants for costs attributable to the Federal fiscal year (FFY) in which the Department awards the grants. With respect to CMA funds used for services for unaccompanied minors, the State may use its CMA funds for services provided during the Federal fiscal year following the FFY in which the Department awards the funds.

(2) A State's final financial report on expenditures of CMA grants, including CMA expenditures for services for unaccompanied minors, must be received no later than one year after the end of the FFY in which the Department awarded the grant. At that time, the Department will deobligate any unexpended funds, including any unliquidated obligations.

(b) *Social service grants and targeted assistance grants,* as described, respectively, at §§ 400.11(a)(2) and 400.311 of this part:

(1) A State must obligate its social service and targeted assistance grants no later than one year after the end of the FFY in which the Department awards the grant.

(2) A State's final financial report on expenditures of social service and targeted assistance grants must be received no later than two years after the end of the FFY in which the Department awarded the grant. At that time, the Department will deobligate any unexpended funds, including any unliquidated obligations.

59. Subpart J is amended by adding a new § 400.212 that reads as follows:

§ 400.212 Restrictions in the use of funds.

Federal funding under this part is not available for travel outside the United States without the written approval of the Director.

Subpart K—Waivers and Withdrawals

60. The heading of subpart K is revised to read as set forth above:

61. Subpart K is amended by revising § 400.300 and adding a new § 400.301, that read as follows:

§ 400.300 Waivers.

If a State wishes to apply for a waiver of a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part and is appropriate and consistent with Federal refugee policy objectives. To the fullest extent practicable, the Director will approve or disapprove an application for a waiver within 130 days of receipt of such application. The Director shall provide timely written notice of the reasons for denial to States whose applications are disapproved.

§ 400.301 Withdrawal from the refugee program.

(a) In the event that a State decides to cease participation in the refugee program, the State must provide 120 days advance notice to the Director before withdrawing from the program.

(b) To participate in the refugee program, a State is expected to operate all components of the refugee program, including refugee cash and medical assistance, social services, preventive health, and an unaccompanied minors program if appropriate. A State is also expected to play a coordinating role in

the provision of assistance and services in accordance with § 400.5(b). In the event that a State wishes to retain responsibility for only part of the refugee program, it must obtain prior approval from the Director of ORR. Such approval will be granted only under extraordinary circumstances and if it is in the best interest of the Government.

(c) When a State withdraws from all or part of the refugee program, the Director may authorize a replacement designee or designees to administer the provision of assistance and services, as appropriate, to refugees in that State. A replacement designee must adhere to the same regulations under this part that apply to a State-administered program, with the exception of the following provisions: 45 CFR 400.5(d), 400.7, 400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i), 400.94(a), 400.94(b), 400.94(c), and subpart L. Certain provisions are excepted because they apply only to States and become moot when a State withdraws from participation in the refugee program and is replaced by another entity. States would continue to be responsible for administering the other excepted provisions because these provisions refer to the administration of other State-run public assistance programs.

62. Part 400 is amended by adding a new subpart L, that reads as follows:

Subpart L—Targeted Assistance

Sec.
400.310 Basis and scope.
400.311 Definitions.
400.312 Opportunity to apply for services.

Funding and Service Priorities

400.313 Use of funds.
400.314 Priority in provision of services.
400.315 General eligibility requirements.
400.316 Scope of targeted assistance services.
400.317 Service requirements.
400.318 Eligible grantees.
400.319 Allocation of funds.

Subpart L—Targeted Assistance

§ 400.310 Basis and scope.

This subpart sets forth requirements concerning formula allocation grants to States under section 412(c)(2) of the Act for targeted assistance.

§ 400.311 Definitions.

For purposes of this subpart—

''Targeted assistance grants'' means formula allocation funding to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

§ 400.312 Opportunity to apply for services.

A State must provide any individual wishing to do so an opportunity to apply for targeted assistance services and determine the eligibility of each applicant.

Funding and Service Priorities

§ 400.313 Use of funds.

A State must use its targeted assistance funds primarily for employability services designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program in order to achieve economic self-sufficiency as soon as possible. Targeted assistance services may continue to be provided after a refugee has entered a job to help the refugee retain employment or move to a better job. Targeted assistance funds may not be used for long-term training programs such as vocational training that last for more than a year or educational programs that are not intended to lead to employment within a year.

§ 400.314 Priority in provision of services.

A State must plan its targeted assistance program and allocate its targeted assistance funds in such a manner that services are provided to refugees in the following order of priority, except in certain individual extreme circumstances:

(a) Cash assistance recipients, particularly long-term recipients;

(b) Unemployed refugees who are not receiving cash assistance; and

(c) Employed refugees in need of services to retain employment or to attain economic independence.

§ 400.315 General eligibility requirements.

(a) For purposes of determining eligibility of refugees for services under this subpart, the same standards and criteria shall be applied as are applied in the determination of eligibility for refugee social services under §§ 400.150 and 400.152(a).

(b) A State may not provide services under this subpart, except for referral and interpreter services, to refugees who have been in the United States for more than 60 months, except that refugees who are receiving employability services, as defined in § 400.316, as of September 30, 1995, as part of an employability plan, may continue to receive those services through September 30, 1996, or until the services are completed, whichever occurs first, regardless of their length of residence in the U.S.

§ 400.316 Scope of targeted assistance services.

A State may provide the same scope of services under this subpart as may be provided to refugees under §§ 400.154 and 400.155, with the exception of § 400.155(h).

§ 400.317 Service requirements.

In providing targeted assistance services to refugees, a State must adhere to the same requirements as are applied to the provision of refugee social services under § 400.156.

§ 400.318 Eligible grantees.

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for targeted assistance awards. The use of targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

§ 400.319 Allocation of funds.

(a) A State with more than one qualifying targeted assistance county may allocate its targeted assistance funds differently from the formula allocations for counties presented in the ORR targeted assistance notice in a fiscal year only on the basis of its population of refugees who arrived in the U.S. during the most recent 5-year period. A State may use welfare data as an additional factor in the allocation of targeted assistance funds if it so chooses; however, a State may not assign a greater weight to welfare data than it has assigned to population data in its allocation formula.

(b) A State must assure that not less than 95 percent of the total award to the State is made available to the qualified county or counties, except in those cases where the qualified county or counties have agreed to let the State administer the targeted assistance program in the county's stead.

[FR Doc. 95–15701 Filed 6–27–95; 8:45 am]
BILLING CODE 4184–01–P

federal register

Wednesday
June 28, 1995

Part VI

Department of Health and Human Services

Food and Drug Administration

Silicone Inflatable Breast Protheses; Information for Women Considering Saline-Filled Breast Implants; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0007]

Silicone Inflatable Breast Prostheses; Information for Women Considering Saline-Filled Breast Implants; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a patient risk information sheet entitled ''Information for Women Considering Saline-filled Breast Implants.'' The purpose of this information sheet is to provide prospective patients with information about the possible risks involved with silicone inflatable breast prostheses (saline-filled breast implants).

ADDRESSES: Submit written requests for single copies of the information sheet entitled ''Information for Women Considering Saline-filled Breast Implants'' to the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests, or FAX your request to 301–443–8818. ''Information for Women Considering Saline-filled Breast Implants'' is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health, Office of Standards and Regulations (HFZ–84), 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: Saline-filled breast implants were already on the market when FDA was given the authority to regulate medical devices. After passage of the Medical Device Amendments of 1976, FDA classified this device into class III (premarket approval). Under a ''grandfather'' clause, manufacturers were permitted to continue marketing class III devices already on the market, with the understanding that at some time in the future FDA would require them to submit preclinical and clinical data showing that their devices are both safe and effective. FDA believes that it is important for prospective recipients of saline-filled breast implants to know that FDA has not yet seen or evaluated preclinical information and clinical trials on these devices. The agency believes that patients should receive information about the possible risks involved before surgery so that they have an opportunity to review the material and discuss it with their doctor. Each woman must decide with her doctor whether she is willing to accept the risks in order to achieve the expected benefits. FDA believes that this decision should be an informed one.

FDA issued a notice to promote the dissemination of information on risks associated with saline-filled breast implants in the **Federal Register** of September 26, 1991 (56 FR 49098). FDA stated in that notice that it would regard saline implants as misbranded under the Federal Food, Drug, and Cosmetic Act (the act) if their labeling does not provide adequate written information to patients on the risks associated with these devices. Included in the **Federal Register** notice was a suggested patient risk information sheet.

Subsequently, in December 1994, FDA solicited comments from health professional groups, consumer organizations, and manufacturers on updating the patient risk information sheet. FDA has sent the updated risk information sheet to the two manufacturers of saline-filled breast implants, Mentor H/S and McGhan Medical, so they can provide it to physicians who perform breast implant surgery. It is the responsibility of these physicians to provide the information sheet to prospective patients before they have decided on surgery so they can read, consider, and discuss the current information before deciding whether to have the surgery.

To ensure that patients receive the revised patient information, these two manufacturers have agreed to send a ''Dear Doctor'' letter to their physician customers, including a copy of the revised patient risk information sheet, to remind them of the importance of providing this information to all prospective patients. Written confirmation from the physicians that they agree to disseminate the revised patient information will be requested. The manufacturers also agreed to ask the American Society for Plastic and Reconstructive Surgeons to include in their next newsletter an article advising their members of the updated patient information, and reminding them of their responsibility to provide this information to all prospective patients. Lastly, the manufacturers are to ensure that all saline breast implants shipped include the revised patient risk information sheet.

The saline-filled breast implant is currently the only device legally available for breast augmentation. For breast reconstruction, the current legal restrictions on the use of silicone gel-filled implants limit their use to those cases where the saline breast prosthesis is considered medically unsatisfactory.

Because FDA believes it is important that the information in the patient risk information sheet is available to consumers and the general public, FDA is providing the text of this sheet below and will provide single copies on request to the Division of Small Manufacturers Assistance (address above).

Information for Women Considering Saline-filled Breast Implants

Saline-filled breast implants (silicone envelopes filled with salt water) were already in use in 1976 when the Food and Drug Administration (FDA) began regulating medical devices. Under this 1976 law, manufacturers could continue selling devices already on the market (''grandfathered''). But the 1976 law made it clear that at some time in the future, FDA would require manufacturers to submit their research data showing that these products are safe and effective. Women need to know that until this call for research data occurs, laboratory, animal, and human tests on some of these ''grandfathered'' products—including saline breast implants—may not have been completed by the manufacturer or reviewed by FDA.

Women considering saline-filled breast implants for breast enlargement or reconstruction should receive the following information about implants (and, when appropriate, other options for reconstruction) before surgery is scheduled. This will allow them time to review the material and discuss possible risks and benefits with her doctor. For some women, breast implants can improve their quality of life. Some breast cancer survivors believe that getting implants has been an important part of their recovery. However, other women find external breast forms to be satisfactory. Reconstruction options include breast implants or surgery using tissue from a patient's own abdomen, back, or buttocks to form a new breast. This surgery requires sufficient fat tissue and a longer operation, and like any other procedure, it is not always successful. For each woman, whether her goal is augmentation or reconstruction, the benefits may be different. With her doctor's advice, each woman must decide whether or not she wishes to accept the possible risks in order to achieve the expected results.

Breast implant surgery presents the same general risks associated with anesthesia and any other surgery. After the surgery, there are other special risks related to saline-filled breast implants. (The manufacturer's package

insert for these devices gives additional, more detailed information. Your surgeon has a copy and can provide it to you.)

Most Common Risks

Deflation. Breast implants cannot be expected to last forever. Some implants deflate (or rupture) in the first few months after being implanted and some deflate after several years; yet some seem to be intact 10 or more years after the surgery. It is not known when deflation is most likely to happen. The implant can break due to injury to the breast or through normal wear over time, releasing the saline (salt water) filling. Researchers are doing studies to determine rupture rates over time. Whenever a saline-filled implant does deflate, it usually happens quickly and requires surgery to remove and, if desired, replace the ruptured implant. Since salt water is naturally present in the body, the leaked saline from the implant will be absorbed by the body instead of being treated as foreign matter.

Making breast cancer harder to find. The implant could interfere with finding breast cancer during mammography. It can ''hide'' suspicious-looking patches of tissue in the breast, making it difficult to interpret results. The implant may also make it difficult to perform mammography. Since the breast is squeezed during mammography, it is possible for an implant to rupture during the procedure. It is essential that every woman who has a breast implant tell her mammography technologist before the procedure. The technologist can use special techniques to minimize the possibility of rupture and to get the best possible views of the breast tissue. Because more x-ray views are necessary with these special techniques, women with breast implants will receive more radiation than women without implants who receive a normal exam. However, the benefit of the mammogram in finding cancer outweighs the risk of the additional x-rays.

Capsular contracture. The scar tissue or capsule that normally forms around the implant may tighten and squeeze the implant. This is called capsular contracture. Over several months to years, some women have changes in breast shape, hardness, or pain as a result of this contraction. No good data are available on how often this happens. If these conditions are severe, more surgery may be needed to correct or remove the implants.

Other Known Risks

Calcium deposits in the tissue around the implant. When calcium deposits, which are not harmful, occur, they can be seen on mammograms. These deposits must be identified as different from the calcium that is often a sign of breast cancer. Occasionally, it is necessary to surgically remove and examine a small amount of tissue to see whether or not it is cancer. This can frequently be done without removing the implant.

Additional surgeries. Women should understand there is a fairly high chance they will need to have additional surgery at some point to replace or remove the implant when and if it wears out. Also, problems such as deflation, capsular contracture, infection, shifting, and calcium deposits can require removal of the implants. Discuss the risk of these additional surgeries with your physician. Many women decide to have the implants replaced, but some women do not.

Infection. Infection can occur with any surgery. The frequency of infection with implant surgery is not known, but a prospective patient should ask her surgeon what his or her experience has been. Most infections resulting from surgery appear within a few days to weeks after the operation. However, infection is possible at any time after surgery. Infections with foreign bodies present (such as implants) are harder to treat than infections in normal body tissues. If an infection does not respond to antibiotics, the implant may have to be removed. After the infection is treated, a new breast implant can usually be put in.

Hematoma. A hematoma is a collection of blood inside the body (in this case, around the implant or around the incision). Swelling, pain, and bruising may result. The chance of getting a hematoma is not known, but a woman thinking about breast implants should ask her surgeon about his or her experience. If a hematoma occurs, it will usually be soon after surgery. (It can also occur at any time after injury to the breast.) Small hematomas are absorbed by the body, but large ones may have to be drained surgically for proper healing. Surgical draining causes scarring, which is minimal in most women.

Delayed wound healing. In rare instances, the implant stretches the skin abnormally, depriving it of blood supply and allowing the implant to push out through the skin. This complication usually requires additional surgery.

Changes in feeling in the nipple and breast. Feeling in the nipple and breast can increase or decrease after implant surgery. Changes in feeling can be temporary or permanent and may affect sexual response or the ability to nurse a baby. (See the paragraph on breast-feeding below.)

Shifting of the implant. Sometimes an implant may shift from its initial placement, giving the breasts an unnatural look. An implant may become visible at the surface of the breast as a result of the device pushing through the layers of skin. Further surgery is needed to correct this problem. If the implant shifts, it may become possible to feel the implant through the skin. (Placing the implant beneath the muscle may help to minimize this problem.) Other problems with appearance could include incorrect implant size, visible scars, uneven appearance, and wrinkling of the implant.

Unknown Risks

In addition to these known risks, there are unanswered questions about saline-filled breast implants. For example, can the implants bring on symptoms of autoimmune diseases such as lupus, scleroderma, and rheumatoid arthritis? Can they bring on neurological symptoms similar to multiple sclerosis in some women? Can the implants increase the risk of cancer? (Because saline-filled implants contain only salt water, any risk that might be related to silicone gel would not occur with this type of product.) There is some concern, but little information, about possible risks from the silicone rubber material of the envelope. Also, questions have been raised about the potential for the saline to become contaminated with fungus or bacteria. If so, these organisms might be released into the woman's body if her implant deflated.

Autoimmune diseases. According to scientific studies, women with breast implants in general are not at an increased risk for autoimmune or connective tissue diseases. However, these studies are too small to detect whether there might be a slightly increased risk of any one of these rare diseases. Also, these current studies have looked only for the symptoms of known autoimmune diseases, rather than the variety of symptoms that some women report experiencing. Some of the reported symptoms include:

- Swelling and/or joint pain or arthritis-like pain;
- General aching
- Unusual hair loss
- Unexplained or unusual loss of energy
- Greater chance of getting colds, viruses, and flu
- Swollen glands or lymph nodes
- Rash
- Memory problems, headaches
- Muscle weakness or burning
- Nausea, vomiting
- Irritable bowel syndrome.

Breast-feeding and children. Questions have been raised about whether or not breast implants present safety concerns for nursing infants of women with breast implants. Some women with breast implants have reported health problems in their breast-fed children. Only very limited research has been conducted in this area, and at this time there is no scientific evidence that this is a problem. It is not known if

there are risks in nursing for a woman with breast implants or if the children of women with breast implants are more likely to have health problems.

Cancer. At this time, there is no scientific evidence that women with saline-filled breast implants are more susceptible to cancer than other women.

Dated: June 15, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–15769 Filed 6–27–95; 8:45 am]

BILLING CODE 4160–01–F

federal register

Wednesday
June 28, 1995

Part VII

Department of Agriculture

Food and Consumer Service

7 CFR Part 271 et al.

Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272 and 273

[Amdt. No. 367]

RIN 0584–AB89

Food Stamp Program: Collecting Food Stamp Recipient Claims From Federal Income Tax Refunds and Federal Salaries

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes collecting two types of Food Stamp Program (FSP) recipient claims from Federal income tax refunds and from Federal salaries. The two types of recipient claims are inadvertent household error (IHE) and intentional Program violation (IPV) claims. These claims represent amounts of benefits which households received but to which they were not entitled. This rule proposes to collect these types of claims from individuals who are no longer participating in the FSP. This rule proposes operating procedures, due-process notices, and appeal rights and other rights and responsibilities of individuals. The Department has been testing the Federal income tax refund offset program (FTROP) since 1992 and is currently testing the Federal salary offset program (salary offset).

DATES: Comments must be received on or before July 28, 1995 to be assured of receiving consideration.

ADDRESSES: Comments should be addressed to James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 907, Alexandria, Virginia 22302. Comments can be reviewed at that address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Porter at the above address or by telephone at (703) 305–2385.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule will affect the State and local agencies which administer the Food Stamp Program and certain individuals who have received excess food stamp benefits. Half of substantially all State and local administrative costs for administering the Food Stamp Program are reimbursed by the Department.

Executive Order 12778

This rulemaking has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Section 3507).

This is a new public information collection burden. The reporting and recordkeeping requirements for it were described in a General Notice titled ''Food Stamp Program: Recipient Claims Collection: Test of Offsetting Federal Income Tax Refunds,'' published August 20, 1991 at 56 FR 41325. Because State agencies are continuing to join FTROP, with a resulting increase in the number of individuals subject to collection, average numbers were used to estimate the information collection burden. These were: 30 State agencies and 250,000 individuals. Of the total 58,555 hour estimated information collection burden, 50,330 hours is associated with due-process notices and appeals under FTROP. The burden is shared between State agencies and individuals, the two types of respondents. State agencies had 13,122 hours, of which more than 12,000 hours is associated with the production of due-process notices. Individuals had 37,208 hours, almost all of which is associated with responding to due process notices.

As mentioned above, collecting food stamp recipient claims from Federal salaries is currently being tested. If that test indicates that full implementation of salary offset would result in a measurable increase in the approved information collection burden, the Department will submit an adjustment to that estimate and provide the public due notice and opportunity to comment on that adjustment. An adjustment to reflect the decreased State agency FTROP reporting as proposed in this rule will be submitted if warranted.

On September 27, 1993 OMB approved the information collection requirements through September 30, 1996 (OMB No. 0584–0446). The title of the information collection is ''Expansion of Test of Offsetting Federal Income Tax Refunds.'' Comments regarding this estimated information collection burden, including suggestions for reducing the burden, should be sent to the Department of Agriculture Clearance Officer, Office of Information Resources Management, Room 404–W, Washington, D.C. 20250. Such comments should also be sent to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0584–0446), Washington, D.C. 20503.

Comment Period

The Department believes that a 30-day comment period for this rule is sufficient because while this is a proposed rule, it addresses comments the Department received about the General Notices under which FTROP has been tested. These comments were from a major public interest group and from several State agencies. The rule clarifies several matters and proposes changes in FTROP procedures based on those comments, on numerous State agency questions raised during annual training sessions and submitted to FCS regional offices during the test of FTROP.

Background

A. General

Individuals currently owe the Department about $800 million for IHE and IPV recipient claims. A substantial portion of the $800 million is not being repaid. The Department is concerned about this situation and is augmenting its policies and procedures to improve

collections of this debt. FTROP and salary offset are major initiatives in this effort.

Both collection methods would require that State agencies submit claims to FCS for referral to the Internal Revenue Service (IRS) for collection through FTROP. Automated data processing would be conducted under strict data security procedures and confidentiality restrictions to assure that information about individual debtors would be used only for the authorized purposes of the proposed collection methods. Under the proposed rule, prior to any adverse action (the collection efforts), notice about the intended collection efforts, including advice of appeal rights, must be provided individuals identified as owing FSP recipient claims. Both FTROP and salary offset would only be used when none of the household members liable for the recipient claims to be collected are participating in the State which would be initiating the collection action. FTROP and salary offset would be applied only to IHE and IPV claims meeting this condition because, under current food stamp regulations, both IHE and IPV claims owed by participating households must be collected either by a repayment method of the household's choice or by allotment reduction.

The IRS requires that Federal agencies participating in FTROP use all reasonable collection efforts before referring a debt for collection from Federal income tax refunds. The IRS views salary offset as such an effort and therefore requires participation in salary offset or at a minimum, deletion of claims which can be collected from Federal employees from lists of claims submitted under FTROP. (See 26 CFR 301.6402–6 (b)(1)(iii) and (c)(2) of IRS regulations.)

B. FTROP

1. Authorities for FTROP

The authority for FTROP is Section 2653 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) as amended by Public Law 101–508 (1990) and Public Law 102–589 (1992) (DEFRA). The FTROP provisions are codified at 31 U.S.C. 3720A, 26 U.S.C. 6402 and 26 U.S.C. 6103. As originally enacted in Public Law 98–369, authority for FTROP had a sunset clause and would have expired on January 1, 1989. That date was extended twice, first by Public Law 100–203 and then by Public Law 100–485. The Emergency Unemployment Act of 1991 (Pub. L. 102–164) made the authority to conduct FTROP permanent. In addition, section 4(c) of the Food Stamp Act of 1977 provides broad authority to the Secretary of Agriculture to issue such regulations as the Secretary deems necessary or appropriate for effective and efficient administration of the Food Stamp Program (7 U.S.C. 2013(c)).

The Department began testing FTROP in 1992 pursuant to a General Notice published August 20, 1991 at 56 FR 41325. That General Notice described the procedures for operating FTROP, including associated due-process notices, appeal rights and related responsibilities of individuals with respect to recipient claims subject to collection under FTROP. The test of FTROP was conducted in conformance with applicable IRS regulations. The IRS initially implemented FTROP with temporary regulations at 26 CFR 301.6402–6T. Final IRS regulations (26 CFR 301.6402–6) were published April 15, 1992 at 57 FR 13035.

The test of FTROP for the FSP was continued and expanded during 1993 and 1994. (See General Notices published August 28, 1992 at 57 FR 39176 and August 12, 1993 at 58 FR 42937.) The policies and procedures contained in those Notices, modified as a result of the test of FTROP, are contained in this proposed rule.

The Department notes that a final rule published January 19, 1994 at 59 FR 2725 modified several aspects of FSP recipient claims policy and corrected two technical errors. Parties interested in this proposed rule may want to make sure that their version of FSP regulations incorporates the just cited rule.

2. Overview of FTROP

a. Operations. FTROP is an optional program for State agencies. The first step for participating State agencies is to develop automated lists of FSP recipient claims which meet the criteria for claims which are referable for collection under FTROP. The lists are developed annually, are discrete from lists for other years and are identified by offset year. The term ''offset year'' means a calendar year during which offsets may be made to collect a particular group of recipient claims from individuals' Federal income tax refunds. The rule proposes at section 272.2 adding this definition of ''offset year'' to the list of definitions of terms for the FSP. During the year preceding the offset year, State agencies submit automated files of recipient claims to FCS which tests them for compatibility with IRS record specifications and refers them to the IRS. Through FCS the IRS provides State agencies with addresses for individuals contained in the IRS master file of taxpayer addresses. These activities make up the ''pre-offset'' phase of FTROP. State agencies then use IRS-provided addresses to send due-process (60-day) notices to individuals. The 60-day notices advise individuals of the intended collection action and provide information on how to repay the claim voluntarily and how to appeal the intended action. State agencies then certify to FCS a final list of FSP recipient claims for offset from Federal income tax refunds. Once State agencies submit the certified list to the FCS, claims cannot be added to the list and amounts of claims on the list cannot be increased.

At this point the offset phase begins. During the offset phase IRS offsets the certified claims against any tax refunds otherwise payable to the individual, and notifies the individual and FCS of offsets which have been made. Also, each week of the offset year beginning in late January, State agencies must provide data deleting claims and reducing amounts of claims on the certified file to reflect changes in the status of the claims due to such actions as voluntary payments from individuals.

b. Reasons for the Present Rulemaking. Two factors make it appropriate to add FTROP as a permanent part of the FSP now. First, as mentioned above, Congress has provided permanent authority for FTROP. Second, the Department stated in the August 1991 General Notice that if the test indicated that FTROP was feasible and cost-effective, the procedures would be incorporated into FSP regulations. The Department believes that the test has proven FTROP feasible and cost-effective and a significantly effective method of collecting FSP recipient claims due to IHE's and IPV's. The number of State agencies participating has increased from two in 1992 to 21 for 1994. Eleven more State agencies will begin participating in 1995. With respect to costs, the Department estimates Federal operational costs for the 1994 calendar year, for example, will be less than $1 million. The Department concludes that FTROP has been cost effective for participating State agencies to operate. About 25 percent of the dollar value of claims which meet the criteria for collection under FTROP is being collected. For example, the 21 State agencies participating during offset year 1994 sent out 60-day notices to individuals owing more than $101 million in claims. Through September 1994 collections totaled more than $30 million, more than $27.7 million from Federal income tax refunds and an additional $2.8 million from individuals

who paid voluntarily. For calendar year 1993, based on information from the Department of the Treasury, 38.4 percent of recipient claims submitted to the IRS were offset, and 28.1 percent of the dollar value of claims submitted were collected. Both the percentage of debt collected in whole or in part, and percentage of dollars collected for the FSP were the highest among Federal agencies participating in FTROP.

c. Discussion of Comments on the General Notices. The August 1991 General Notice solicited comments from the public. The Department responded to those comments in the August 1992 General Notice. The August 1992 General Notice also solicited comments from the public. Two comment letters were received on the August 1992 General Notice.

One of those letters was from a State agency which suggested that there should be a priority for offsetting debts from tax refunds and that the first priority should be delinquent child support collections. The priorities for tax refund offsets are established by 26 U.S.C. 6402(d)(2), and IRS regulations state them at 26 CFR 301.6402–6(g). The first priority for FTROP is tax liabilities owed the IRS. The second priority is childsupport payments assigned to a State under certain specified provisions of the Social Security Act. The third priority, which includes FSP recipient claims, is past-due, legally enforceable debts owed Federal agencies. The fourth priority is for child-support payments not assigned to a State.

The second comment letter was from a research and action group concerned with nutrition and related issues. This action group made a series of comments on the August 1992 General Notice. The Department is responding to several of the action group's general comments just below and to comments addressing specific aspects of FTROP in pertinent sections of this preamble.

The action group stated that the Department should rescind the August 1991 Notice until the rulemaking process could resolve the numerous issues which the group raised, especially relating to apparent inconsistencies between FTROP as tested and the Food Stamp Act of 1977, as amended (7 U.S.C. 2011) (the Act). The group stated that Section 13(b)(2) of the Act (7 U.S.C 2022(b)(2)) authorizes collection of IHE claims through recoupment but not through alternative means such as FTROP, and that such alternative means apply only to IPV claims and claims due to State agency error. This is incorrect. Section 13 of the Act provides collection authorities as follows: First, subparagraph (b)(1)(A) requires that households pay IPV claims by agreeing to an allotment reduction (recoupment) or a cash repayment schedule, in lieu of which the claim is collected through allotment reduction. Second, subparagraph (b)(1)(B) provides, in principal part, that IPV claims not collected by recoupment or cash, may be collected through ''other means of collection.'' Third, subparagraph (b)(2)(A) requires that IHE claims be collected through recoupment. Fourth, subparagraph (b)(2)(B) provides that State agencies may use ''other means of collection'' for any claim not collected by the three preceding methods. Consequently, the Food Stamp Act authorizes ''other means of collection,'' for IPV and IHE claims.

The group also pointed out that Section 13(b)(2)(A) of the Act sets a ceiling on the rate of recoupment on IHE claims at 10 percent or $10 per month, whichever would result in a faster collection rate, but that with FTROP the Department has implemented a 100 percent recoupment rate. The statutory limitation applies to collecting overpayments by reducing the monthly allotments of participating households. Since FTROP is used to collect claims from individuals who are not participating in the FSP, the statutory limitation on the rate of recoupment does not apply to collections made under FTROP.

The action group stated that FTROP defeats Congressional intent because it collects recipient claims from the Earned Income Tax Credit (EITC). The group pointed out that Congress has repeatedly expressed its support for EITC by continuing to expand its scope. The Department does not disagree that Congress has expanded EITC. However, since Congress has not enacted legislation excluding EITC from such debt collection through FTROP, the Department does not believe that collecting food stamp recipient claims from EITC's is inconsistent with Congressional intent.

The action group also stated that it believed that FTROP is unduly punitive and causes severe hardship for poor families. The Department disagrees. First, recipient claims subject to FTROP were caused by the households themselves and are uncollected because households did not pay them in response to demand letters. Second, the 60-day notice (the due-process notice) offers individuals a second opportunity to pay in full or negotiate a payment schedule before claims are referred for tax offset. In addition, food stamp regulations at 7 CFR 273.18(g)(2)(i) provide that if a claim cannot be paid within three years, the State agency may reduce the claim to an amount that the household can pay within three years.

The action group asserted that FTROP would not be cost-effective. In this regard, the group referred to a comment at a public meeting in February 1991 by an FCS official who expressed concern that the priority order for collection from tax refunds might adversely affect the cost-effectiveness of FTROP. Since the IRS does not provide Federal agencies information about debts which are uncollected because of a higher priority debt, the effect of this factor on FSP recipient claims referred to the IRS under FTROP cannot be determined. The priorities for offset from tax refunds notwithstanding, as demonstrated above, the test of FTROP has demonstrated that FTROP is cost-effective.

The action group also commented that the Department lacked criteria for evaluating FTROP in terms of feasibility and cost-effectiveness. The Department disagrees. The test has fully demonstrated the feasibility and cost-effectiveness of the project based on increasing State agency participation, the large dollar volume of collections and the increased efficiency of FSP claims collection.

In another general comment, the action group asserted that instead of focusing on collecting overissued food stamp benefits, the Department should focus on preventing and correcting underissuances. Through the Quality Control System the Department has an ongoing program for identifying and correcting certification and benefit errors. These errors cause both over and underissuance of food stamp benefits. In this regard, it should be noted that a certain percentage of the errors causing such incorrect levels of benefits results from households failing to accurately report their circumstances. In addition to the Quality Control System's efforts to reduce certification and benefit errors, on April 1, 1993 FCS awarded grants to two State agencies for special error reduction initiatives. One grant focuses on client-caused error, the other on State agency-caused error.

3. FTROP—Requirements for State agencies

a. General Requirements. During the testing of FTROP, all participating State agencies were required to submit an annual commitment letter in which they stated they would comply with the requirements of the August 1991 General Notice. This rule proposes at section 273.18(g)(5)(i)(A) that State agencies which choose to implement FTROP must submit a one-time

amendment to their Plan of Operation stating that they will comply with the requirements for FTROP and salary offset. (Section D of this preamble explains why State agencies which implement FTROP must also implement salary offset.) Amendments would be due to FCS regional offices twelve months before the beginning of a State agency's first offset year. Amendments for State agencies currently participating would be due 90 days after publication of the final rule on FTROP. (See the last section of this preamble, ''Effective Date.'')

The August 1991 General Notice required State agencies to attend a training session on FTROP policy and procedures prior to beginning to test the program. The Department expects to continue to require new State agencies to attend such a training session but is not proposing to include the requirement in regulations.

The IRS specifies what information they need for the various tasks required to match FSP recipient claims to Federal income tax return information, to effect offsets, and for reporting and accounting functions. The IRS also sets schedules for submission of data to them and for the various reports which they produce and distribute. These instructions and schedules are contained in the annually revised IRS Revenue Procedure, ''Magnetic Media Reporting for Federal Income Tax Refund Offset Program (Debtor Master File).'' FCS conducts field edits to assure that data which State agencies submit conform to IRS formats, and FCS works with State agencies to correct problems which would result in data being rejected by the IRS. State agency data and format problems sometimes require that State agencies resubmit data. For example, magnetic tapes must be preceded by a specific Job Control Language (JCL). If the JCL is incorrect, the State agency may have to produce another tape. On the other hand, FCS is able to correct some problems without requiring a second submission. For example, if Social Security Numbers (SSN's) are not correctly justified in the data field, FCS may be able to shift them to their correct position. The problems which FCS can correct are limited, however, and State agencies have the primary responsibility for detecting and correcting data and format errors prior to submitting recipient claim files to FCS. Since data submitted to the IRS must be correctly formatted, FCS will not submit data from a State agency to the IRS until the State agency's data conforms to IRS format requirements. Consequently, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data according to the record formats specified by FCS and/or the IRS.

This rule also proposes at section 273.18(g)(5)(i)(B) that State agencies submit data according to schedules provided by FCS. State agencies need to submit files early enough to allow sufficient time for transmittal to FCS, for FCS to conduct field edits and to consolidate State agency submissions, and for FCS to mail files to IRS to meet IRS deadlines. FCS will provide State agencies each year a schedule for State agency data submissions to FCS. This schedule will also include other FTROP due dates so that State agencies have one source as a reference for meeting the various FTROP deadlines.

IRS currently requires that FCS provide data to IRS on magnetic tape. During the early testing of FTROP, State agencies submitted their data to FCS on magnetic tape. Managing tape submissions for the number of State agencies currently participating has proven inefficient. Consequently, during January 1994 FCS began implementing electronic data transmission. To provide for this technology and for future improvements in this area, this rule proposes at section 273.18(g)(5)(i)(B) that State agencies must submit data by means of magnetic tape, electronic data transmission or other method specified by FCS.

b. Claims Referable for Offset. The provisions of DEFRA codified at 31 U.S.C. 3720A(b) and IRS regulations at 26 CFR 301.6402–6(c) specify criteria for debts which can be referred for offset from Federal income tax refunds. The August 1991 General Notice included those criteria as well as additional criteria required for the FSP. This rule proposes at section 273.18(g)(5)(ii) to include substantially the same criteria, the most general of which is specified by DEFRA: All claims submitted for tax offset must be past-due and legally enforceable. The rule then proposes a number of specific criteria for determining claims past-due and legally enforceable. Only recipient claims which meet those criteria may be referred for collection under FTROP.

General Criteria: For purposes of testing FTROP, the Department chose to limit FTROP to IHE and IPV claims. This rule proposes that same limitation at section 273.18(g)(5)(ii)(A). The August 1991 General Notice further specified in paragraph b(1) that these claims had to be ''properly established'' as required by FSP regulations. This rule expands the statement of that requirement by referencing at section 273.18(g)(5)(ii)(A)(*1*) current rules on recipient claims and disqualification hearings for IPV's. The Department also wants to make clear that State agencies must have documentation that the claims they submit for collection under FTROP are properly established. Consequently, this rule proposes at section 273.18(g)(5)(ii)(A)(*2*) that State agencies must have such documentation on claims which they refer under FTROP. Specifically such documentation would include such items as electronic records and/or paper copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments. In this context an electronic record would be such items as dates of demand letters and the formats of such letters.

The Three-Month Delinquency Period: Temporary IRS regulations at 26 CFR 301.6402–6T(b)(2) provided that referable debts must be delinquent at least three months at the time the offset is made. The August 1991 General Notice in paragraph b(3) provided that for purposes of FTROP recipient claims must be delinquent at least three months as of the date the State agency certified its final files to FCS. That date is usually in early December. Further in this regard, the August 1991 General Notice specified in paragraphs b(3)(i) and (ii) that a claim could not be considered delinquent for purposes of FTROP if either: (1) the State agency was responding to a request for a fair hearing which was made within the 90 days following the initial demand letter; or (2) the time allowed for responding to the initial demand letter had not elapsed. Final IRS regulations at 26 CFR 301.6402–6 do not include an explicit three-month minimum delinquency nor do those regulations use the term ''delinquency.'' The preamble to the final IRS rule states that a three month minimum delinquency is ensured because of the various notices and actions that must occur prior to referring debts under FTROP.

During the test of FTROP, State agencies raised questions about the criteria for ''delinquency'' of claims for FTROP purposes. These questions were answered with specific discussion of such considerations as whether payments were being regularly made. This rule incorporates policy developed in response to those questions and does not use the terms ''delinquent'' or ''delinquency'' with respect to determining whether a recipient claim may be referred for collection under FTROP. If a claim meets the criteria for being past due and legally enforceable as proposed in this rule, the claim would be subject to FTROP.

The Department wants to make clear that claims may not be considered past due and legally enforceable until individuals have been provided the opportunity to respond to demand letters as required in current food stamp rules. Current FSP regulations at 7 CFR 273.18(d)(4)(iii) state that if any nonparticipating household does not respond to the first demand letter for repayment of a recipient claim, additional demand letters must be sent at reasonable intervals, such as 30 days, until: (1) The household repays the claim or agrees to repay it; (2) collection action can be suspended; or (3) *the State agency initiates other collection actions* (emphasis added). Consequently, at section 273.18(g)(5)(ii)(A)(*1*) this rule would refer to that FSP regulation and the requirement to provide additional demand letters prior to initiating other collection actions. This criterion would replace the criteria stated in paragraphs b(3)(i) and (ii) of the 1991 General Notice.

The action group several times expressed concern that FTROP procedures specified in the August 1991 General Notice did not require that State agencies establish that all other collection had stopped before acting on a claim under FTROP. In the following paragraphs this preamble discusses the criteria for determining whether or not a claim is referable under FTROP and in later sections discusses the content of the 60-day notice. The Department believes that these discussions and the corresponding parts of this proposed rule should make clear both to State agencies and to individuals receiving those 60-day notices that claims are not referable under FTROP if they are being regularly repaid. The Department also addresses this concern by proposing policies on verifying that no liable individual is currently participating in the FSP in the State and on apportioning claims among individuals who are jointly and severally liable for the claims.

Section 13(a)(2) of the Act and FSP regulations at 7 CFR 273.18(a) specify that all adult members of the household are jointly and severally liable for any overissuance of benefits to the household. In addition, the regulations require that State agencies establish claims against any household which contains an adult member who was an adult member of another household which received an overissuance. The Department wants State agencies to take steps to collect FSP recipient claims from households to the maximum extent. On the other hand, as already discussed, both IHE and IPV claims must be recouped from monthly allotments of participating households with members who are liable for recipient claims. Consequently, this rule proposes at section 273.18(g)(5)(ii)(B) that claims are referable for collection through FTROP for which the State agency has verified that no individual participating in the FSP in the State is jointly and severally liable as specified in section 273.18(a).

The IRS regulations at 26 CFR 301.6402–6(c)(7) set a $25 minimum for claims which can be referred for tax offset. The August 1991 General Notice applied the $25 minimum during the test of FTROP, and this rule would apply the same minimum. To avoid the need to change FSP regulations should the IRS change the minimum dollar amount for claims which can be referred under FTROP, this rule proposes at section 273.18(g)(5)(ii)(C) that State agencies may submit only claims in dollar amounts which are at least the minimum dollar amount set by the IRS. FCS will advise State agencies if that amount changes from $25.

The 10-Year Limit: Temporary IRS regulations at 26 CFR 301.6402–6T(b)(2) provided, in part, that debts could only be referred if they were not delinquent for more than 10 years at the time the offset was made except for judgment debts, which were not subject to this 10-year limitation. The August 1991 General Notice in paragraph b(3) provided, in part, that except for claims reduced to final court judgments, recipient claims could be delinquent for no more than nine years, 11 months as of the date State agencies certified their final file of claims to FCS. Final IRS regulations at 26 CFR 301.6402–6(c)(1) specify that except for judgment debts or debts specifically exempt from the requirement (such as certain debts referred by the Department of Education), claims may be referred under FTROP if they are referred within 10 years after *the (Federal) agency's right of action accrues* (emphasis added).

In the preamble to their final regulation on FTROP, the IRS states that only the Federal agency referring the debt for offset is in a position to determine when its right of action to collect a particular debt accrues. The Department considers that its right of action to collect a recipient claim under FTROP accrues on the date of the initial demand letter. The IRS accepts certified FTROP files no later than about January 4 of each offset year. This date is the date claims are considered referred to the IRS and the date from which the 10-year period is measured in order to determine if the right of action on a particular recipient claim accrued within that period. To assure that recipient claims referred for tax offset fall within the IRS 10-year time frame and to provide State agencies a date which remains unchanged year to year, this rule proposes at section 273.18(g)(5)(ii)(D) that, except for claims reduced to final court judgments ordering individuals to pay the debt, FSP recipient claims may be submitted for tax offset only if the date of the initial demand letter is within 10 years of January 31 of the applicable offset year.

The August 1991 General Notice provided in paragraph b(3)(iii) that a claim was not delinquent if the household was making payments pursuant to an agreed upon schedule of payments as provided in 7 CFR 273.18(g)(2). This rule proposes at section 273.18(g)(5)(ii)(A)(*5*) that claims are past due and legally enforceable if the State agency is neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current FSP regulations at 7 CFR 273.18(g)(2) nor is receiving scheduled, involuntary payments such as wage garnishment. The Department proposes to add the second criterion because, as in the case of voluntary payment under an agreement with the State agency, the claim is being repaid regularly. Consequently, the claim should not be referred for collection under FTROP. The rule further proposes to specify that claims for which the State agency has received such payments are considered past-due and legally enforceable under FTROP 30 days after the due date for a regular payment which is not received.

Bankruptcy: As a condition of participating in FTROP, the IRS requires that Federal agencies annually sign a Memorandum of Understanding (MOU) which specifies the respective rights and responsibilities of the Department and the IRS. The MOU specifies that the (Federal) agency must certify to the IRS that collection on claims referred under FTROP is not limited by a bankruptcy filing. The August 1991 General Notice in paragraph b(5) applied this provision to State agencies. This rule proposes the same provision at section 273.18(g)(5)(ii)(A)(*6*). This subject matter is discussed in greater detail later in this preamble.

Notifications: The August 1991 General Notice specified in paragraph b(6), that State agencies could refer only those claims for which they had complied with all of the required FSP notification and review rights explained therein. This rule proposes the same requirement at section 273.18(g)(5)(ii)(A)(7).

In addition to these criteria, other criteria must be applied to determine if other recipient claims are past due and legally enforceable.

Other Collection Efforts: Many State agencies collect FSP recipient claims from refunds due individuals from overpayments of State income tax and other sources. The Department is concerned about over collections of claims referred for collection from State tax refunds for the same period they are subject to offset under FTROP. To avoid such over collections, the consequent temporary loss of funds to individuals and the need for State agencies to make refunds, this rule proposes at section 273.18(g)(5)(ii)(B)(*1*) that claims referred under FTROP must be reduced by any amounts referred for collection from State income tax refunds or from other sources which may result in collections during the offset year.

Combined Claims: During the test of FTROP, State agencies were allowed to combine two or more claims against an individual and to submit them as one claim. This rule at section (g)(5)(ii)(B)(*2*) would require that the date of the initial demand letter for each of the claims so combined be within the 10-year period specified in section 273.18(g)(5)(ii)(A)(*4*). The IRS requires that debts reduced to judgment be identified when they are submitted for offset. Consequently, judgment debts cannot be combined with claims which are not reduced to judgment. Accordingly, this rule would prohibit such combinations.

Split Claims: As discussed above, 7 CFR 273.18(a) provides that all adult household members are jointly and severally liable for recipient claims. In addition, 7 CFR 273.18(f), explicitly authorizes State agencies to attempt to collect claims from any household which contains an adult member of a household which received an overissuance. The 1991 General Notice in paragraph b(4) provided that claims could be submitted under FTROP for only one individual or in cases where more than one individual was jointly and severally liable for the claim pursuant to 7 CFR 273.18(a) and (f), the full amount of the claim could be apportioned between two or more liable individuals as long as the sum of the amounts submitted for all liable individuals did not exceed the total amount of the claim. The Department believes that it is unnecessary to state in the regulation that a claim for one individual is referable under FTROP. Consequently, this rule provides at section 273.18(g)(5)(ii)(B)(*3*) that claims may be referred under FTROP which are apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to section 273.18(a) and section 273.18(f) on the condition that the total of the amounts submitted under FTROP for a particular claim do not exceed the amount of the claim.

Credit Bureau Reporting: Finally with regard to the criteria for determining claims referable under FTROP, the IRS at 26 CFR 301.6402–6(c)(6) specifies that, with certain exceptions, debts may not be referred unless they have been disclosed to a consumer reporting agency. In a letter to FCS dated March 25, 1991 the IRS waived this requirement for the FSP on the basis of the disclosure limitations in Section 11(e)(8) of the Act (7 U.S.C. 2020(e)(8)). Consequently, food stamp recipient claims are not referred to consumer reporting agencies as part of FTROP.

c. 60-Day Notice to Individuals. As codified at 31 U.S.C. 3720A(b), DEFRA requires that prior to referring a debt to the IRS for collection from Federal income tax refunds, a Federal agency must notify the person incurring such debt that the agency proposes to take such action and give the person at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable. The August 1991 General Notice in paragraph c(1) required State agencies to provide this notice and required that it contain the information specified in paragraph d. of the General Notice. Accordingly, this rule proposes at section 273.18(g)(5)(iii)(A) that, prior to referring claims for collection under FTROP, the State agency provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

Required Information: Because of the importance of complying with the due process provisions of DEFRA, this rule proposes at section 273.18(g)(5)(iii)(B) that, with the exception of such State-specific information as names and positions and information required for contacts, a State agency's 60-day notice shall contain only the information specified in paragraph 273.18(g)(5)(iv) for the 60-day notice. Furthermore, the rule proposes that in the certification letters which must be submitted with final files of claims as stated in paragraph 273.18(g)(5)(vii), State agencies must include a statement that their 60-day notices conform to this requirement. State agencies which need to deviate from the required content of the 60-day notice would need to obtain FCS approval for a waiver to allow the deviation. FCS will provide State agencies with a format for the 60-day notice. The Department believes that this is consistent with Section 11(d) of the Act which prohibits the Secretary, as part of the approval process for a plan of operation, from requiring a State agency to submit for prior approval by the Secretary forms it will use to carry out the FSP.

The action group commented that the 60-day notice is likely to be confusing because several provisions are in technical language which many food stamp households may not possess sufficient reading skills to comprehend. The Department is aware that regulatory language can be technical, and this awareness was, in large part, why the August 1991 General Notice required State agencies to follow the format for the 60-day letter which FCS provided and why this rule proposes a similar requirement. In this regard, the action group also expressed concern about automated forms or forms printed in small type. The Department has received no complaints about such matters during the test but will monitor 60-day notices for legibility and will request State agency corrective action as necessary.

The August 1991 General Notice required in paragraph c(3) that State agencies mail 60-day notices no later than the date specified in operational guidelines issued by FCS for the particular offset year. October 1 was the specified deadline for mailing 60-day notices during the test of FTROP. This rule proposes at § 273.18(g)(5)(iii)(C) that, unless otherwise notified by FCS, the State agency must mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

Addresses for 60-Day Notices: IRS regulations at 26 CFR 301.6402–6(c)(4) require that agencies participating in FTROP provide the debtor, or make a reasonable effort to provide the debtor with the required notice. IRS regulations at 26 CFR 301.6402–6(d)(1) state that use of the most recent address for the debtor provided by the IRS constitutes a reasonable effort to notify the individual about the intended referral for offset. The IRS provides such address information to State agencies during the annual pre-offset cycle. The last cited provision of the IRS regulations also states that the IRS-provided address must be used unless the State agency receives clear and concise notification from the taxpayer that notices from the agency are to be sent to an address different from the address obtained from the IRS. The IRS regulation provides that such clear and concise notification means that the

taxpayer has provided the [State] agency with written notification including the taxpayer's name and identifying number (which is generally an SSN), the taxpayer's new address, and the taxpayer's intent to have agency notices sent to the new address. This rule proposes at section 273.18(g)(5)(iii)(D) to include requirements on addresses for 60-day notices which are consistent with these IRS regulations.

During the test of FTROP several State agencies asked whether claims for which 60-day notices were returned as undeliverable for such reasons as ''forwarding address unknown,'' could be referred for collection. To clarify this matter, this rule proposes at § 273.18(g)(5)(iii)(D) that claims for which 60-day notices addressed as required in that paragraph are returned as undeliverable should be referred for collection.

Finally in regard to addresses for 60-day notices, the August 1991 General Notice provided in paragraph c(4) that the 60-day notice could also be mailed to addresses from State agency files if the State agency believed that such addresses in its files were better than ones provided by the IRS. This policy caused confusion during the test. Some State agencies thought that if the 60-day notice sent to the IRS-provided address was returned, the claim could not be submitted under FTROP unless a second 60-day notice was sent. In view of this problem and the fact that the final IRS regulation requires the use of the IRS address unless the debtor has specifically requested that another address be used, this provision is not included in this proposed rule.

d. Contents of the 60-Day Notice. This rule proposes several changes in the content of the 60-day notice from that used during the test of FTROP. Among other things, these changes would provide individuals with more information about their liability for the claim, clarify the scope of individuals' right to have the intended collection action reviewed, and advise individuals about documents for showing that a claim is not past-due or legally enforceable.

Facts of the Claim; Authority for FTROP: The August 1991 General Notice required in paragraph d(1) that the 60-day notice first inform individuals that State agency records document that the individual, identified with his or her SSN, is liable for a specified, unpaid balance of a claim for overissued food stamp benefits, that the State agency previously notified the individual about the claim, made the required collection efforts, and that the claim is past-due and legally enforceable. To make clear that the claim was properly established, the August 1991 Notice also required that the 60-day notice state that State agency records documented the claim. The individual's SSN was required to help assure that the 60-day notice was sent to the correct individual. The information on the amount of the claim was required to comply with the IRS requirement at 26 CFR 301.6402–6T(b)(5) that the 60-day notice inform the debtor of the amount of the debt and that it was determined past-due and legally enforceable. The statement about previous notification and collection efforts was required to comply with the DEFRA requirement at 31 U.S.C. 3720A(b)(4) that agencies participating in FTROP satisfy the Secretary of the Treasury that they have made reasonable efforts to obtain payment of the debt (prior to referring it for collection through tax offset).

The August 1991 General Notice required in paragraph d(2) that the 60-day notice inform the individual that DEFRA authorizes the IRS to deduct debts (such as claims for overissued food stamp benefits) from tax refunds and that the State agency intends to refer the claim for such deduction unless the individual pays the claim within 60 days or makes other repayment arrangements acceptable to the State agency. As noted in the preceding section of this preamble, DEFRA contains these requirements at 31 U.S.C. 3720A(b).

This rule at §§ sections 273.18(g)(5)(iv) (A) and (B) would reorganize these statements and make some minor modifications in language, in particular to accommodate the proposed requirement that 60-day notices conform to the language specified in this rule. As did the 60-day notice used during the test of FTROP, the 60-day notice proposed here would first state that the State agency has records documenting that the individual, identified by name and SSN, is liable for the unpaid balance of the recipient claim(s) resulting from overissued food stamp benefits the State agency intends to refer for offset.

The 60-day notice would then state that the State agency has previously mailed or otherwise delivered demand letters notifying the individual about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts. The clause ''previously mailed or otherwise delivered'' would be used in the 60-day notice in order to be consistent with the recent revision of 7 CFR 273.18(d)(4) cited at the end of section B(1) of this preamble. The reference to the notice of the right to a fair hearing on the claim would serve as a reminder to the individual that the opportunity for a fair hearing has already been provided. The Department wants to include that reminder to help individuals understand why, as discussed below, the 60-day notice offers an opportunity for a review of whether the claim is referable, not an opportunity for a fair hearing.

This proposed rule would require at section 273.18(g)(5)(iv)(B) that the 60-day notice state that the Deficit Reduction Act of 1984, as amended by the Emergency Unemployment Compensation Act of 1991, authorizes the IRS to deduct such debts from tax refunds if they are past due and legally enforceable. The 60-day notice would then state that: (1) The State agency has determined that the debt is past due and legally enforceable according to the criteria specified by the Deficit Reduction Act of 1984, the IRS regulations and the Food Stamp Program (FSP) regulations; and (2) the State agency intends to refer the claim for deduction from the individual's Federal income tax refund unless the individual pays the claim within 60 days of the date of the notice or makes other repayment arrangements acceptable to the State agency.

Offset Fee: During the test of FTROP, the Department of the Treasury (Treasury) charged Federal agencies participating in FTROP a fee for each offset to cover Treasury's administrative costs for FTROP operations. For example, the fee for offset year 1995 is $8.79. Treasury plans to continue this practice. Treasury assesses the offset fee whether the offset satisfies all or only part of the debt. During the test of FTROP (including 1995), these fees were treated as allowable costs for the State agency. This has meant that State agencies and FCS each paid for half of each fee. For example, assuming a $100 claim and an $8 fee, if the IRS offset $100 from a tax return either because that was the amount of the recipient claim referred or because that was all the refund available for offset, the IRS would keep $8 and send FCS $92. FCS would report a $100 offset to the State agency which would credit that amount against the balance of the recipient claim. FCS would also report the $8 offset fee to the State agency which would claim 50 percent of that fee, or $4, as a reimbursable cost from FCS. The fees are costs which can be avoided if individuals pay their claims voluntarily in response to 60-day notices. Consequently, at § 273.18(g)(5)(iv)(C) this rule proposes that the 60-day notice state that if a

claim is referred to the IRS, a charge for the administrative cost of collection will be added to the amount of the claim and any amount deducted from the tax refund will first be applied to pay the charge, with the balance applied to the claim, as explained further.

Under this proposal, in the case of a $100 claim and an $8 offset fee, a debt of $108 would be referred to the IRS. If that amount were available for offset, the IRS would keep $8 and send $100 to FCS who would transfer $100 to the State agency for credit against the claim. On the other hand, if only $50 were available for offset, the IRS would keep $8 and $42 would be credited against the claim. A balance of $58 would remain.

The 60-day notice would not cite the exact amount of the charge because during the test the IRS notified FCS of the amount of the offset fee during November, too late for the exact amount to be provided State agencies prior to the October 1 mailing of the 60-day notices. FCS plans to add the exact amount of the fee to each recipient claim submitted by State agencies in their certified files in early December. FCS would advise State agencies of the amount of the fee, but the fee must not be added to the amount of the claim as maintained in State agency food stamp case records. The State agency would ultimately advise the individual of the amount offset, including how much of the offset was applied to the fee and how much to the claim itself.

Joint and Several Liability: During the test of FTROP it was clear that the household composition of many individuals liable for claims subject to FTROP had changed and that some individuals did not understand that they were liable for the overissuances. Consequently, this rule proposes to require at § 273.18(g)(5)(iv)(D) that the 60-day notice advise individuals that all adults who are household members when excess food stamp benefits are issued to the household are jointly and severally liable for the value of those benefits, and that collection of claims for such benefits may be pursued against those individuals.

Action Group Comments: The action group made two comments which pertain to these initial statements in the 60-day notice. First, the group commented that the appeal process is defective because the individual is not given an opportunity to acknowledge that, while a debt is owed, it should not be collected through FTROP. The group cited the example of an individual who has entered into a repayment agreement with a State agency to repay a debt which the State agency in error refers under FTROP. The August 1991 Notice stated in paragraph b(3)(iii) that claims being repaid are not delinquent and so are not referable. This rule proposes that same information be given to individuals in the 60-day notice in two places. First, the rule would require at § 273.18(g)(5)(iv)(D) that the 60-day notice advise households that State agency records do not show that the debt is being repaid according to either a voluntary agreement with the State agency or through scheduled, involuntary payments. Second, as discussed below, the 60-day notice would state that evidence that a claim is being repaid is one type of evidence showing that a claim is not past due. The action group also commented that the individual is never informed that collection efforts concurrent with FTROP are not permissible and are grounds for appeal. The Department believes that the just discussed revisions to the language in the 60-day notice should make that point clear.

Also with regard to the initial statements in the 60-day notice, the action group commented that the 60-day notice as tested does not provide an opportunity for a hearing before the refund is seized because the notice does not state a definite intent to seize the refund. The action group went on to assert that this deficiency means that the FTROP procedures do not comply with due-process mandates and that the FTROP procedures should be withdrawn. The 60-day notice does state an intent to offset the debt against income tax refunds, and the notice fully complies with the requirements of DEFRA which provides, in part, that debts may not be referred to the Secretary of the Treasury for collection from income tax refunds until the Federal agency owed the debts notifies the debtors that the agency proposes to make such referral and provides the debtors 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable (emphasis added). Of course, as the action group states, at the time of the 60-day notice it is not known whether or not there will be a tax refund available for collection. Based on experience during the test of FTROP, there is no confusion on the part of individuals about this matter. Immediately after 60-day notices are mailed, State agencies begin receiving telephone calls about the claims and the intended referral for offset, and individuals do file appeals.

State Agency Contact: The August 1991 General Notice required in paragraph d(3) that the 60-day notice include instructions about how to pay the claim, including the name, address and telephone number of a State agency contact able to discuss the claim and the intended offset with the individual. Such information is needed so that individuals will know how to contact the State agency and where to send payments. During the test of FTROP several State agencies raised concerns about personal safety because of the requirement to provide a name of an individual and/or the street address in the 60-day notice. In view of this concern, this rule proposes to require at § 273.18(g)(5)(iv)(E) that the 60-day notice provide the name of an office, administrative unit and/or individual, street address or post office box, and telephone number for the contact. The 1991 General Notice did not specify that the telephone number for the State agency contact must be toll-free or collect. In its publication ''Guidelines for the Federal Tax Refunds Offset Program'' (August 1992), Treasury requires such a telephone number on the 60-day notice. Accordingly, this rule would specify that requirement (at § 273.18(g)(5)(iv)(E)).

Requests for Review: The August 1991 General Notice required in paragraph d(4) that the 60-day notice inform the individual of six factors about appealing the intended collection action. Most of these factors are based on the requirements of DEFRA. This rule proposes to require that the 60-day notice address the same factors, modifying them based on experience during the test of FTROP.

The first such modification is the replacement of the term ''appeal'' with the phrase ''request a review'' or ''review request.'' The rule proposes this change for two reasons. First, State agencies observed that the use of the word ''appeal'' in the 60-day notice gave individuals the impression that they were being offered the right to a full-fledged review of all aspects of the claim. Second, during the test of FTROP, several State agencies requested approval of 60-day notices which would offer debtors an opportunity for a fair hearing on the claim itself even though such an opportunity was provided with the initial demand letter. A second opportunity for a fair hearing may be appropriate in certain circumstances, but the Department does not believe that collection of a recipient claim through FTROP is such a circumstance. FTROP is one of several types of ''other means of collection'' for which 7 CFR 273.18(d)(4)(iv) provides authority, and State agencies do not offer a second fair hearing opportunity before initiating other collection actions such as small claims court proceedings or referral to a collection agency. The proposed

rephrasing should help clarify that an individual's ''appeal'' right is limited. For additional clarity, the rule proposes using the word ''collection'' instead of ''offset.'' Accordingly, § 273.18(g)(5)(iv)(F) would require that the 60-day notice advise individuals that they have a right to request a review of the intended collection action.

The August 1991 General Notice required in paragraphs d(4)(iii) and (iv) that the 60-day notice state that claims that have been appealed (for which timely reviews have been requested) will not be referred for offset while under review, and that individuals must provide their SSN's with their appeals (review requests). The rule would make these same requirements at § 273.18(g)(5)(iv)(F). At that same place the rule would require that the review request be written because during the test of FTROP State agencies asked whether they had to review claims based on telephone inquiries. The Department wants to make clear to debtors and State agencies that an oral request, such as an inquiry made over the telephone, does not constitute a review request.

In this regard, the action group commented that the opportunity to appeal provided by the 60-day notice was not meaningful because, whereas recipients are accustomed to working with food stamp offices, the opposing party in this instance is the IRS. Requests for review are made to State agencies and FCS, not the IRS. Only requests to protect the tax refund of a non- liable spouse should be directed to the IRS, as discussed in detail below. During the test there were few reports from the IRS that individuals were contacting IRS offices instead of State agencies about appealing the intended collection from tax refunds. Nonetheless, to help make clear that appeals are directed to the State agency, this rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice specify that requests for review be submitted to the State agency address provided in the notice. Requests for review will generally be submitted by mail, but the rule does not propose to require this. Individuals could provide the written requests in person.

DEFRA provides that individuals must be given 60 days to show a debt is not subject to FTROP. The August 1991 General Notice required in paragraph d(4)(ii) that the 60-day notice state that the State agency will not review appeals which it receives later than 60 days after the date of the 60-day notice. The provision was intended: (1) To make as clear as possible to individuals that the 60-day appeal period would be strictly adhered to; and (2) to relieve State agencies of the responsibility for reviewing appeals received after that period expires. This rule proposes at § 273.18(g)(5)(iv)(F) that the 60-day notice advise individuals that their request for review must be received with 60 days of the date of the 60-day notice. During the test of FTROP, after the 60-day period State agencies sometimes received documentation, for example, that the claim was paid. In such circumstances, as required by current food stamp regulations when an over collection is discovered, the State agencies were required to refund the over collection. Consistent with current food stamp regulations on refunding over collections of recipient claims, if after the 60-day notice an individual documents or otherwise demonstrates that the claim is not past due or legally enforceable, and the claim has already been collected from the individual's tax refund, the amount collected on the claim will be refunded.

Bankruptcy: The August 1991 General Notice required in paragraph d(5) that the 60-day notice advise individuals that they should inform the State agency if they believed that a bankruptcy prevents collection of the claim. During the test of FTROP several State agencies asked what documentation of bankruptcy was required. Bankruptcy law forbids requiring documentation of bankruptcy. This rule proposes at § 273.18(g)(5)(iv)(G) to restate the requirement that a claim is not legally enforceable if the individual indicates that a bankruptcy prevents collection of the claim.

Tax Refunds of Non-liable Spouses: The August 1991 General Notice required in paragraph d(6) that 60-day notices state that married individuals may want to contact the IRS in order to protect the refund in cases where spouses are not liable for the claim. This rule proposes this same requirement at § 273.18(g)(5)(iv)(H). That section would also inform the individual that his or her own liability for this claim, including any charge for administrative costs, may be collected from his or her share of a joint refund. The Department wants to make clear that the protection for a non-liable spouse's share of a tax refund against collection by tax refund offset does not extend to the liable spouse's share of the tax refund.

Documenting a Claim is ''Not Referable'': The August 1991 General Notice stated in paragraph d(4)(iv) that an appeal must provide evidence or documentation why the individual believes that the claim is not past-due or is not legally enforceable, and in paragraph d(4)(v) that an appeal is not considered received until the State agency receives such evidence or documentation. During the test of FTROP, State agencies asked whether they were required to review requests which did not contain any pertinent documentation. The Department believes that all timely, written review requests warrant consideration and a written response, as discussed later in connection with State agency action on review requests. The Department also wants to make clear to individuals that certain documentation is necessary to show that a claim is not subject to FTROP. Accordingly, this rule proposes at § 273.18(g)(5)(iv)(I) that 60-day notices inform individuals that if they request a review of the intent to collect the claim from their income tax refund, they should provide documentation showing at least one reason why the claim is not subject to FTROP and that if they cannot, for example, provide a cancelled check, they should explain in detail why they believe that the claim is not collectible under FTROP. This should allow individuals wide latitude to explain the particular circumstances of the claim and still require that they show some basis for why the claim is not past due and legally enforceable. The 60-day notice would be required at §§ 273.18(g)(5)(iv)(J) and (K) to list the reasons the claim is subject to collection under FTROP.

In the first two weeks after mailing out 60-day notices, State agencies typically receive a large number of telephone calls from individuals asking questions about the recipient claims and the intended collection action described in the notices. Many of these callers assert that they are not liable for the claim. The Department believes that providing individuals information in the 60-day notice about why their claims are subject to collection under FTROP will allow informal inquiries to be handled quickly and may reduce the number of such inquiries. This information should also help individuals decide what information they need to provide in order to substantiate that, for example, they have paid the claim or that the claim has been discharged in bankruptcy.

The action group made several comments concerning the requirements for documenting that a claim is not past due or is not legally enforceable. The group stated that the 10-year time limit for delinquent claims to be referable for tax offset results in an undue burden for documentation on low-income households and recommended that the Department shorten that period. On this matter the action group also commented that some households may have

difficulty documenting that no debt is owed. To the same effect, the action group commented that recipients may not have evidence to rebut the intended collection action or the claim itself. They cited the example of a household member alleged to have had unreported earnings (which would have resulted in an overissuance) who is unavailable when the 60-day notice is received. The Department recognizes that recordkeeping for low-income households may be relatively difficult, especially perhaps, as the action group remarks, because low-income households may move relatively often and may have relatively limited resources to devote to household recordkeeping. The Department does not believe that shortening the 10-year period would address this difficulty. The Department believes that it must require a minimum level of documentation that a claim is not past due or is not legally enforceable and that the proposed rule states that minimum level. With respect to rebutting the claim itself, since only IHE and IPV claims which are properly established are subject to FTROP, the household has already been offered an opportunity to rebut the claim itself in fair hearings or administrative disqualification hearings.

The action group also commented that in other contexts households present evidence and the State agency has the burden of defending its actions. The Department understands that by ''other contexts'' the action group is referring to fair hearing and disqualification hearing procedures. As just discussed, those procedures are part of the process of establishing a claim. Once a claim is established, due process requires permitting the individual an opportunity to establish that the claim is not past due or legally enforceable (is not subject to collection under FTROP). Due process does not require permitting a second opportunity to challenge the substantive basis for the claim.

e. State Agency Action on Requests for Review. DEFRA requires at 31 U.S.C. 3720A(b)(3) that any evidence presented by debtors must be considered and a determination made whether the debt is past-due and legally enforceable. The IRS requires at 26 CFR 301.6402–6(d)(2) that the participating agency notify the debtor of its decision. The August 1991 General Notice required in paragraph e(1) that when a State agency examines documents or evidence submitted with a review request, it determine whether the claim is past due and legally enforceable and notify the individual of its decision in writing. Consistent with the requirements concerning State agency action on review requests already discussed, this rule proposes at § 273.18(g)(5)(v)(A) that State agencies act on all written requests for reviews received within the 60-day period for timely review requests, determine whether or not such claims are past due and legally enforceable, and notify individuals in writing of the result of such determinations.

Section 273.18(g)(5)(v)(B) of this rule proposes that the State agency determine whether or not claims are past-due and legally enforceable based on a review of its records and of documentation, and evidence or other information the individual may submit. The provision in the August 1991 General Notice at paragraph e(2) which contained examples of types of documentation or evidence has been eliminated as unnecessary.

During the test of FTROP State agencies indicated confusion about whether they were required to respond to review requests which contained inadequate or no documentation. To address this concern, this rule proposes to add at § 273.18(g)(5)(v)(C)(*1*) the requirement that the decision letter advise the individual of the reason for the State agency's decision, including the failure to provide adequate evidence or documentation that the claim was not past due and legally enforceable.

The August 1991 General Notice required in paragraph (e)(3)(i) that if the State agency decides a claim is past-due and legally enforceable, the State agency must inform the individual in its written decision that it intends to refer the claim for offset. This rule would make the same requirement at § 273.18(g)(5)(v)(C)(*2*).

Information About FCS Reviews of State Agency Decisions: The IRS regulations at 7 CFR 301.6402–6(d)(2) provide that if the review is conducted by an agent of the Federal agency, in this case the State agency, the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency. The August 1991 General Notice required in paragraph e(3)(ii) that the State agency's notice of decision inform the individual that he or she is entitled to ask FCS to review the State agency's decision but that FCS would not review such decisions if it received a request to do so later than 30 days after the date of the State agency decision notice.

Consistent with the August 1991 General Notice, this rule proposes to require at § 273.18(g)(5)(v)(C)(*3*) that the State agency decision advise that the individual has 30 days from the date of the State agency decision to request that FCS review the State agency's decision. If FCS review is timely requested, FCS will provide the individual a written response stating its decision and the reasons for its decision. Consistent with the IRS regulation cited just above, this rule also proposes at § 273.18(g)(5)(v)(C)(*3*) that individuals be advised that the claim will not be referred for offset pending FCS review of the State agency's decision.

The 1991 General Notice required in paragraph e(iii) that the State agency decision: (1) advise the individual that a request for an FCS review must include his or her SSN; (2) be sent to an FCS regional office; and (3) provide the address of that office including a line reading ''Tax Offset Review.'' The purpose of this requirement was to help FCS obtain the correct records from the State agency, to provide individuals the address to which to send their requests for FCS reviews and to identify those requests to regional offices so that action could be taken promptly. This rule would make that same requirement at § 273.18(g)(5)(v)(C)(*4*).

The August 1991 General Notice specified in paragraph e(4) that if the State agency determines that the claim is not past-due or is not legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency must take any actions required by food stamp regulations with respect to establishing claims and/or holding appropriate hearings, or other required recipient claim actions. The purpose of this requirement was to make sure that State agencies: (1) Corrected any errors in their processing of claims in question; and (2) took actions to properly establish claims and to initiate collection action. Aside from some editorial changes, this rule proposes the same requirement at § 273.18(g)(5)(v)(D).

The August 1991 General Notice specified in paragraph e(5) three groupings for timely appealed claims which could not be referred for offset. Guidance on treatment of the first group, claims which a State agency determines are not past-due or are not legally enforceable, has just been discussed. The third group is claims which FCS either determines are not past due or not legally enforceable, or for which FCS does not complete its review before State agency final files were due. State agency action on these claims is discussed later in this preamble in connection with the certification letter to FCS.

State Agency Reviews not Complete by October 31: The second of the three groups is those claims for which the State agency does not complete its review and notification to the

individual at least 30 days prior to the deadline for the State agency to certify its final file of claims for offset to FCS. The deadline for this final file is in early December. During the test State agencies indicated that they did not understand that if, for example, a review request was received in mid-November, even if the State agency review determined that the claim was past due and legally enforceable, it could not be referred. These claims are not referable because there is not a 30-day opportunity for the individual to appeal to FCS before the deadline for the State agency to refer its final files to FCS. As explained above, IRS regulations at 26 CFR 301.6402–6(d)(2) state that if the review is conducted by an agent of the Federal agency (in this case, the State agency), the individual must be accorded at least 30 days from the agent's determination to request a review by the Federal agency.

To accommodate the schedule for State agency final files and the 30-day opportunity which must be provided individuals to request a Federal-level review, this rule proposes at § 273.18(g)(5)(v)(E) that State agencies cannot refer for offset any claim for which a review request is received unless, by October 31 preceding the offset year, the State agency has completed its review of the claim, determined that the claim is past due and legally enforceable, and provided the individual with its decision. The Department believes that this proposal will not have a major impact on the number of claims referred for FTROP. During the test of FTROP most review requests were received relatively early in the 60-day period provided for those requests.

Some review requests will be received too late for the October 31 deadline but within the 60 days provided for timely review requests. As during the test, such claims are not referable for offset in the immediately upcoming offset year. In such situations State agencies should review the request and provide individuals their decisions on whether the claim is past due and legally enforceable and subject to collection by tax refund offset. Such claims could then be included in the processing cycles for the succeeding offset year.

f. FCS action on Appeals of State Agency Reviews. The August 1991 General Notice provided in paragraph f(1) that FCS would not review State agency decisions on review requests when it received such requests later than 30 days after the date of the State agency decision on the original review. This rule proposes at § 273.18(g)(5)(vi)(A) that FCS act on all timely requests for FCS review of State agency review decisions, and that such a request is timely if it is received by FCS within 30 days of the date of the State agency review decision.

The August 1991 General Notice stated in paragraph f(2) that when FCS received timely requests for reviews of State agency decisions, FCS would either: (1) Complete the requested review and notify the State agency and individual of its determination; or (2) notify the State agency that FCS had not completed its review and that the State agency must delete the claim from its final files certified to FCS for referral for offset. This rule proposes the same actions at § 273.18(g)(5)(vi)(B). In addition, this rule proposes at § 273.18(g)(5)(vi)(B) that FCS provide funds to refund the charge for the offset fee if FCS is late in notifying the State agency to delete a claim, where FCS finds that the claim is not referable and the claim is offset because of the late notification. For timely requests for review received by FCS, where the State agency's decision is dated after October 31 prior to the offset year, FCS will complete its review and notification of the results of its review, but the claim shall not be referred for offset in the immediately upcoming offset year, as specified above. This proposal is found at § 273.18(g)(5)(v)(E) and § 273.18(g)(5)(vi)(C).

The August 1991 General Notice stated in paragraph f(3) the components of FCS reviews of State agency decisions on review requests. Those components were: (1) Requesting documentation from the State agency about the appeal; (2) determining the correctness of the State agency decision; and (3) notifying the individual and State agency of this determination. The August 1991 General Notice stated in paragraph f(3)(iii)(A) that if FCS determined that the State agency was correct (the claim was past due and legally enforceable), FCS would also notify the individual that any further appeals must be made through the courts. The August 1991 General Notice stated in paragraph f(3)(iii)(B) that if FCS determined that the State agency determination that the claim was past due and legally enforceable was incorrect, FCS would request that the State agency take appropriate corrective action. This rule would include these provisions, slightly modified, at § 273.18(g)(5)(vi)(D), (E) and (F). The rule proposes to specify the types of documentation FCS would request from State agencies. These items are consistent with the documentation State agencies would be required to have in order for a claim to be considered referable for collection through FTROP. The types of documentation are: printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, records of payments, 60-day notices, the review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

g. Referral of Claims for Offset. The August 1991 General Notice required in paragraph g(1) that State agencies comply with FCS operating guidelines when submitting certified files of claims for tax offset. As discussed earlier in this preamble, this rule proposes replacing the requirement for compliance with operating guidelines with the requirement that State agencies submit data in the format and schedules provided by FCS. Accordingly, this rule at § 273.18(g)(5)(vii)(A) would require that State agencies submit certified files by the date specified by FCS. The August 1991 General Notice required in paragraph g(2) that, by the date specified in the FCS guidelines, State agencies certify in writing to FCS that all claims in the final files of claims meet the requirements for referral under FTROP, including the issuance of all due-process notifications to individuals. This rule proposes at § 273.18(g)(5)(vii)(A) to require this certification letter and statement. The letter and statement are necessary because the IRS requires that Federal agencies provide the IRS such letters and statements with their certified files. In addition, this rule proposes at § 273.18(g)(5)(vii)(A) to require that the certification letter also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed its review.

As discussed earlier, the rule proposes to require that State agencies state in the certification letter that their 60-day notice complies with IRS and FCS requirements. State agencies must provide FCS copies of the formats for these letters as required by current food stamp regulations requiring submittal to FCS of State agency operating guidelines and forms. (See 7 CFR 272.3(b)(2).)

The August 1991 General Notice required in paragraph g(3) that State agencies provide the name, address and telephone number of State agency contacts to be included in the notices of offset which IRS sends taxpayers whose

refunds have been offset, and also required that State agencies update that information if and when it changed. This information is the ''Agency Address File.'' The IRS is especially concerned that this information be accurate and requires Federal agencies to specify how they determined that the information provided for contacts is accurate. This rule proposes at section 273.18(g)(5)(vii)(B) that State agencies provide the contact information, state in the certification letter how they determined that the contact information was accurate and update the information as necessary. The IRS also wants the contact telephone number to be toll-free or collect, and the rule would make this a requirement.

h. State Agency Actions on Offsets Made. The August 1991 General Notice required in paragraph h(1) that promptly after receiving notices of offset from the IRS, State agencies were required to notify individuals about offsets made and the resulting status of the claim. The Department required this so that individuals would know the status of the claim against them. State agencies were also required to promptly refund any erroneous offsets made and to do so as close in time as possible to the notice of offset. This rule proposes these same requirements at § 273.18(g)(5)(viii). In addition, that section would require that State agencies inform individuals of the amount of the offset collected to pay the offset fee.

The action group complained that the Department has not offered procedures to compel a State agency to return funds that have been wrongfully offset by the IRS. This is incorrect. Current food stamp regulations at 7 CFR 273.18(i)(4) require that State agencies return overpayments of claims as soon as possible after such overpayments become known. To help clarify that the refund procedure for claim overpayments under FTROP is the same as for other overpayments, the proposed rule would cite that provision at § 273.18(g)(5)(vii)(B). In this regard, the action group cited the example of a debtor who has successfully appealed the referral of a claim which is then erroneously referred and offset. Should this happen, since the debtor would have been notified about both the State agency decision and the offset, a telephone call should be sufficient to bring the error to the State agency's attention and to obtain a refund of the over collection.

Responsibility for Offset Fees for Erroneous Offsets: In the case discussed in the preceding paragraph, the claim was referred and offset because of a State agency error. In such cases, the Department believes that the offset fee should be refunded to the individual and that the cost of the fee should be considered an allowable administrative expense of the State agency. Accordingly, this rule proposes at § 273.18(g)(5)(viii)(C) that if an over collection from an individual's Federal income tax refund is due to the State agency including in the certified file of claims required by § 273.18(g)(5)(vii)(A) a claim which does not meet the criteria specified in § 273.18(g)(5)(ii), such refund shall include any amounts collected to pay for the offset fee charged by the IRS. The section would further specify that the State agency may claim any such amount as an allowable administrative cost under Part 277 of this chapter. As a consequence of this provision, State agencies and FCS would each pay fifty percent of the cost of these offset fees.

Further in regard to refunds of offset fees, under this proposed rule the 60-day notice would advise individuals that spouses who are not liable for recipient claims can prevent offsets against their share of a tax refund by filing the appropriate form with the IRS when they file their tax return. If they do so and the entire tax refund is theirs, no offset will occur, and no administrative charge will be incurred. If the appropriate IRS form is submitted after the tax return is filed, an offset may occur. If it does, the IRS will refund the collection to the non-liable spouse, including the administrative charge. The IRS may refund offsets, including offset fees, to taxpayers for reasons other than a non-liable spouse. In all cases of such IRS refunds, the Department will pay the administrative charge, and the amount of the claim will be charged to the State agency. Consequently, this rule also proposes at § 273.18(g)(5)(viii)(C) that State agencies will not be responsible for refunding the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund. In cases where part of the tax refund due on a joint tax return is attributable to an individual who is liable for the food stamp claim, the liable individual's portion would be subject to offset and the offset fee could be collected from the individual.

i. Monitoring and Reporting Offset Activities. The August 1991 General Notice required in paragraph i. that State agencies monitor offset activities to accomplish the various requirements of the tax offset program. Particular emphasis was given to the need for State agencies to update IRS files by reducing the amounts of claims and deleting claims to reflect voluntary payments and other events so that IRS records would reflect the current status of the claim. This rule proposes to make this a requirement at § 273.18(g)(5)(ix)(A). This rule also proposes at § 273.18(g)(5)(ix)(B) that State agencies monitor FTROP activities to assure that refunds of over collections are made promptly.

During the test of FTROP State agencies were required to submit a ''management report'' with their certified files. The report provided data to FCS on such things as numbers of 60-day notices sent and the volume of informal inquiries. This rule proposes at § 273.18(g)(5)(ix)(C) to eliminate this report and instead require that by the tenth of October of the year prior to the offset year State agencies report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of associated claims. The Department wants this information as a basis for measuring collections through both voluntary repayments and offsets.

The rule proposes at § 273.18(g)(5)(ix)(D) that State agencies report on two matters as required by the IRS. State agencies participating in the test of FTROP were required to make these reports, and the information collection burdens associated with both were included in the burden estimate discussed earlier in this preamble. One reporting requirement relates to data security as required by the IRS in its publication Tax Information Security Guidelines for Federal, State and Local Agencies. Currently two reports are required. One is the Safeguard Procedures Report, which State agencies are required to submit in the initial year of their participation. The second is the Safeguard Activity Report, which all State agencies are required to submit annually. FCS provides State agencies copies of the IRS publication just cited and guidance on annual due dates and related matters. The IRS also requires quarterly reports of voluntary collections. The rule would require that State agencies provide that information as required by FCS. FCS provides State agencies the format for this report.

During the test State agencies were required to report collections under FTROP, both voluntary and by actual offset from tax refunds, on the appropriate Form FCS–209, Status of Claims Against Households. This rule would include that requirement at § 273.18(g)(5)(ix)(E).

C. Federal Salary Offset

1. Authorities for Salary Offset

The Debt Collection Act of 1982 (Public Law 97–365), amended 5 U.S.C. 5514 to authorize Federal agencies to offset the salaries of Federal employees who are delinquent on debts owed to the Federal government. The Office of Personnel Management (OPM) implemented 5 U.S.C. 5514 by promulgating regulations at 5 CFR 550.1101–1108 (Collection by Offset from Indebted Government Employees). Pursuant to 5 U.S.C. 5514(b)(1), the Department promulgated regulations at 7 CFR 3.51 through 3.68 implementing salary offset. Departmental regulations at 7 CFR 3.68 delegate to individual USDA agencies the authority to act for the Secretary under those regulations and to issue regulations or policies not inconsistent with the Departmental regulations and with the OPM regulations. Section 13941 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66, signed August 10, 1993) authorizes disclosure of food stamp casefile information to Federal agencies for purposes of collecting recipient claims (except those caused by State agency errors) from Federal salaries.

A test of salary offset is currently being conducted under a General Notice published August 29, 1994 at 59 FR 44400. Section 17(b)(1) of the Act (7 U.S.C. 2026(b)(1)) authorizes the Secretary to conduct such projects to test program changes that might increase the efficiency of the FSP. The provisions of this proposed rule relative to salary offset are substantially the same as the provisions of the August 1994 General Notice on salary offset. The Department intends to use experience from the test of salary offset as well as comments on this proposed rule in developing the final salary offset regulations.

Pursuant to Section 13 of the Act (7 U.S.C. 2022), and subject to the standards of FSP regulations at 7 CFR 273.18, the authority to settle claims against households has been delegated to State agencies at 7 CFR 271.4(b). Food stamp coupons issued pursuant to the Act are deemed to be obligations of the United States (7 U.S.C. 2024(d)). Under these statutes and regulations, State agencies establish FSP recipient claims, and collect and maintain records of those claims. State agencies return amounts collected to the Federal government, less a statutory ''retention amount'' established to encourage collection of recipient claims (7 U.S.C. 2025(a)).

This rule proposes to incorporate the requirements of Departmental regulations on salary offset (7 U.S.C. 3.51 *et seq.*), and to supplement and modify these procedures to the extent necessary to accommodate the position of State agencies as primarily responsible for establishing, collecting and maintaining records on recipient claims. These additions and modifications are consistent with OPM regulations on salary offset.

2. Overview of Salary Offset Procedures for the FSP

Under this proposed rule, salary offset would have three phases and be operated on an annual cycle. In the first phase, FSP recipient claims would be matched against records of all active Federal civilian and military employees, including United States Postal Service (USPS) employees. The recipient claims so matched would be compiled from lists of recipient claims provided by State agencies as part of FTROP procedures. The Federal employee records are maintained by the Department of Defense (DoD) and the USPS. The match would identify Federal employees and their employing agencies, and would provide employee and employing agency addresses to FCS. This match would be conducted in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). As required by that statute, the public has been advised of this matching program by the publication of three General Notices. A General Notice was published September 17, 1993 at 58 FR 48633 advising the public of the systems of records involved. A second General Notice was published March 1, 1994 at 59 FR 9733 advising the public of the match with DoD. A third General Notice was published August 17, 1994 at 59 FR 42205 advising the public about the match with the USPS. Recipient claims which these matches identify as obligations of Federal employees will not be referred to the IRS for collection through FTROP.

During the second phase of food stamp salary offset procedures, recipient claims identified in the match would be referred to State agencies. After a review of their records to determine if those recipient claims are still owed and if so their correct amounts, State agencies would send the identified Federal employees advance notices of salary offset (advance notices). The advance notice would provide these individuals 30 days to voluntarily pay the claim or provide documentation that all or part of the claim is not legally collectible. Claims which are not paid, or for which replies are late or do not provide adequate documentation, would be referred to the FCS National Office for collection by salary offset.

In the third phase of salary offset, by means of a notice of intent, FCS would notify Federal employees owing recipient claims referred by State agencies that FCS intends to collect the debt from the employees' salaries. The notice of intent would include information about appeal rights, pertinent time frames and other information which is required for that notice by Departmental regulations on salary offset. Subject to the responses to notices of intent, FCS would proceed with action to collect the debts. FCS would follow the collection procedures in the Departmental rule on salary offset as those procedures would be modified by this rule.

3. Discussion of Proposed Regulatory Provisions for Salary Offset

a. Claims Subject to Salary Offset. This rule proposes at § 273.18(g)(6)(i) that all claims submitted by State agencies participating in FTROP would first be subject to the matching procedures proposed in this rule. Those procedures would identify which of those claims are owed by Federal employees. Individuals so identified would be subject to the salary offset procedures proposed in this rule in lieu of having their claims referred for collection under FTROP. Consequently, all State agencies participating in FTROP would also be required to participate in salary offset.

b. Identification of Recipient Claims Owed by Federal Employees. The rule at § 273.18(g)(6)(ii)(A) would specify the steps of phase one of salary offset.

The Department wants to ensure that State agencies protect information they receive from DoD and USPS from the time they receive it. Consequently, at § 273.18(g)(6)(ii)(B) this rule would provide that when FCS receives Federal employment information for a particular State agency, it would first notify the State agency in writing accompanied by a data security and confidentiality agreement for the State agency to sign and return. When that agreement is returned, FCS would then provide the information to the State agency. Concurrently with publication of this rule, FCS is providing State agencies a sample notification letter with the language of the data security and confidentiality agreement.

The matching of State agency recipient claims with DoD and USPS data files would be conducted under the terms of Memorandums of Agreement (Agreements) between USDA and DoD, and between USDA and the USPS. The

Agreements require that if the records obtained from DoD and the USPS are disclosed to a State or local agency, those entities must agree in writing to abide by the data security and confidentiality protection measures specified in the Agreements. This rule at § 273.18(g)(6)(ii)(C) would specify those protection measures and require that State agencies extend them to any contractors or other non-State agency entities to which the records may be disclosed. The requirements are typical data security and usage controls, and should require minimal State agency resources.

This rule would require at § 273.18(g)(6)(ii)(D) that, prior to taking additional action to collect claims from Federal employees, State agencies must review those claims to verify the amount of the recipient claim owed, and to remove any claims which have been paid, are being paid or which for other reasons are not collectible through salary offset. The rule would require this review to verify that the individual identified in the match owes an FSP recipient claim and that the amount of the claim is correct.

c. State Agency Advance Notice of Salary Offset. This rule proposes to require at § 273.18(g)(6)(iii)(A) that, following the review just described, State agencies provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice would provide the debtor certain information about the recipient claim and would offer the debtor an opportunity to pay the claim voluntarily. Although the debtor would have been offered an opportunity to pay the claim voluntarily in the initial claim demand letter required by food stamp regulations at 7 CFR 272.18(d)(3), the Department is proposing to provide a second voluntary payment opportunity for several reasons. This opportunity would offer debtors a way to repay recipient claims without involving their employing agencies. It would provide State agencies a way to collect such claims without the delay which salary offset entails. Furthermore, recipient claims paid voluntarily to State agencies would save the Federal government the administrative cost of the actual salary offset.

The Department wants State agency collection efforts to proceed promptly. Consequently, this rule proposes at § 273.18(g)(6)(iii)(A) that advance notices must be mailed or otherwise provided to debtors at the addresses provided by FCS within 60 days of State agency receipt from FCS of the list of recipient claims owed by Federal employees. The addresses would be those which DoD and USPS would provide through the matching program. The 60-day period should allow State agencies sufficient time to integrate this task into related administrative processes with the addition of minimal resources.

The rule proposes that recipient claims owed by Federal employees who do not voluntarily pay them directly to the State agency in response to the advance notice would be collected through salary offset. Consequently, it proposes at § 273.18(g)(6)(iii)(B) that within 90 days of the date of the advance notice State agencies refer to FCS all claims for which the State agency does not receive timely and adequate response. The advance notice would allow debtors 30 days to respond to State agencies. The 90-day period would give State agencies 60 days beyond that time frame to refer claims to FCS. This rule proposes that the referral from State agencies would consist of a copy of the advance notice and copies of records relating to the claim. This rule would specify that copies of records relating to the claim would consist of copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations. (This is substantially the same requirement which is proposed for the documents State agencies must submit to FCS for requests for FCS reviews of State agency decisions on referrals of claims under FTROP.)

This rule specifies at § 273.18(g)(6)(iii)(C) the proposed content of the advance notice. (Concurrently with publication of this rule, FCS is providing State agencies a sample format for the advance notice.) First, at § 273.18(g)(6)(iii)(C)(*1*) this rule proposes to require that the advance notice state that, according to State agency records, the debtor is liable for a recipient claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies would be encouraged to include as much other information about the claim as possible, including such things as whether the claim was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which related to the claim and what, if any, payments have reduced the amount of the original claim.

This rule proposes at § 273.18(g)(6)(iii)(C)(*2*) that the advance notice state that the debtor was found through a computer match to be employed by a Federal agency and state the name and address of the employing agency. The advance notice would also state that the computer match was conducted according to procedures required by the Privacy Act of 1974, as amended. This information would be required so that debtors know the source of the information about their employment and that it was obtained under authority of law.

This rule proposes at § 273.18(g)(6)(iii)(C)(*3*) that the advance notice further advise debtors that the authority to collect debts such as food stamp recipient claims from Federal salaries is the Debt Collection Act of 1982. The advance notice would also state that the subject claim will be referred to FCS for such collection action unless, within 30 days of the date of the advance notice, the State agency receives payment in full or an acceptable installment payment on the claim. With respect to payments, this rule proposes that the advance notice state several things. First, claims of $50 or less must be paid in full within 30 days or they will be referred to FCS for collection from the debtor's Federal salary. Second, claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month, and debtors may pay more than $50 in any installment payment. Third, the advance notice must state the monthly due date of installment payments for the claim and that if a monthly installment payment of at least $50 is not received by the monthly due date, the claim will be referred to FCS for salary offset with no further opportunity to enter a voluntary repayment agreement. (See sections 273.18(g)(6)(iii)(C)(*3*)(*i*), (*ii*) and (*iii*).)

This rule proposes at section 273.18(g)(6)(C)(*4*) that the advance notice must also provide the name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for payment and/or discussion of the claim. The 1994 General Notice on salary offset did not require a toll-free or collect telephone number, but the Department believes that such a number is necessary because individuals owing recipient claims may live outside the State which established the claim. State agencies could use the same number provided individuals in the 60-day notice for FTROP.

The advance notice would also advise debtors that they may submit documentation to State agencies

showing such things as payment of all or part of the claim, or other circumstances which would prevent collection. Second, unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency would refer the claim to FCS for collection from the debtor's salary. Third, State agencies would notify debtors in writing when claims will not be referred for collection from salaries. Fourth, the advance notice would state that debtors have the right to a formal appeal to FCS, and that notification about how to make such an appeal is required and will be provided to debtors before any collection action from salaries is taken. (See § 273.18(g)(6)(iii)(C)(*5*).)

d. State agency retention and reporting of collections. For purposes of calculating amounts of collections which State agencies retain, this rule proposes at § 273.18(g)(6)(iv)(A) that all claims collected under the salary offset provisions of this rule would be treated as if they were collected by the State agency. Specifically, this rule would provide that, for recipient claims paid voluntarily and through salary offsets, State agencies would retain collections at the rates specified at 7 CFR 273.18(h) for the appropriate reporting period for Form FCS–209, Status of Claims Against Households. The rule would also provide at § 273.18(g)(6)(iv)(A) that from time to time as volume warrants, FCS will provide reports and also transfer amounts collected from salaries to State agencies. State agencies would include the collections on the appropriate FCS–209 report. This rule would not require that collections on salary offset claims be identified separately on the FCS–209 from other collections of recipient claims. The Department can determine the levels of such collections based on the number and dollar values of claims which FCS refers to State agencies and the number and dollar values of claims which State agencies refer back to FCS because debtors do not respond or respond inadequately to advance notices.

In this regard, the rule proposes at § 273.18(g)(6)(iv)(B) that if a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies would refer the claim to FCS, reporting the default, the dollar amount collected and the balance due. In the August 1994 General Notice initiating the test of salary offset, this period is 90 days. The Department believes that 60 days should be adequate for State agencies to refer claims to FCS when Federal employees default on payments of them.

e. FCS Actions on Claims Referred by State Agencies. This rule proposes at § 273.18(g)(6)(v) that, subject to certain modifications described below, Departmental procedures at 7 CFR 3.51–3.68 will apply to claims referred by State agencies to FCS for salary offset.

Three additions would be made to the definitions set forth at 7 CFR 3.52. The term ''debts'' would be further defined to include recipient claims established according to 7 CFR 273.18, and the terms ''State agency'' and ''FCS'' would be defined as set forth in 7 CFR 271.2. (See section 273.18(g)(6)(v)(A).)

The Departmental rules require that, using the Notice of Intent to Offset Salary (notice of intent) set forth at 7 CFR 3.55, the Department provide notice to the debtor 30 days prior to offsetting the debtor's salary. This rule proposes at § 273.18(g)(6)(v)(E) that this procedure and the notice of intent specified at 7 CFR 3.55 be used for FSP recipient claims as described below.

The provisions of the notice of intent are largely self- explanatory. The notice of intent sets forth the amount of the debt and the facts which gave rise to it, and describes how the actual offset will be conducted, including the frequency and amount of salary deductions. The notice of intent advises the debtor about the method and time period for requesting a hearing and that a timely hearing request will stay the collection proceedings. The notice of intent also advises how the hearing will be conducted and the time frame for issuance of decisions. It also advises the debtor of the penalties for making or submitting any knowingly false or frivolous statements, representations or evidence.

The rule proposes at § 273.18(g)(6)(v)(B), (C), and (D) to modify three sections of the notice of intent in order to apply that notice to FSP recipient claims. First, 7 CFR 3.55(d) requires that the notice of intent explain the Department's requirements regarding payments of interest, penalties and administrative costs, unless such payments are waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34. These charges would be waived as explained in detail below. Accordingly, the notice of intent for FSP recipient claims would not include an explanation of these charges. Second, 7 CFR 3.55(e) requires that the notice of intent explain the debtor's right to inspect and copy Department records relating to the debt. As explained below, for FSP recipient claims, the notice of intent would also include an explanation of the right to request and receive copies of the records from the Department, and a statement of the time for making such a request which is established under 7 CFR 3.60(a). Third, 7 CFR 3.55(f) requires that the Department's notice of intent advise the debtor of the procedures for proposing a repayment agreement in lieu of salary offset. As explained below, this explanation and procedure would not be included in the FSP notice of intent.

Departmental regulations at 7 CFR 3.65 and 3.55(d) set forth the procedures for charging interest, penalties, and administrative costs for salary offset. As discussed above, this rule proposes at § 273.18(g)(5)(iv)(C) that the offset fee assessed by the IRS for collections under FTROP be paid by the debtor out of funds collected through FTROP. Other than in this proposed regulation, FSP regulations do not authorize collection of interest, penalties or administrative costs for FSP recipient claims. Accordingly, there are no administrative mechanisms in place for the assessment and notice of such charges. The Department believes that it would not be administratively cost effective or feasible to establish such mechanisms at this time but may consider them at some future date. Therefore, pursuant to 7 CFR 3.34(c)(4), the Secretary has determined that collection of such charges is not in the best interests of the United States, and the rule proposes to waive collection of such charges. Accordingly, as noted above, the FSP notice of intent would not include an explanation of interest and related charges.

Departmental regulations at 7 CFR 3.60 set forth procedures for the review of Departmental records relating to debts to be collected by salary offset and provide that, upon a timely request, the Department will permit debtors to inspect and copy those records. This rule proposes at § 273.18(g)(6)(v)(E)(*1*) that, for purposes of FSP salary offset, the debtor may also request that the Department provide copies of the records. The Department believes that this offer is appropriate because these records will be located at the FCS National Office while debtors are located throughout the country. The rule proposes that, for their requests to be considered timely as provided in 7 CFR 3.60(a), FCS must receive a letter requesting copies of the records (or requesting an opportunity to inspect or copy the records) within 30 calendar days of the date of the FSP notice of intent. As stated above, the notice of intent would advise debtors of these procedures and deadlines.

Departmental salary offset regulations at 7 CFR 3.61 provide debtors the

opportunity to propose a written repayment agreement in lieu of salary offset, subject to approval by the Secretary. OPM regulations at 5 CFR 550.1104(d)(6) provide that this opportunity is not required if the debtor was previously provided such an opportunity. Current FSP regulations at 7 CFR 273.18(g)(2) provide that opportunity at the time of the initial demand letter on the recipient claim. The State agency advance notice of salary offset would offer a second such opportunity. Accordingly, this rule proposes at § 273.18(g)(6)(v)(E)(*2*) that the FSP notice of intent not offer debtors an opportunity to enter into a written agreement to repay the debt.

The remaining FSP salary offset procedures relate primarily to hearings which debtors may request and to the procedures for the actual offsets from salaries. These procedures would operate as set forth in the Departmental regulations, and they are briefly described below.

The Departmental regulation at 7 CFR 3.56 provides that debtors have 30 days to request a hearing on the existence or amount of the claim, or on the proposed offset schedule (rate and frequency of offset). The notice of intent advises the debtor what information should be included in the request for a hearing, and states the basis for accepting a late request. Section 3.57 provides that a hearing will not be granted if the employee fails to request one as prescribed or fails to appear at the hearing. Section 3.58 describes how hearings will be conducted, and Section 3.59 specifies the format of written hearing decisions.

The Departmental regulation at 7 CFR 3.62 provides that deductions will begin either: (1) As stated in the notice of intent; (2) if a hearing is requested, after a decision in favor of the Secretary; or (3) through administrative offset upon the employee's retirement or resignation as provided by 7 CFR 3.21 through 3.36. Section 3.63 provides that collections will be made in a lump sum or installments, and will be by installments if the debtor cannot repay the debt in one payment or the debt exceeds 15 percent of disposable pay for a pay period. Section 3.64 provides that installments will be at established pay intervals, bear a reasonable relationship to the size of the debt, up to a maximum of 15 percent of disposable pay, and specifies the types of pay (basic pay, incentive pay, etc.) which can be offset. Section 3.66 provides that payment by salary offset will not be interpreted as a waiver of any rights the debtor may have under 5 U.S.C. 5514. Section 3.67 provides for the refund of amounts erroneously offset from salaries under certain conditions such as an administrative or judicial order.

Effective Date

It is proposed that this rule would become effective 30 days after publication of the final rule except that State agencies currently participating in FTROP would be required to submit the amendment to the Plan of Operation required at 7 CFR 272.2(d)(1)(xii) no later than 90 days after publication of that rule.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 271, 272 and 273 are proposed to be amended as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. The authority citation for parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 271.2, the definition of *Offset year* is added in alphabetical order to read as follows:

§ 271.2 Definitions

* * * * *

Offset year means the calendar year during which offsets may be made to collect certain recipient claims from individuals' Federal income tax refunds.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.2, a new sentence is added to the end of paragraph (a)(2) and a new paragraph (d)(1)(xii) is added to read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content*

* * *

(2) *Content.* * * * The Plan's amendments shall also include the commitment to conduct the optional Federal income tax refund offset program and Federal salary offset program.

* * * * *

(d) *Planning Documents.*

(1) * * *

(xii) If the State agency chooses to implement the Federal income tax refund offset program and the Federal salary offset program, the Plan's attachments shall include a statement in which the State agency states that it will comply with the provisions of § 273.18 (g)(5) and (g)(6) of this chapter.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

4. In § 273.18 new paragraphs (g)(5) and (g)(6) are added to read as follows:

§ 273.18 Claims against households.

* * * * *

(g) *Method of collecting payments.*

* * *

(5) *Federal income tax refund offset program.*

(i) *General requirements.* State agencies which choose to implement the Federal income tax refund offset program (FTROP) shall:

(A) Submit an amendment to their Plan of Operation as specified in § 272.2(d)(1)(xii) of this chapter stating that they will comply with the requirements for FTROP and with the requirements for the Federal salary offset program (salary offset). Such amendments shall be submitted to the appropriate FCS regional office no later than twelve months before the beginning of a State agency's first offset year.

(B) Submit data for FTROP to FCS in the record formats specified by FCS and/or the Internal Revenue Service (IRS), and according to schedules and by means of magnetic tape, electronic data transmission or other method specified by FCS.

(ii) *Claims referable for offset.* State agencies may submit for collection from Federal income tax refunds recipient claims which are past due and legally enforceable.

(A) Such claims must be:

(*1*) Only inadvertent household error claims or intentional Program violation claims. These claims shall be properly established according to the requirements of this section (which pertains to claims against households), including the requirement that additional demand letters be provided prior to initiating other collection actions as required by paragraph (d)(4)(iii) of this section, and the

requirements of section 273.16 (which pertains to disqualification for intentional Program violations). In addition, these claims shall be properly established no later than the date the State transmits its final request for IRS addresses for the particular offset year. Furthermore, the State agency shall have electronic records and/or paper documents showing that the claim was properly established. These records and documents include such items as claim demand letters, results of fair hearings, advance notices of disqualification hearings, results of such hearings, and records of payments.

(*2*) Claims for which the State agency has verified that no individual who is jointly and severally liable as specified in paragraph (a) of this section is also currently participating in the FSP in the State.

(*3*) Claims which meet at least the minimum dollar amount established by the IRS.

(*4*) Claims for which the date of the initial demand letter is within 10 years of January 31 of the offset year, except that claims reduced to final court judgments ordering individuals to pay the debt are not subject to this 10-year limitation.

(*5*) Claims for which the State agency is neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in paragraph (g)(2) of this section nor is receiving scheduled, involuntary payments such as wage garnishment. Claims for which the State agency has received such payments are considered past due and legally enforceable 30 days after the due date for a regular payment which is not received.

(*6*) Claims for which collection is not barred by a bankruptcy.

(*7*) Claims for which the State agency has provided the individual with all of the notification and opportunities for review as specified in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section.

(B) In addition:

(*1*) All claims to be submitted for collection under FTROP shall be reduced by any amounts subject to collection from State income tax refunds or from other sources which may result in collections during the offset year.

(*2*) If a claim to be submitted for collection under FTROP is a combination of two or more recipient claims, the date of the initial demand letter for each claim combined shall be within the 10-year range specified in paragraph (g)(5)(ii)(A)(*4*) of this section. Claims reduced to judgment shall not be combined with claims which are not reduced to judgment.

(*3*) If a claim to be submitted under FTROP is apportioned between two or more individuals who are jointly and severally liable for the claim pursuant to paragraphs (a) and (f) of this section, the sum of the amounts submitted shall not exceed the total amount of the claim.

(iii) *60–Day notice to individuals.* (A) Prior to referring claims for collection under FTROP, the State agency shall provide individuals from whom it seeks to collect such claims with a notice, called a 60-day notice.

(B) With the exception of such State-specific information as names and job titles and information required for State agency contacts, a State agency's 60-day notice shall contain only the information specified in paragraph (g)(5)(iv) of this section. In the certification letter required in paragraph (g)(5)(vii) of this section, the State agency shall include a statement that its 60-day notice conforms to this requirement.

(C) Unless otherwise notified by FCS, the State agency shall mail 60-day notices for claims to be referred for collection through FTROP no later than October 1 preceding the offset year during which the claims would be offset.

(D) The State agency shall mail 60-day notices using the address information provided by the IRS unless the State agency receives clear and concise notification from the taxpayer that notices from the State agency are to be sent to an address different from the address obtained from the IRS. Such clear and concise notification shall mean that the taxpayer has provided the State agency with written notification including the taxpayer's name and identifying number (which is generally the taxpayer's SSN), the taxpayer's new address, and the taxpayer's intent to have notices from the State agency sent to the new address. Claims for which 60-day notices addressed as required in this paragraph are returned as undeliverable may be referred for collection under FTROP.

(iv) *Contents of the 60-day notice.* The State agency's 60-day notice shall state that:

(A) [Name of the State agency or an equivalent phrase] has records documenting that you, [the name of the individual], Social Security Number: [the individual's Social Security Number] are liable for [the unpaid balance of the recipient claim(s) the State agency intends to refer] resulting from overissued food stamp benefits. [The name of the State agency or equivalent phrase] has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

(B) The Deficit Reduction Act of 1984, as amended, authorizes the Internal Revenue Service (IRS) to deduct such debts from tax refunds if they are past due and legally enforceable. [Name of the State agency or an equivalent phrase] has determined that your debt is past due and legally enforceable as specified by the Deficit Reduction Act of 1984, the IRS regulations, and Food Stamp Program (FSP) regulations. We intend to refer the claim for deduction from your Federal income tax refund unless you pay the claim within 60 days of the date of the notice or make other repayment arrangements acceptable to us.

(C) If we refer your claim to the IRS, a charge for the administrative cost of collection will be added to your claim and that amount will also be deducted if the claim, or any portion of the claim, is deducted from your tax refund.

(D) All adults who were household members when excess food stamp benefits were issued to the household are jointly and severally liable for the value of those benefits, and collection of claims for such benefits may be pursued against all such individuals. Our records do not show that the claim is being paid according to either a voluntary agreement with us or through scheduled, involuntary payments.

(E) To pay the claim voluntarily or to discuss it, you should contact: [an office, administrative unit and/or individual, the contact's street address or post office box, and a toll-free or collect telephone number].

(F) You are entitled to request a review of the intended collection action. We must receive your request for review within 60 days of the date of this notice. Such a request must be written, must be submitted to the address provided in this notice and must contain your Social Security Number. We will not refer your claim for offset while our review is pending.

(G) The claim is not legally enforceable if a bankruptcy prevents collection of the claim.

(H) You may want to contact your local office of the IRS before filing your Federal income tax return. This is true where you are filing a joint return, and your spouse is not liable for the food stamp claim and has income and withholding and/or estimated Federal income tax payments. In such circumstances your spouse may be entitled to receive his or her portion of any joint refund. Your own liability for this claim, including any charge for administrative costs, may still be

collected from your share of such a joint refund.

(I) If you request a review of our intent to collect the claim from your income tax refund, you should provide documentation showing that at least one of the items listed below is incorrect for the claim cited in this notice. If you do not have such documentation, for example a cancelled check, you should explain in detail why you believe that the claim is not collectible under FTROP.

(J) The claim cited in this notice is subject to collection from your tax refund for the following reasons:

(*1*) The claim was properly established according to Food Stamp Program regulations and was caused by an inadvertent household error or an intentional Program violation;

(*2*) No individual who is jointly and severally liable for the claim is also currently participating in the Food Stamp Program in [the name of State initiating the collection action];

(*3*) The claim is for at least [the minimum dollar amount required by the IRS];

(*4*) The date of the initial demand letter for the claim is within 10 years of January 31, [the offset year]. If the claim was reduced to a final court judgment ordering you to pay the debt, this 10-year period does not apply, and the date of the initial demand letter may be older than 10 years; and

(*5*) We are neither receiving voluntary payments pursuant to an agreed upon schedule of payments as provided in current Food Stamp Program regulations nor are we receiving scheduled, involuntary payments such as wage garnishment. Claims are considered past due and legally enforceable for collection from Federal income tax refunds 30 days after the due date for such a regular payment which is not received.

(K) In addition, collection of the claim is not barred by bankruptcy.

(v) *State agency action on requests for review.* (A) For all written requests for review received within 60 days of the date of the 60-day notice, the State agency shall determine whether or not the subject claims are past due and legally enforceable, and shall notify individuals in writing of the result of such determinations.

(B) The State agency shall determine whether or not claims are past due and legally enforceable based on a review of its records, and of documentation, evidence or other information the individual may submit.

(C) If the State agency decides that a claim for which a review request is received is past due and legally enforceable, it shall notify the individual that:

(*1*) The claim was determined past due and legally enforceable, and the reason for that determination. Acceptable reasons for such a determination include the individual's failure to provide adequate documentation that the claim is not past due or legally enforceable;

(*2*) The State agency intends to refer the claim to the IRS for offset;

(*3*) The individual may ask FCS to review the State agency decision. FCS must receive the request for review within 30 days of the date of the State agency decision. FCS will provide the individual a written response to such a request stating its decision and the reasons for its decision. The claim will not be referred to the IRS for offset pending the FCS decision; and

(*4*) A request for an FCS review must include the individual's SSN and must be sent to the appropriate FCS regional office. The State agency decision shall provide the address of that regional office, including in that address the phrase ''Tax Offset Review.''

(D) If the State agency determines that the claim is not past due or legally enforceable, in addition to notifying the individual that the claim will not be referred for offset, the State agency shall take any actions required by food stamp regulations with respect to establishing the claim, including holding appropriate hearings and initiating collection action.

(E) The State agency shall not refer for offset a claim for which a timely State agency review request is received unless by October 31 preceding the offset year the State agency determines the claim past due and legally enforceable, and notifies the individual of that decision as specified in paragraphs (g)(5)(v)(C)(*1*), (g)(5)(v)(C)(*2*) and (g)(5)(v)(C)(*3*) of this section.

(vi) *FCS action on appeals of State agency reviews.*

(A) FCS shall act on all timely requests for FCS reviews of State agency review decisions as specified in paragraph (g)(5)(v)(C) of this section. A request for FCS review is timely if it is received by FCS within 30 days of the date of the State agency's review decision.

(B) If a timely request for FCS review is received, and the State agency's decision is dated on or before October 31 of the year prior to the offset year, FCS shall:

(*1*) Complete a review and notification as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E), and (g)(5)(vi)(F) of this section, including providing State agencies and individuals the required notification of its decision; or

(*2*) Notify the State agency that it has not completed its review and that the State agency must delete the claims in question from files to be certified to FCS according to paragraph (g)(5)(vii) of this section. If FCS fails to timely notify the State agency and because of that failure a claim is offset which FCS later finds does not meet the criteria specified in paragraph (g)(5)(ii) of this section, FCS will provide funds to the State agency for refunding the charge for the offset fee.

(C) If a timely request for FCS review is received, and the State agency's decision is dated after October 1 of the year prior to the offset year, FCS shall complete a review as specified in paragraphs (g)(5)(vi)(D), (g)(5)(vi)(E) and (g)(5)(vi)(F) of this section, but the claim shall not be referred for offset as specified in paragraph (g)(5)(v)(E) of this section.

(D) When FCS receives an individual's request to review a State agency decision, FCS shall:

(*1*) Request pertinent documentation from the State agency about the claim. Such documentation shall include such things as printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, 60-day notices, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations; and

(*2*) Decide whether the State agency correctly determined the claim in question is past due and legally enforceable.

(E) If FCS finds that the State agency correctly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision, including notice to the individual that any further appeal must be made through the courts.

(F) If FCS finds that the State agency incorrectly determined that the claim is past due and legally enforceable, FCS will notify the State agency and individual of its decision, and the reason(s) for that decision. FCS will also notify the State agency about any corrective action the State agency must take with respect to the claim and related procedures.

(vii) *Referral of claims for offset.* (A) State agencies shall submit to FCS a certified file of claims for collection through FTROP by the date specified by FCS in schedules which FCS will provide as stated in paragraph (g)(5)(i)

of this section. At the same time State agencies shall also provide to their FCS regional office a letter which specifically certifies that all claims contained in that certified file meet the criteria for claims referable for FTROP as specified in paragraph (g)(5)(ii) of this section, and that for all such claims a notice and opportunity to request a review as required in paragraphs (g)(5)(iii), (g)(5)(iv), (g)(5)(v) and (g)(5)(vi) of this section have been provided. The certification letter shall also state that the State agency has not included in the certified file of claims any claim which, as provided in paragraph (g)(5)(vi) of this section, FCS notified the State agency is not past due or is not legally enforceable, or any claim for which FCS notified the State agency that it has not completed a timely requested review, or for which the State agency has not completed a timely requested review. Finally, the certification letter shall also state that with the exception of State-specific information such as names and positions and State-specific information required for State agency contacts, the State agency's 60-day notice contains only the information specified in paragraph (g)(5)(iv) of this section.

(B) The State agency shall provide to FCS the name, address and toll-free or collect telephone numbers of State agency contacts to be included in IRS notices of offset. State agencies shall state in the letter required in paragraph (g)(5)(vii)(A) of this section how they determined that such information is accurate and shall provide FCS updates of that information if and when that information changes.

(viii) *State agency actions on offsets made.* (A) Promptly after receiving notice from FCS that offsets have been made, the State agency shall notify affected individuals of offsets made, including the amount charged for offset fees, and the status of the claims in question.

(B) As close in time as possible to the notice of offset required in paragraph (g)(5)(viii)(A) of this section, the State agency shall refund to the individual (as required by paragraph (i)(4) of this section) any over collection which resulted from the offset of the individual's Federal income tax refund.

(C) If an offset results from a State agency including in the certified file of claims required by paragraph (g)(5)(vii)(A) of this section a claim which does not meet the criteria specified in paragraph (g)(5)(ii) of this section, the State agency shall refund the amount offset to the individual, including any amounts collected to pay for the offset fee charged by the IRS. The State agency may claim any such latter amount as an allowable administrative cost under Part 277 of this chapter. The State agency shall not be responsible for refunding any portion of the charges for offset fees incurred for IRS reversals of offsets when, for example, the IRS refunds amounts offset, including offset fees, to taxpayers who properly notified the IRS that they are not liable for claims which were collected in whole or part from their share of a joint Federal income tax refund.

(ix) *Monitoring and reporting offset activities.* State agencies shall monitor FTROP activities and shall take all necessary steps to:

(A) Update IRS files, reducing the amounts of or deleting claims from those files to reflect payments made after referral to FCS, or deleting claims which for other reasons no longer meet the criteria for being collectible under FTROP.

(B) Promptly refund to the individual any over collection of claims as required in paragraph (g)(5)(viii)(B) of this section.

(C) Annually and no later than the tenth of October of the year prior to the offset year report in writing to the FCS regional office the number of 60-day notices mailed and the total dollar value of the claims associated with those notices.

(D) Submit data security and voluntary payment reports as required by FCS and the IRS.

(E) Report collections of all recipient claims collected under the procedures of paragraph (g)(5) of this section on the appropriate Form FCS–209, Status of Claims Against Households, as required by paragraph (i)(2) of this section.

(6) *Federal salary offset program.*

(i) *Claims subject to salary offset.* All recipient claims submitted by State agencies participating in the Federal income tax refund offset program (FTROP) shall be subject to the matching procedures specified in this paragraph. Individuals identified by the match shall be subject to the salary offset procedures specified in this paragraph.

(ii) *Identification of recipient claims owed by Federal employees.* (A) FCS will match all recipient claims submitted by State agencies participating in FTROP against Federal employment records maintained by the Department of Defense (DoD) and the United States Postal Service (USPS). FCS will remove recipient claims matched during this procedure from the list of recipient claims to be referred to the Internal Revenue Service (IRS) for collection through FTROP.

(B) When FCS receives a list of Federal employees matched against recipient claims for a particular State agency, it will notify the State agency in writing accompanied by a data security and confidentiality agreement containing the requirements specified in paragraph (g)(6)(ii)(C) of this section for the State agency to sign and return. When that agreement is returned, signed by an appropriate official of the State agency, FCS will provide the list of matched Federal employees to the State agency.

(C) State agencies which receive lists of matched employees shall take the actions specified in this paragraph to ensure the security and confidentiality of information about those employees and their apparent debts, and shall ensure that any contractors or other non-State agency entities to which the records may be disclosed also take these actions:

(*1*) By such means as card keys, identification badges and security personnel, limit access to computer facilities handling the data to persons who need to perform official duties related to the salary offset procedures. By means of a security package, limit access to the computer system itself to such persons;

(*2*) During off-duty hours, keep magnetic tapes and other hard copy records of data in locked cabinets in locked rooms. During on-duty hours, maintain those records under conditions that restrict access to persons who need them in connection with official duties related to salary offset procedures;

(*3*) Use the data solely for salary offset purposes as specified in paragraph (g)(6) of this section, including not extracting, duplicating or disseminating the data except for salary offset purposes;

(*4*) Retain the data only as long as needed for salary offset purposes as specified in paragraph (g)(6) of this section, or as otherwise required by FCS;

(*5*) Destroy the data by shredding, burning or electronic erasure; and

(*6*) Advise all personnel having access to the data about the confidential nature of the data and their responsibility to abide by the security and confidentiality provisions stated in paragraph (g)(6)(ii)(C) of this section.

(D) Prior to taking any action to collect recipient claims as specified in paragraph (g)(6)(iii) of this section, State agencies shall review the claims records of matched Federal employees to verify the amount of the recipient claim owed, and to remove from the list of claims any recipient claims which have been paid, which are being paid according to

an agreed to schedule, or which for other reasons are not collectible.

(iii) *State agency advance notice of salary offset.* (A) Following the review specified in paragraph (g)(6)(ii)(D) of this section, State agencies shall provide each Federal employee verified as owing a recipient claim (debtor) with an advance notice of salary offset (advance notice). This advance notice shall be mailed to the debtor at the address provided by FCS, or shall be otherwise provided, within 60 days of State agency receipt of the list specified in paragraph (g)(6)(ii)(B) of this section.

(B) Within 90 days of the date of the advance notice, the State agency shall refer to FCS all claims for which the State agency does not receive timely and adequate response as specified in the advance notice. Such referrals shall consist of a copy of the advance notice sent to the debtor and copies of records relating to the recipient claim. Records relating to the recipient claims include such things as copies of printouts of electronic records and/or copies of claim demand letters, results of fair hearings, advance notices of disqualification hearings, the results of such hearings, records of payments, review requests and documentation, decision letters, and pertinent records of such things as telephone conversations.

(C) The advance notice shall state that:

(*1*) According to State agency records the debtor is liable for a claim for a specified dollar amount due to receiving excess food stamp benefits. State agencies are encouraged to include as much other information about the claim as possible, including such things as whether it was caused by household error or intentional Program violation, the date of the initial demand letter, any hearings or court actions which relate to the claim, and what, if any, payments have reduced the amount of the original claim;

(*2*) Through a computer match the debtor was found to be employed by [the name and address of the employing agency of the debtor]. The computer match was conducted under the authority of and according to procedures required by the Privacy Act of 1974, as amended;

(*3*) Collection from the wages of Federal and USPS employees for debts such as food stamp recipient claims is authorized by the Debt Collection Act of 1982. The claim will be referred to FCS for such collection action unless within 30 days of the date of the advance notice the State agency receives either:

(*i*) Payment of the claim in full. Claims of $50 or less shall be paid in full within 30 days or they will be referred to FCS for collection from the individual's Federal salary; or

(*ii*) The first installment payment for the claim. Claims of more than $50, if not paid in full within 30 days, must be paid in installments of at least $50 a month. Debtors may pay more than $50 on any installment payment. The advance notice shall state the monthly due date of installment payments and that if a monthly installment payment of at least $50 is not received by the due date, the claim will be referred to FCS for offset from the individual's Federal salary with no further opportunity to enter a voluntary repayment agreement;

(*4*) The name, address and a toll-free or collect telephone number of a State agency contact (an individual or unit) for repayment and/or discussion of the claim; and

(*5*) Debtors may submit documentation to State agencies showing such things as payments of claims or other circumstances which would prevent collection of claims. Unless the State agency receives such documentation within 30 calendar days of the date of the advance notice and the documentation clearly shows that the claim has been paid or is not legally collectible, the State agency shall refer the claim to FCS for collection from the debtor's salary. The State agency shall notify debtors in writing when claims for which an advance notice was issued will not be referred for collection from salaries. Debtors have the right to a formal appeal to FCS. Notification about how to make such appeals is required and will be provided to debtors before any collection action from salaries is taken.

(iv) *State agency retention and reporting of collections.* (A) State agencies shall retain collections of recipient claims paid voluntarily to State agencies and to FCS through salary offsets at the rates specified in paragraph (h) of this section for the appropriate reporting period for Form FCS–209, Status of Claims Against Households. From time to time as volume warrants, FCS will report and transfer amounts collected from salaries to State agencies. Collections by State agencies and by FCS on all such claims shall be included on the appropriate FCS–209.

(B) If a debtor fails to make an installment payment, within 60 days of the date the payment was due, State agencies shall refer the claim to FCS, reporting the default, the dollar amount collected and the balance due.

(v) *FCS actions on claims referred by State agencies.* Departmental procedures at 7 CFR 3.51–3.68 shall apply to claims referred by State agencies to FCS as required by paragraphs (g)(6)(iii)(B) and (g)(6)(iv)(B) of this section subject to the following modifications:

(A) In addition to the definitions set forth at 7 CFR 3.52, the term ''debts'' shall further be defined to include recipient claims established according to this section; and the terms ''State agency'' and ''FCS'' shall be defined as set forth in section 271.2 of this chapter.

(B) Pursuant to 7 CFR 3.34(c)(4) and 7 CFR 3.55(d), the Secretary has determined that collection of interest, penalties and administrative costs provided at 7 CFR 3.65 is not in the best interests of the United States and hereby waives collection of such charges.

(C) In addition to providing the right to inspect and copy Departmental records as specified at 7 CFR 3.60(a), the Secretary shall provide copies of records relating to the debt in response to timely requests. For a request to be timely, FCS must receive it within 30 calendar days of the date of the notice of intent.

(D) Pursuant to 5 CFR 550.1104(d)(6), an opportunity to establish a written repayment agreement provided at 7 CFR 3.61 shall not be provided.

(E) The notice of intent for FSP salary offset shall comply with the requirements of the Departmental notice of intent which are set forth at 7 CFR 3.55, subject to the following modifications:

(*1*) In addition to the statement that the debtor has the right to inspect and copy Departmental records relating to the debt, the notice of intent shall state that if timely requested by the debtor, the Secretary shall provide the debtor copies of such records. It shall further advise, as required by 7 CFR 3.60(a), that to be timely such requests must be received within 30 days of the date of the notice of intent; and

(*2*) The statement of the right to enter a written repayment agreement provided by 7 CFR 3.55(f) shall not be included.

* * * * *

Dated: June 23, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 95–15887 Filed 6–27–95; 8:45 am]

BILLING CODE 3410–30–U

federal register

Wednesday
June 28, 1995

Part VIII

Securities and Exchange Commission

17 CFR Part 250, et al.

Exemption of Issuance and Sale of Certain Securities by Public Utilities and Nonutility Subsidiary Companies, etc.; Final Rule and Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–26311, File No. S7–17–92]

RIN 3235–AF49

Exemption of Issuance and Sale of Certain Securities by Public Utility and Nonutility Subsidiary Companies of Registered Public Utility Holding Companies; Exemption of Acquisition by Companies in a Registered Public Utility Holding Company System of Certain Securities of Associate Companies; Exemption of Capital Contributions and Open Account Advances, Without Interest, by Parent Companies to Subsidiary Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending rule 52, which exempts certain financing transactions involving the securities of the public utility subsidiary companies of a registered public utility holding company from the requirement of prior Commission approval under the Public Utility Holding Company Act of 1935 (''Act''). As amended, the rule will exempt certain additional types of securities, and will exempt the issuance and sale of certain types of securities of nonutility subsidiary companies of a registered holding company in connection with routine financing transactions. The Commission is also amending rule 45(b)(4) to exempt from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) all capital contributions and open account advances by a parent company to its subsidiary company. These amendments are intended to eliminate unnecessary regulatory and paperwork burdens associated with seeking Commission approval for routine financings by registered holding companies and their subsidiary companies.

EFFECTIVE DATE: June 28, 1995. These amended rules are substantive rules that grant an exemption or relieve restrictions.[1]

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, or Bonnie Wilkinson, Staff Attorney, all at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Rule 52 (17 CFR 250.52) exempts from the requirement of prior Commission approval under section 6(a) the issuance and sale of certain specified types of securities by a public utility subsidiary of a registered holding company, subject to the terms and conditions of the rule. Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a) the acquisition by a parent holding company of the securities issued by an existing public utility subsidiary pursuant to the rule. The Commission is amending rule 52 to broaden the types of debt securities that may be issued in reliance upon the exemption and to make the exemption available to nonutility subsidiaries of a registered holding company in connection with routine financing transactions. The Commission is also amending rule 45 (17 CFR 250.45) to exempt from the requirement of prior Commission authorization under section 12(b) of the Act and rule 45(a) capital contributions and open account advances by a parent company to its subsidiary companies. The Commission proposed these amendments by release issued on July 7, 1992.[2]

In a companion release published today in the **Federal Register**, the Commission is inviting public comment on a further amendment to rule 52 that would extend the exemption to all types of securities issued in connection with routine financing transactions, provided that the conditions of the rule are met. The Commission is also proposing a conforming change to rule 45.

Discussion

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain specified types of securities by public utility subsidiary companies of registered holding companies.[3] The rule also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a company in a registered system of any securities issued by an existing public utility subsidiary pursuant to the rule.[4]

At present, the rule applies only with respect to the issuance of common stock, preferred stock, mortgage bonds and notes issued to a parent holding company, where the interest rate and maturity date of the note is designed to parallel a debenture or preferred stock issued by the parent. The issue and sale of such securities must be solely for the purpose of financing the business of the public utility company, and the relevant state commission must have expressly authorized the financing transactions.

Rule 45 prohibits registered holding companies and their subsidiaries from lending or extending credit to, indemnifying, or making any donation or capital contribution to a company in the same holding company system, except in specified circumstances.[5] The rule provides exceptions from the general provision, including an exception under rule 45(b)(4) for capital contributions or open account advances without interest to any subsidiary in an

[1] 5 U.S.C. 553(d)(1).

[2] Holding Co. Act Release No. 25574 (July 7, 1992), 57 FR 31156 (July 14, 1992) (''Proposing Release'').

[3] Section 6(a) requires Commission approval under the standards of section 7 for the issue and sale of any security of a registered holding company or its subsidiary company.

Section 6(b) authorizes the Commission to exempt from the requirements of section 6(a):

the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business.

Congress intended ''to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist.'' H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935). See generally Holding Co. Act Release No. 25058 (Mar. 19, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52), and Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992) (amending rule 52).

[4] Section 9(a)(1) in pertinent part requires prior approval under the standards of section 10 for an acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of:

such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance of securities to form a new public utility subsidiary of a registered holding company. See rule 52(c).

[5] Rule 45 was adopted under section 12(b), which provides that:

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

Rule 45(a) requires the filing of a declaration and an order of the Commission permitting the declaration to become effective in order for a registered holding company or its subsidiary to engage in these transactions.

aggregate amount of up to $50,000 in any calendar year, after deducting payments during the year.

On July 7, 1992, the Commission proposed amendments to rules 52 and 45(b)(4) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*).[6] The amendments would (a) broaden the types of debt securities that may be issued by public utility subsidiaries in reliance upon rule 52, (b) extend the exemption under rule 52 to nonutility subsidiaries of registered holding companies, (c) revise the conditions of rule 52 applicable to intrasystem loan transactions, and (d) remove the annual dollar limitation from rule 45(b)(4).

The Commission received comments submitted by or on behalf of seven registered holding companies[7] and by the Council of the City of New Orleans and the National Association of Regulatory Utility Commissioners (''NARUC''). While the registered holding companies generally support adoption of the proposed amendments, New Orleans and NARUC generally oppose the amendments. New Orleans urged that, in the event the amendments are adopted, several additional conditions, including incorporation of a consolidated debt/equity ratio applicable to sales of securities by nonutility subsidiaries, should be included. The Commission had invited comment on the need for such a limitation in its notice of proposed rulemaking. The objections of New Orleans and NARUC are discussed in greater detail in section 5, below.

1. Issue and Sale of Securities by Public Utility Subsidiaries

Rule 52 currently exempts the issue and sale by a public utility subsidiary of any common stock, preferred stock, mortgage bond or note issued to a parent holding company. The rule currently has limited usefulness. With respect to intrasystem loan transactions, the exemption is available only for notes issued to a parent holding company with interest rates and maturity dates that parallel those of the holding company's debentures or preferred stock. This condition prevents the use of the exemption in connection with other common forms of intrasystem financing, such as unsecured short-term and long-term loans, money pool arrangements, and the like, the terms of which are not matched to an actual debenture or preferred stock issued by the acquiring company.[8] In addition, because none of the registered electric utility holding companies currently issues debentures and preferred stocks, their subsidiaries do not benefit from the exemption at all in connection with down-stream loans. The Commission proposed to amend the rule to extend the exemption to all types of debt instruments, including bonds, notes and other forms of indebtedness issued by the subsidiary, having interest rates and maturities designed to parallel the effective cost of capital of the purchaser.[9] All of the holding companies submitting comments support a change that would extend the benefits of rule 52 to all types of indebtedness.

The Commission believes it is appropriate to expand the exemption of rule 52 to include all types of debt securities[10] that may be issued by utility subsidiaries, as proposed. The Commission believes that this expanded exemption is appropriate in view of the continuing requirement of express approval by the state commission of the state in which the public utility is organized and doing business. In 1935, few states exercised jurisdiction over public utility financing. Today, most do, although the extent of such jurisdiction varies greatly.[11] Rule 52 will not apply to utility financings if a state does not regulate financing, nor to a utility in a state which regulates securities sales generally if such state chooses not to regulate a particular type of security, such as short-term debt. CSW and CNG ask the Commission to interpret section 6(b) to permit an extension of the exemption under rule 52 to utility debt issuances where the relevant state government has determined that such issuances need not be reviewed by the state utility commission. Similarly, GPU suggests an expansion of rule 52 to guaranties issued by a holding company where no state commission approval is required. The Commission declines to adopt these suggestions, as section 6(b) does not appear to offer a basis for such action.

In proposing the amendment to rule 52, the Commission contemplated that the effective cost of capital for debt securities which have recently been issued by the purchasing associate company will be the coupon rate of interest plus all expenses, including, but not limited to, underwriters' compensation, discounts, and fees and commissions associated with the issue and sale of such debt; and that, in the event the purchasing associate company has not recently issued debt securities, the effective cost of capital may be tied to an appropriate index such as, but not limited to, the Federal Funds' rate or a published bond index. The Commission invited comment on whether other factors should be considered in determining the effective cost of capital of the purchasing associate company.

APS suggests that filing fees, listing fees, counsel and accountants' fees, Blue Sky survey fees, and transfer agent fees should also be considered.[12] The Commission agrees that all ordinary and necessary costs of a debt offering should be considered.

CNG recommends that the Commission permit use of an appropriate index to determine the effective cost of capital if the associate company has issued debt securities in circumstances where the financing terms are not comparable to the terms of the intrasystem loan.[13] We believe that the language of the final rule is flexible enough to permit use of a published rate or index in these circumstances.

2. Issue and Sale of Securities by Nonutility Subsidiaries

In the Proposing Release, the Commission noted the large volume of debt securities sold by nonutility subsidiaries of registered holding companies. The Commission proposed

[6] See the Proposing Release.

[7] The registered holding companies submitting comments were American Electric Power Company, Inc., Allegheny Power System, Inc. (''APS''), Consolidated Natural Gas Company (''CNG''), Central and South West Corporation (''CSW''), Eastern Utilities Associates, General Public Utilities Corporation (''GPU''), and New England Electric System.

[8] As noted in the Proposing Release, the omission of common intrasystem financing transactions is of particular concern to the registered gas systems. Unlike registered electric systems, these systems typically issue and sell debt to the public at the parent company level and fund their subsidiaries' operations by means of capital contributions, open account advances, money pool arrangements, purchases of common stock, and short- and long-term loans.

[9] The Commission noted that it has permitted numerous declarations to become effective for the issuance and sale of such securities on this basis. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 25339 (June 28, 1991), 49 SEC Docket 449 (July 16, 1991), and Holding Co. Act Release No. 25110 (June 29, 1990), 46 SEC Docket 1124 (July 17, 1990) (cost to subsidiaries of borrowing from parent registered holding company tied to Federal Funds' rate for short-term debt and published bond index for long-term debt).

[10] In the Proposing Release, the Commission sought comment on whether rule 52 should be extended to cover guaranties. However, the rule as amended today will specifically exclude guaranties. As discussed below, the Commission is requesting comment in a companion release to be published today on the question of whether rule 52 should be further amended to cover issuance of all types of securities, including guaranties.

[11] See National Association of Regulatory Utility Commissioners Compilation of Utility Regulatory Policy in the United States and Canada, 1993–94 Compilation (NARUC 1994), Tables 59A and B (state jurisdiction with respect to the issue and sale of securities by public-utilities).

[12] APS at 1.

[13] CNG at 2.

to amend rule 52 to encompass nonutility as well as utility subsidiaries. So doing, the Commission noted that absent further amendment of the rule, routine gas intrasystem financings would remain subject to the requirement of prior approval.[14]

Section 6(b) provides that the Commission shall exempt the issue and sale of a security of a nonutility subsidiary of a registered holding company for the purpose of financing the subsidiary's business, subject to such terms and conditions as the Commission deems appropriate in the public interest or for the protection of investors or consumers. In enacting section 6(b), Congress intended the Commission ''to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist.[15]

In the past, the Commission has granted exemptions for nonutility financings by order on a case-by-case basis. The Commission, in 1989, also considered an exemption by rule for such financings. In the release proposing the original rule 52, the Commission deferred action, citing its concern ''with the adverse consequences that potential growth of debt in the nonutility subsidiary companies could have for the holding-company system and the public utility subsidiaries.'' [16]

Our experience since that time suggests to the Commission that a case-by-case approach to nonutility financings is no longer necessary. In addition, the extensive reporting requirements imposed on registered holding company systems by the Act and other federal securities laws, and the level of scrutiny of reporting companies by investors and by the financial community suggest that the rule may appropriately encompass nonutility as well as utility subsidiaries. All of the registered holding companies submitting comments support expansion of the rule to exempt routine nonutility subsidiary financings.

GPU, noting the widespread use of partnership interests and other types of securities in nonutility financing, particularly in the context of project finance, recommends the inclusion of such securities in rule 52(b).[17] Because the Commission is proposing a further amendment to rule 52 to extend the exemption of the rule to all types of securities issued by subsidiary companies of a registered holding company, so long as the other conditions of the rule are met, we do not think it necessary to address the status of partnership interests separately at this time.[18]

In the Proposing Release, the Commission invited comment on whether, to avoid excess leveraging, the availability of the exemption for security issuances of nonutility subsidiaries should be conditioned upon a requirement that an issuance not cause the consolidated debt/equity ratio of the holding company system to exceed 65/30.[19] None of the commenting holding companies support such a measure. Most observe that market forces affecting the parent holding company's common stock, as well as the desire to maintain credit quality ratings on public utility debt, will effectively deter management from over-leveraging the holding company capital structure.[20]

GPU notes that financing of independent power project subsidiaries is typically non-recourse to other companies in the holding company system, so that including such debt in a consolidated capitalization ratio would overstate the exposure of the registered system. GPU also states that the use of a consolidated debt/equity ratio would not be consistent with the Commission's approval of higher debt ratios in numerous project financing applications.[21] New Orleans, however, supported by NARUC, believes that such a consolidated capitalization ratio is necessary if proposed rule 52(b) is adopted, which, as previously indicated, these commenters oppose.

Total investment by registered holding companies in nonutility subsidiaries, to date, has not been significant in amount. As of December 31, 1994, the registered holding companies had invested only $1.1 billion (1.4% of over $80 billion of total capitalization) in all energy-related businesses, exclusive of exempt wholesale generators, foreign utility companies and gas holding company transportation and supply operations.

The Commission has concluded that it is unnecessary to condition an exemption under rule 52(b) upon the maintenance of a consolidated debt/equity ratio of 65/30.[22] We agree with the arguments of the holding companies in this respect. We also note that the Commission will continue to have jurisdiction over securities sales by registered holding companies. The Commission will thus be able to monitor, on a continuing basis, the effects of holding company financing on the consolidated capital structure of the registered system.

Because rule 52(c) currently exempts only acquisitions of securities issued and sold by a public utility subsidiary, the Commission proposed to amend rule 52 to extend the exemption to acquisitions of securities of nonutility subsidiaries as well. The Commission is adopting the proposed amendment. Paragraph (c) of the rule, with this change, becomes paragraph (d).

In a separate release, the Commission is today seeking comment on a rule that would allow registered holding companies to diversify through new or existing subsidiaries into certain categories of ''energy-related'' businesses, subject to financial and other limitations. In this connection, the Commission intends to revisit rule 52(d) to conform or limit its scope.

3. Capital Contributions and Open Account Advances, Without Interest, to Subsidiary Companies

Rule 52, as amended, does not provide an exemption for certain other common intrasystem financing transactions. For example, a capital contribution from a registered holding company to any of its subsidiary companies is regulated as an intercompany loan under section 12(b)

[14] The Commission noted that the nonutility operations of registered gas holding companies rival in size the utility operations, largely because the Act does not include transmission assets in the definition of a gas utility company.

[15] H. R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935).

[16] Holding Co. Act Release No. 24891 (May 17, 1989), 54 FR 22314 (May 23, 1989) (proposing rule 52).

[17] GPU at 3.

[18] Filings with the Commission to date suggest that the kinds and types of securities issued by nonutility subsidiaries, such as independent power subsidiaries, will vary more than those issued by public utility subsidiaries.

[19] The Commission noted that this condition is drawn from section 7(d)(1), which requires the Commission, in reviewing an issuance of securities, to consider whether the security is reasonably adapted to the security structure of the company issuing the security and the other companies in the registered holding company system. Under that section, the Commission generally has required a registered holding company system and its public utility subsidiaries to maintain a 65/30 debt/common equity ratio, the balance generally being preferred equity. Such a debt/equity capitalization requirement was included in rule 52, as originally adopted, as applied to securities issued by public utility subsidiaries, but was eliminated in 1992.

[20] The Commission also notes the emphasis placed upon these considerations in many comments received in response to our request for comment concerning the modernization of regulation under the Act. See Holding Co. Act Release No. 26153 (Nov. 2, 1994), 59 FR 55573 (Nov. 8, 1994).

[21] GPU at 3–4.

[22] As in the case of a debt instrument issued by a public utility subsidiary pursuant to the rule, the interest rates and maturity dates of any debt security issued by a nonutility subsidiary to an associate company would be required to parallel the effective cost of capital of the associate company. See the discussion *supra*, at 6–7, 8–9.

and rule 45.[23] Open account advances that do not bear interest are also subject to these provisions.

To facilitate these transactions, the Commission proposed to amend rule 45(b)(4), which exempts up to $50,000 in capital contributions and open account advances, without interest, made to any subsidiary during a calendar year, to remove the dollar limitation of the rule.[24] All of the registered holding companies submitting comments support this change. New Orleans proposes that, if rule 45(b)(4) is amended, it should exempt capital contributions or open account advances subject to an aggregate limitation of $1,000,000 per year.

As the Commission noted in the Proposing Release, the legislative history of the Act makes clear that the Congress, while concerned with holding company abuses, recognized that ''[d]own-stream loans * * * may be legitimate sources of credit * * *,'' and concluded that ''the subject is one in which the rule-making power of the Commission is required to meet a host of varying circumstances.'' [25] Capital contributions and open account advances, without interest, are routine transactions which serve to transfer funds from the parent to its subsidiary. The amounts and types of securities issued by any registered holding company, which remain subject to prior approval by the Commission, must be justified by reference to the need for capital infusions by its subsidiaries, both utility and nonutility. Financing requests must be supported by capital budget projections covering the authorization period. The Commission believes that its ability to supervise intrasystem financing through these means will not be compromised by removal of the dollar limitation in rule 45(b)(4). Accordingly, the Commission declines to incorporate an aggregate dollar limitation in the rule as adopted.[26]

4. Issuance of Other Securities

Finally, the Commission sought comment on whether the amendments to rules 45 and 52 should be extended to exempt financing transactions involving other securities, in particular, guaranties of debt securities issued by other subsidiary companies.[27] Because guaranties are securities under the Act,[28] their issuance and sale are subject to the declaration requirement of section 6, unless exempted under section 6(b). At present, rule 52 does not extend to the issuance and sale of guaranties.

In addition, the guaranty by a subsidiary company of debt securities issued by another subsidiary company is subject to section 12(b) and rule 45 thereunder. Rule 45, with exceptions not relevant here, prohibits the issuance of guaranties by a subsidiary company without the filing of a declaration.[29]

As previously indicated, we are publishing a companion release inviting comment on a further amendment to rule 52 to exempt the issuance of all types of securities. Accordingly, there is no need to address guaranties separately at this time.

5. Comments by the City of New Orleans and NARUC

New Orleans opposes any expansion of the exemptions from the Commission's pre-approval requirement for financings provided by rules 45(b)(4) and 52 which, the city contends, would ''widen the existing regulatory gap between federal and state and local regulators.'' [30] New Orleans urges that, if the amendments are adopted, several additional conditions need to be incorporated. Certain of these additional conditions, or limitations on the availability of the exemptions, have been discussed above. New Orleans states that these conditions are generally necessary to protect public utility subsidiaries of registered holding companies and their customers from the financial effects of financing transactions, particularly in the context of nonutility ventures that are not otherwise subject to effective state oversight.

During the notice period inviting comment on the proposed amendments to rules 45(b)(4) and 52, Congress passed the Energy Policy Act of 1992.[31] Title VII of the Energy Policy Act amended the Act to permit investments by registered holding companies in ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), defined in new sections 32 and 33, respectively.[32] Those sections exempt EWGs and FUCOs from all provisions of the Act, including sections 6(a), 7 and 12(b), which would otherwise apply to securities and guaranties issued and sold by such entities. However, these sections do not exempt issuance and sale of securities by a registered holding company in cases where the proceeds will be used for EWG or FUCO investments, and these financing transactions continue to require Commission approval under sections 6(a) and 7. Under section 32, Congress directed the Commission to promulgate rules with respect to actions which would be considered to ''have a substantial adverse impact on the financial integrity of the registered holding company system'' to ensure that actions (*e.g.*, financings, guaranties, etc.) by any registered holding company in respect of EWGs would not have any adverse impact on any utility subsidiary or its customers or on effective state regulation.[33] Similarly, under section 33, Congress directed the Commission to promulgate rules regarding registered holding companies' acquisitions of interests in FUCOs which shall provide for the protection of the customers of associate public utility companies and the financial integrity of the holding company system.[34]

The Commission had not yet initiated the rulemaking effort under new sections 32 and 33 when it proposed the additional amendments to rules 45(b)(4) and 52. In part for that reason, NARUC and New Orleans both urged the Commission to delay any action on the proposed rules pending development of consumer protection measures in the broader context of investments in EWGs and FUCOs, which, for purposes of the

[23] Section 12(b) and rule 45(a) generally require prior Commission approval for a registered holding company or its subsidiary company to ''lend or in any manner extend its credit to or indemnify any company in the same holding-company system.''

[24] Rule 45(b)(4) exempts ''[c]apital contributions or open account advances, without interest, to any subsidiary: *Provided*, That after giving effect to the transaction the total net amount which such subsidiary will have received during the calendar year as a result of such transactions will not exceed $50,000 (after deducting payments during the year regardless of the date of the advances).'' The rule contained the $50,000 limitation when adopted in 1941. Holding Co. Act Release No. 2694 (Apr. 21, 1941).

[25] S. Rep. No. 621, 74th Cong., 1st Sess. 34–5 (1935).

[26] We also intend to revisit rule 45(b)(4) in the context of any rulemaking on nonutility diversification.

[27] Section 12(a) prohibits the guaranty by subsidiary companies of debt issued by a registered holding company.

[28] See section 2(a)(16) (definition of security).

[29] At present, rule 45(b)(6) exempts certain guaranties ''in the ordinary course of business.'' The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

[30] New Orleans, Executive Summary, at 4–5.

[31] P.L. 102–486, 106 Stat. 2776 (1992).

[32] An EWG is defined in section 32(a) of the Holding Company Act as any person determined by the Federal Energy Regulatory Commission to be engaged exclusively in the business of owning and/or operating all or part of one or more facilities that are used for the generation of electric energy, exclusively for sale at wholesale or leased to a utility, and selling electric energy at wholesale. A FUCO is defined in section 33(a) as any person that owns or operates facilities outside the United States used for the generation, transmission or distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas, that derives no part of its income from such utility activities in the United States and is not a public utility company operating in the United States, and that provides notice to the Commission.

[33] See section 32(h)(6).

[34] See section 33(c)(1).

Act, are nonutilities. However, since that time, several related rules have been promulgated under the new provisions, and others are pending.[35] Those rules were intended to carry out the Congressional mandates under sections 32 and 33.[36] We note that those rules are subject to a pending challenge by NARUC and others.[37]

The City of New Orleans recommends that the Commission consider the proposed amendments in light of the Congressional mandates under sections 32 and 33. We do not believe this measure is necessary. As indicated, those provisions exempt EWGs and FUCOs from all provisions of the Act, and the rules adopted under those sections are intended to provide a means to ensure that investments by the holding company and activities of the exempt subsidiaries have not adversely affected the holding company or its utility customers. The proposed amendments to rules 45(b)(4) and 52, in contrast, exempt only public utility financing that has been reviewed and approved by state commissions, and financing by nonutility subsidiaries (other than EWGs and FUCOs) that is non-recourse to the holding company or any utility subsidiary. As a result, the activities exempted by the proposed rule amendments are not nearly so far-reaching as the EWG and FUCO provisions, and do not have the same need for additional consumer protection. Further, and this distinction appears critical, the acquisition by a registered holding company of an interest in a new nonutility business, and any other actions related thereto, such as the organization of a separate subsidiary to conduct that business, the initial capitalization thereof, intrasystem guaranties and any arrangements for the sale of goods and services to the new subsidiary, are, in the absence of any other applicable exemption, subject to the pre-approval process required under applicable provisions of the Act, as well as to ongoing reporting requirements and other requirements of the Act regarding maintenance of books and records, audits, inspections and the like. State commissions, consumer groups and other interested parties have the opportunity to express their views regarding the likely effects of nonutility ventures on consumers and other protected interests and to propose safeguards appropriate in order to protect these interests in connection with this pre-approval process.[38]

In addition to the modifications to the proposed rules mentioned elsewhere in this release, New Orleans recommends that the rules, if adopted, should require prior approval of a holding company's cost of capital by each state and local commission which regulates the parent. The Commission understands this request to involve approval by a commission in each of the states in which the holding company's public utility subsidiaries operate.[39] Because the rules do not exempt holding company financings from our approval, we see no useful purpose to be achieved by requiring a multistate determination of a holding company's cost of capital. The Commission is specifically obligated by section 7(d) to consider the reasonableness of the fees, commissions and other expenses of a securities issuance which would be relevant to the determination of a holding company's effective cost of capital in connection with our consideration of any holding company financing applications.

New Orleans' suggestion that rule 52, as proposed to be amended, also be conditioned upon a requirement for state commission approval in every state in a holding company's service territory for any guaranty is likewise misplaced.[40] As previously stated, the rules do not exempt registered holding companies from the requirement to obtain Commission approval in connection with issuing any guaranty.

In summary, we do not believe that the proposed amendments to rules 45(b)(4) and 52 will compromise our ability to protect consumers and investors, and we do not find that the additional conditions and restrictions proposed by New Orleans are necessary for this purpose. We are therefore adopting the proposed amendments to rules 45(b)(4) and 52 substantially in the form proposed.

Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments adopted today are consistent with those two objectives.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments with respect to the Chairman's certification.

Costs and Benefits

Amended rule 52 will substantially decrease regulatory compliance costs for the registered holding companies. In calendar years 1993 and 1994, 122 applications would not have been filed, had the proposed amended rule 52 been in place. Estimated savings per application would have been approximately $30,000 including the $2,000 filing fee per application, and related legal, accounting, and management costs. Thus, for 122 applications filed in calendar years 1993 and 1994, the aggregate savings would have been approximately $3,660,000 or $1,830,000, respectively, per year. Moreover, the reduction in Commission staff hours associated with reviewing and analyzing these applications would have been approximately 5,700 hours per year (2.5 staff years). The only cost to the registered holding companies in complying with the amended rule will be the cost of completing a Form U–6B–2 after the issue or sale of any security. It is estimated that approximately one hour will be required to complete each form at an estimated cost of $100 per hour. Assuming 61 financing applications per year, the cost of compliance reporting would approximate $6,100 per year.

Paperwork Reduction Act

The proposed amended rules are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and have been submitted to the Office of Management and Budget for approval to use them through July 31, 1997. Final action is expected by June 23, 1995.

Statutory Authority

The Commission is amending rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Public Utility Holding Company Act of 1935.

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[35] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993).

[36] Rule 53 provides standards for the Commission to determine whether to approve the issue or sale of a security by a registered holding company, in cases where the proceeds of the financing will be used to acquire an EWG. Rule 54 provides that the effect of EWG and FUCO operations on the registered system will not be considered in determining whether to approve any other transactions under the Holding Company Act, if the standards of rule 53 are satisfied. 17 CFR 250.53 and 250.54.

[37] *National Association of Regulatory Utility Commissioners, et al.* v. *Securities and Exchange Commission,* U.S. Court of Appeals for the District of Columbia Circuit, No. 93–1778.

[38] Further, the amended rules do not create any new exemption from the pre-approval process for guaranties by a registered holding company of the securities or other obligations of any subsidiary.

[39] New Orleans at 15.

[40] New Orleans at 16.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Final Rules

For the reasons set forth in the preamble, Part 250 of chapter II, title 17, of the Code of Federal Regulations is amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company.

* * * * *

3. Section 250.52 is revised to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer (excluding any guaranty and other form of assumption of liability on the obligations of another) if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public utility company, an investment company, or a fiscal or financing agency of a holding company, a public utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any common stock, preferred stock, bond, note or other form of indebtedness, of which it is the issuer (excluding any guaranty and other form of assumption of liability on the obligations of another) if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 (17 CFR 259.206) containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by any associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act (15 U.S.C. 79i(a)); provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new subsidiary company of a registered holding company.

Dated: June 20, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15836 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 250

[Release No. 35–26312, File No. S7–11–95]

RIN 3235–AG45

Exemption of Issuance and Sale of Securities By Public-Utility and Nonutility Subsidiary Companies of Registered Public-Utility Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission, which today amended rules 45 and 52 under the Public Utility Holding Company Act of 1935 (''Act''), is requesting comment on further amendments. The proposed amendment to rule 52 would permit a subsidiary company of a registered company to issue and sell any security without the need to apply for, or receive, prior Commission approval, where the conditions of the rule are met. The Commission is proposing a conforming amendment to rule 45 with respect to the guaranty of securities. These amendments are intended to eliminate unnecessary regulatory burdens and paperwork associated with seeking Commission approval for routine financings by companies in a registered holding company system.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comment letters should refer to File No. S7–11–95. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, or Bonnie Wilkinson, Staff Attorney, all at (202) 942–0545, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed amendments to rules 45 and 52 (17 CFR 250.45 and 250.52) under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.]. Rule 52 has exempted from the requirement of prior Commission approval under section 6(a) the issuance and sale of certain specified types of securities by any subsidiary company of a registered holding company, in accordance with the terms and conditions of the rule. The proposed amendment to rule 52 would broaden the scope of the rule to exempt all types of securities issued and sold by such subsidiary companies, subject to satisfying the other conditions of the rule. A conforming change to rule 45 is also being proposed to conditionally exempt from the requirement of prior Commission approval under section 12(b) any guaranty by a subsidiary company of debt securities issued by any other subsidiary company.

The Commission is also proposing to rescind the statements of policy with respect to first mortgage bonds and preferred stock (''Statements of Policy'') and seeks comment on this proposal.[1]

Introduction

Rule 52 exempts from the requirement of prior Commission authorization under section 6(a) the issue and sale of certain specified types of securities by both public-utility and nonutility subsidiary companies of registered public-utility holding companies.[2] Rule 52 also exempts from the requirement of prior Commission authorization under section 9(a)(1) the acquisition by a company in a registered holding company system of any securities issued by any associate company pursuant to the rule.[3]

Rule 52, as originally adopted in 1990, was limited to specified types of securities issued by public-utility companies. The rule was amended in 1992 to, among other things, expand the types of securities within the exemption;[4] and the Commission has today further amended the rule in order to expand the categories of securities covered, to make the exemption more useful in connection with other common forms of intrasystem financing, and to extend the exemption to nonutility companies. As so amended, the rule provides a conditional exemption from the requirement of prior Commission approval for the issue and sale by both public-utility and nonutility subsidiary companies of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness of which it is the issuer (excluding guaranties), provided that, in the case of any note issued to an associate company, the interest rate and maturity date of such note are designed to parallel the effective cost of capital of that associate company. To qualify for exemption under rule 52, the issue and sale must be solely for the purpose of financing the business of the subsidiary company and, if the subsidiary company is a public-utility company, must be expressly authorized by the relevant state commission.

The Commission is today proposing a further amendment to rule 52 to exempt the issue and sale of any security by a subsidiary company in a registered holding company where the conditions of the rule are otherwise met. This additional change is intended to eliminate unneeded regulation of routine financings by existing subsidiaries of a registered holding company. The Commission is also proposing a further change to rule 45 to conform the exemption from section 12(b), which is provided by rule 45, to the exemption from section 6(a), which is provided by rule 52. Such a conforming amendment is necessary because a guaranty may be both a security under section 6(a) and an extension of credit under section 12(b).

The Commission is also proposing to rescind the Statements of Policy.

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[1] Holding Co. Act Release Nos. 13105 and 13106 (Feb. 16, 1956), as amended in Holding Co. Act Release Nos. 16369 (May 8, 1969) and 16758 (June 22, 1970).

[2] Section 6(a) requires Commission approval under the standards of section 7 of the issue and sale of any security of a registered holding company or its subsidiary company.

Section 6(b) authorizes the Commission to exempt from the declaration requirements of section 6(a):

the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business. * * *

In section 6(a), the Congress intended ''to exempt the issue of securities by subsidiary companies in cases where holding company abuses are unlikely to exist.'' H.R. Conf. Rep. No. 1903, 74th Cong., 1st Sess. 66–67 (1935). See generally Holding Co. Act Release No. 25058 (Mar. 9, 1990), 55 FR 11362 (Mar. 28, 1990) (adopting rule 52), and Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992) (amending rule 52).

[3] Section 9(a)(1) requires prior Commission approval under the standards of section 10 for the acquisition of securities by a registered holding company or its subsidiary company. Section 9(c)(3) provides a limited exception from this requirement for the acquisition of:

such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

The exemption under rule 52 does not apply to the issuance and acquisition of securities to form a new subsidiary company of a registered holding company.

[4] See fn. 2, *supra.*

Discussion

In the 1992 release inviting comments on the proposed amendment to rule 52, adopted today, the Commission requested comments on whether the exemption under rule 52 should also be extended to exempt financing transactions involving other securities, in particular guaranties of debt securities issued by other subsidiary companies.

All of the registered holding companies commenting on the proposed amendment[5] favored extending the exemption to other types of securities, including guaranties. Guaranties by parent companies are frequently used in conjunction with borrowings by their subsidiary companies, and have been approved by order in countless instances.[6] Depending on materiality, such guaranties are required to be disclosed in financial statements. Further, as several commenters noted,[7] guaranties of affiliate company obligations by public-utility companies are subject to public utility commission approval in many states.

Several commenters[8] also supported expansion of rule 52 to exempt other categories of securities, particularly in the context of nonutility subsidiary financings. One holding company,[9] for example, noted the widespread use of partnership interests and other types of securities in nonutility financing, particularly in the context of project finance, and recommended the inclusion of such securities in rule 52(b).[10] The Commission is aware that a majority of states now have adopted limited liability company statutes which create a hybrid between partnerships and corporations.[11] This is an increasingly popular form of business enterprise. Based upon the Commission's experience in recent years with individual applications, it is clear that the kinds and types of securities issued by nonutility subsidiaries, including independent power subsidiaries, tend to vary more than those issued by public-utility subsidiaries.

The Commission is proposing to amend rule 52 to conditionally exempt the issue and sale of all types of securities by public-utility and nonutility subsidiaries alike. Because of the extensive reporting requirements imposed by the Act and other federal securities laws, and the far greater scrutiny of reporting companies since the passage of the Act sixty years ago, the Commission believes that it may be appropriate to condition the exemption under rule 52 solely by reference to the literal requirements of section 6(b), without regard to the form of the security issued.

In this connection, the Commission notes that it has exercised jurisdiction under sections 6(a) and 7 of the Act over interest rate swap agreements and related instruments.[12] Comment is requested on the extent, if any, to which such transactions should be excluded from the rule proposed today.

The Commission is also considering whether compliance with rule 52(b)(2)[13] should be required in situations where a nonutility subsidiary of a registered holding company issues a security that is acquired by another nonutility subsidiary in the same holding company system. Comment is requested on whether rule 52(b)(2) should be amended to create an exception for such situations.

A guaranty of debt securities issued by another subsidiary company is itself a security under the Act,[14] the issuance and sale of which is subject to the declaration requirement of section 6(a), unless exempted under section 6(b). In addition, the guaranty by a subsidiary company of any obligation of another subsidiary company is subject to section 12(b) and rule 45(a) thereunder.[15] An agreement to assume joint liability, as co-maker or otherwise, with respect to the indebtedness of another company is the functional equivalent of a guaranty, and is also subject to both sections 6(a) and 12(b).

Rule 45(a), with exceptions not relevant here, prohibits the issuance of guaranties and similar undertakings by a subsidiary company without the filing of a declaration.[16] We believe, however, that any guaranty or similar undertaking with respect to the indebtedness of another subsidiary company that is issued pursuant to the exemption provided by rule 52 should itself be exempt under rule 45. Accordingly, we are proposing to add a new paragraph to rule 45(b) to conform the related exemptions.[17]

In connection with the amendments to rules 52 and 45 adopted today by the Commission, some commenters have expressed concern that public-utility subsidiaries of registered holding companies and their customers need protection from the financial effects of financing transactions, particularly in the context of nonutility ventures that are not otherwise subject to effective state oversight.[18] The proposed expansion of the exemptions under rules 52 and 45 may heighten these concerns, and the Commission seeks the views of all parties on these issues. As a result, the Commission requests comments as to whether protection is needed and, if so, what form it should take. Commenters are invited to address the need for limitations based on (a) the registered holding company system's capitalization ratios; (b) the financial condition of the registered holding company system; (c) the extent of past losses incurred by registered holding companies in connection with past nonutility ventures; and (d) any other basis specified by the commenter. The

[5] The registered holding companies submitting comments were American Electric Power Company, Inc. (''AEP''), Allegheny Power System, Inc. (''APS''), Consolidated Natural Gas Company (''CNG''), Central and South West Corporation, Eastern Utilities Associates, General Public Utilities Corporation (''GPU''), and New England Electric System.

[6] See, *e.g.*, Eastern Utilities Assocs., Holding Co. Act Release No. 26266 (April 5, 1995)(guaranty by parent holding company of obligations of nonutility subsidiary); American Electric Power Co., Holding Co. Act Release No. 26267 (April 5, 1995)(same); Jersey Central Power & Light Co., Holding Co. Act Release No. 26246 (March 6, 1995)(guaranty by utility of payment obligations on preferred limited partnership interests of investment subsidiary); and Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995)(guaranty by holding company of debt, lease obligations and installment purchase obligations of nonutility subsidiary).

[7] AEP 3 and GPU at 4.

[8] See generally AEP at 3, APS at 2, and CNG at 3.

[9] GPU at 3.

[10] Many of the nonutility investments approved by the Commission in recent years have involved joint ventures with nonassociate companies. It is almost always desirable for the joint venture partners to invest directly or indirectly in an entity (such as a partnership) which for federal and state income tax purposes is treated as a partnership, rather than as a corporation, so that the income, loss and credits associated with the business can be reported directly by the joint venture partners.

[11] We understand that limited liability companies may be treated for tax purposes as partnerships, rather than taxed as corporations.

[12] These related instruments include products referred to as interest rate caps, floors and collars. Registered holding companies and subsidiaries have been using such instruments to limit the range within which the interest rate on the debt underlying such instrument will vary.

[13] Rule 52(b)(2) requires that the interest rate and maturity date of a debt security issued by a nonutility company to an associate company be designed to parallel the effective cost of capital of the associate company.

[14] See Holding Company Act section 2(a)(16)(definition of security), 15 U.S.C. 79b(a)(16).

[15] Section 12(a) prohibits the guaranty by subsidiary companies of debt issued by a registered holding company. 15 U.S.C. 79*l*(a).

[16] At present, rule 45(b)(6) exempts certain guaranties ''in the ordinary course of business.'' The rule by its terms does not apply to a guaranty of a subsidiary's indebtedness for borrowed money.

[17] Under our proposal, it is possible that a subsidiary company providing a guaranty may be exempt from section 12(b) by reason of the proposed amendment to rule 45, but fail to satisfy the conditions for exemption from section 6(a) provided by rule 52.

[18] *See* the discussion of the comments of the City of New Orleans in the companion release published today in the **Federal Register**.

Commission also seeks comment on whether the rules should incorporate any requirements of notice to interested state commissions of the consummation of financing by nonutility subsidiaries of registered holding companies.

The Commission also proposes to rescind the Statements of Policy. The Statements of Policy were formulated by the Commission's staff nearly forty years ago to specify the terms to be included in new issues of first mortgage bonds and preferred stock. As the securities markets have developed, the Commission has found that the Statements of Policy have become anachronistic and hinder the ability of registered companies to raise capital. As a result, the Commission has permitted more and more deviations on a case-by-case basis from the requirements of the Statements of Policy.[19] In addition, in 1992, for similar reasons, the Commission eliminated compliance with the Statements of Policy as a condition to use of Rule 52.[20] The Commission believes that it is no longer appropriate to require specific terms to be included in securities issues, and requests comment on this proposed rescission.

Conclusion

The Commission believes that the registered holding-company systems should have a greater ability to engage in routine financings without the regulatory burden of prior Commission authorization, and that this may be done without jeopardizing the interests the Act is designed to protect. The rule amendments proposed today are intended to accomplish this purpose.

Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rules will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Costs and Benefits

It appears that amended rules 45 and 52 will substantially decrease regulatory compliance costs for the registered holding companies.

Paperwork Reduction Act

The proposed amendment is subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and will be submitted to the Office of Management and Budget for approval.

Statutory Authority

The Commission is proposing to amend rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Part 250

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set forth in the preamble, Part 250 of chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows.

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

2. Section 250.45 is amended by adding paragraph (b)(7) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) pursuant to § 250.52.

3. Section 250.52 is amended by revising paragraphs (a) and (b) to read as follows:

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the business of such public-utility subsidiary company;

(2) The issue and sale of such security have been expressly authorized by the state commission of the state in which such subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

* * * * *

Dated: June 20, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15837 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 250 and 259

[Release No. 35–26313; File No. S7–12–95]

RIN 3235–AG46

Exemption of Acquisition By Registered Public-Utility Holding Companies of Securities of Nonutility Companies Engaged in Certain Energy-Related and Gas-Related Businesses; Exemption of Capital Contributions and Advances to Such Companies

AGENCY: Securities and Exchange Commission.

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[19] See, e.g., Georgia Power Co., Holding Co. Act Release No. 25033 (Feb. 7, 1990)(authorizing deviation from redemption provisions required by Statement of Policy for first mortgage bonds), and System Energy Resources, Inc., Holding Co. Act Release No. 24318 (Feb. 18, 1987) (authorizing charter amendment with earnings coverage requirement different from Statement of Policy for preferred stock). The Statements of Policy themselves contemplate that ''deviations from these standards should be permitted in appropriate cases.'' Holding Co. Act Release Nos. 13105 and 13106 (Feb. 16, 1956).

[20] Holding Co. Act Release No. 25573 (July 7, 1992), 57 FR 31120 (July 14, 1992).

ACTION: Proposed rule and rule amendments.

SUMMARY: The Commission is requesting comment upon proposed rule 58 and related proposed conforming amendments to rules 45(b) and 52(b) under the Public Utility Holding Company Act of 1935 (''Act''). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of securities of an ''energy-related company,'' as defined in the rule, subject to certain investment limitations and reporting requirements. Rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a gas registered holding company or any subsidiary of securities of a ''gas-related company,'' as defined in the rule, subject to certain reporting requirements. The proposed rule and related rule amendments will eliminate unnecessary regulatory burdens and paperwork associated with filings by a registered holding company for Commission approval to invest in nonutility businesses that are closely related to a system's core utility business.

DATES: Comments must be submitted on or before September 26, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comment letters should refer to File No. S7–12–95. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Weeden, Associate Director, Joanne C. Rutkowski, Assistant Director, Sidney L. Cimmet, Senior Special Counsel, Robert P. Wason, Chief Financial Analyst, or Bonnie Wilkinson, Staff Attorney, Office of Public Utility Regulation, all at (202) 942–0545, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comment on proposed rule 58 and related amendments to rule 45(b) and rule 52(b) (17 CFR 250.45(b) and 250.52(b)) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 *et seq.*). Rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered holding company or any subsidiary company of any securities of an energy-related company, subject to certain investment limitations and reporting requirements. The proposed rule defines an energy-related company as one that derives, or will derive, substantially all of its revenues from one or more activities specifically enumerated in the rule, and such other activities as the Commission may, from time to time by order upon application under sections 9(a)(1) and 10, designate as energy-related for purposes of the rule. The exemption provided by the rule would be available only if the aggregate investment by a registered holding company in such energy-related companies does not exceed the greater of $50 million and 15% of the holding company's consolidated capitalization.

Proposed rule 58 would also exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10 of the Act, pursuant to section 9(c)(3), the acquisition by a registered gas-utility holding company or any subsidiary company of any securities of a gas-related company, subject to certain reporting requirements. The proposed rule defines a gas-related company as one that derives, or will derive, substantially all of its revenues from one or more activities permitted under the Gas Related Activities Act of 1990, and such other activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and the Gas Related Activities Act, designate as gas-related for purposes of the rule.

The Commission is also proposing amendments to rule 45(b) and rule 52(b) concerning financings by registered holding company system companies: (1) to qualify the exception under rule 45(b) to the requirement of Commission approval under section 12(b) and rule 45(a) for capital contributions and open account advances without interest to an energy-related subsidiary company; and (2) to qualify the exemption provided by rule 52(b) from the requirement of Commission approval under sections 6(a) and 7 for issuances and sales of securities by energy-related subsidiary companies, in each case to conform the rules to the investment limitations of proposed rule 58.

I. Background

In recent years, the volume of applications by registered holding companies seeking approval to engage in various nonutility activities that complement, or are natural extensions of, the electric and gas utility businesses has grown dramatically.[1] It is evident from these filings that the utility industry is evolving toward a broadly based energy-related business that is no longer focused solely on the traditional, regulated, production and distribution functions of a utility. Today, almost all utilities engage in a variety of other energy-related activities that involve applications of resources and capabilities developed in the conduct of utility operations. Many involve new uses of skills and experience gained in utility operations, or new uses of utility infrastructure and technology to provide services to utility as well as nonutility customers.

II. Statutory Framework

Section 9(a)(1) of the Act, among other things, requires prior Commission approval under the standards of section 10 for any direct or indirect acquisition by a registered holding company or any subsidiary company of any securities or an interest in a nonutility business. Of interest here, section 10(c)(1) requires that the Commission shall not approve an acquisition that would be detrimental to the carrying out of section 11. Section 11(b)(1), in turn, limits the nonutility activities of a registered holding company to those that are ''reasonably incidental, or economically necessary or appropriate'' to the company's utility business when the Commission finds such activities to be ''necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of [the integrated] system.'' Under the orders of the Commission interpreting section 11(b)(1), a registered holding company may acquire an interest in a nonutility business that has an operating or functional relationship to the utility operations of the holding company system.[2] The Commission has also approved the acquisition of a nonutility interest that (1) involves the sale or lease of products or skills of some complexity developed by the holding company at considerable expense for the benefit of its utility

[1] From 1993 through the end of 1994, for example, the Commission reviewed approximately 122 filings under section 10 involving proposals to acquire nonutility interests, usually through investments in nonutility subsidiaries. These filings represented, in staff time, 13,300 hours per year, or 6.5 staff years.

[2] See Michigan Consolidated Gas Co., 44 S.E.C. 361, 363–65 (1970), aff'd, 444 F.2d 913 (D.C. Cir. 1971); General Public Utilities Corp., 32 SEC 807, 839 (1951).

subsidiaries and not readily available to the rest of the public from other sources; (2) generally requires little or no further investment by the holding company; and (3) permits the amortization of product development expenses with little or no risk.[3]

To encourage energy-related activities, Congress has acted to modify the requirements of section 11(b)(1) on several occasions. In 1992, Congress enacted the Gas Related Activities Act of 1990 (''GRAA'')[4] to enable the three gas utility holding companies then registered under the Act to participate on an equal footing with other gas companies in the development of new gas markets.[5] Congress intended to promote competition in the natural gas markets through investment in gas production, transportation, storage, marketing and similar activities.

The GRAA provides that the acquisition by a gas registered company ''of any interest in any natural gas company[6] or any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of [the system's] gas utility companies.''[7] The GRAA further provides that the acquisition by a gas registered company ''of any interest in any company organized to participate in activities (other than those of a natural gas company or involving the transportation or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas shall be deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acquisition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary as to the proper functioning of the registered holding company system.''[8] All acquisitions made pursuant to the GRAA thus remain subject to approval under sections 9(a)(1) and 10 of the Act, and related financings remain subject to the applicable provisions of the Act.

In addition, free-standing legislation enacted in 1985, 1986 and 1992 addressed the ownership by registered holding companies of interests in qualifying cogeneration facilities and qualifying small power production facilities (collectively, ''QFs''), as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), in light of the requirements of section 11(b)(1) of the Act.[9] For purposes of the Act, a QF is a nonutility interest of a registered holding company.[10] The 1985 amendment permitted gas registered holding companies to acquire cogeneration QFs without regard to the requirement of a functional relationship between the QF and the utility business of the registered system.[11] The 1986 legislation provided similar relief to electric registered holding companies.[12] The two amendments thus permitted registered holding companies and their subsidiaries to own cogeneration QFs without regard to location.[13] The 1992 amendment eliminated the distinction made in the earlier amendments between cogeneration QFs and small power production QFs. Thus, registered holding companies and their subsidiary companies may now own both small power production QFs and cogeneration QFs wherever located. As in the case of the GRAA, however, the acquisition of the securities of a QF entity remains subject to approval under sections 9(a)(1) and 10 of the Act, and related financings by a QF subsidiary company remain subject to the applicable provisions of the Act.

Finally, Congress in 1992 enacted legislation to promote the development of alternative powered vehicles as a part of a national energy policy to reduce automobile emissions.[14] The legislation defines vehicular natural gas as ''natural or manufactured gas that is ultimately used as a fuel in a self-propelled vehicle,'' and provides that a nonutility company that is involved, as a primary business, in the sale of vehicular natural gas, or the manufacture, sale, transport, installation, servicing, or financing of equipment related to the sale for consumption of vehicular gas is a nonutility company for purposes of the Act and may be acquired by a gas registered holding company in any geographic area.[15]

Section 9(c)(3) of the Act provides an exemption from the requirements of section 9(a)(1) for the acquisition of ''such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public

[3] See Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (citing CSW Credit, Inc., Holding Co. Act Release No. 24348 (Mar. 18, 1987)).

[4] Pub. L. No. 101–572, 104 Stat. 2810 (codified at 15 U.S.C. § 79k note (1990)).

[5] S. 8367 Cong. Rec. (June 20, 1990). The three gas registered holding companies were Columbia Gas System, Inc. (''Columbia''), Consolidated Natural Gas Company (''CNG'') and National Fuel Gas Company (''NFG'').

[6] ''Natural gas company'' is defined to have the same meaning given such term under the Natural Gas Act, 15 U.S.C. 717(a) *et seq., viz.,* an individual or corporation engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of natural gas for resale.

[7] Section 2(a), GRAA.

[8] Section 2(b), GRAA. Section 2(c) further provides that each determination under section (b) shall be made on a case-by-case basis, not based on any ''preset criteria.'' Section 2(d) provides that ''[n]othing contained herein shall be construed to affect the applicability of any other provisions of the Act to the acquisition or retention of any such interest by any such company.''

[9] PURPA appears generally in 16 U.S.C. 2601 *et seq.* Section 3(18) of the Federal Power Act (''FPA''), as amended by PURPA, defines a cogeneration facility as a facility which produces—(i) electric energy, and (ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes. 16 U.S.C. 796(18)(A). Section 210 of PURPA encourages energy conservation by directing the Federal Energy Regulatory Commission (''FERC'') to define and to prescribe rules that would exempt so-called ''qualifying'' cogeneration facilities and ''qualifying'' small power production facilities from the FPA, the Act, and certain state laws ''if the [FERC] determines such exemption is necessary to encourage cogeneration and small power production.'' 16 U.S.C. 824a-3(e)(1). The rules adopted by the FERC concerning qualifying facilities require electric utilities to interconnect with QFs and to offer to purchase power from, and sell power to, QFs, and set the general standard for determining the rates for power sale transactions with QFs. 18 CFR 292.301–308.

[10] Under section 210 of PURPA, a QF is exempt under the Act from the definition of an ''electric utility company'' and is entitled to other benefits under state and federal law.

[11] Pub. L. 99–186, 99 Stat. 1180 (codified at 15 U.S.C. 79k note (1988)).

[12] Pub. L. 99–553, 100 Stat. 3087 (codified at 15 U.S.C. 79k note (1988)).

[13] Neither bill made any allowance, however, for investments in small power production QFs. As a result, acquisitions of such interests remained subject to the section 11(b)(1) requirement of functional relationship. Prior to the 1992 legislation, this requirement barred gas registered holding companies from investing in small power production facilities and limited electric registered holding companies to investments located within the service territory of their utility subsidiaries.

[14] See Articles IV, V and VI, Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2777 (1992) (codified at 15 U.S.C. 79b note (1992)).

[15] The legislation also provides that the sale or transportation of vehicular natural gas by a company or its subsidiary shall not be taken into consideration in determining whether, under section 3 of the Act, such company is exempt from registration. *Id.*

interest or the interest of investors or consumers.'' (Emphasis added). The Commission has previously issued orders under section 9(c)(3) exempting from section 9(a)(1) acquisitions of small amounts of securities of local industrial development corporations, affordable housing projects, and venture capital concerns, among others.[16] Because the investments in these matters did not result in control or create an affiliate relationship,[17] the Commission reasoned that they did not contravene the requirements of section 10(c) and, by reference, section 11(b).[18] The Commission has also adopted rule 40(a)(5) under section 9(c)(3) to exempt such acquisitions from the requirements of section 9(a)(1), provided that an affiliate relationship does not result, and subject to certain annual dollar limitations.[19]

III. Proposed Rule 58

Proposed rule 58 would exempt from the requirement of prior Commission approval under sections 9(a)(1) and 10, pursuant to section 9(c)(3), the acquisition by a registered holding company or a subsidiary company of securities of an ''energy-related company'' or a ''gas-related company,'' as defined in the rule, subject to certain conditions. The proposed rule would not exempt from the requirement of prior Commission authorization under section 10 any acquisition of securities of an electric utility company or a gas utility company within the meaning of the Act, or exempt an energy-related or gas-related subsidiary company from any provision of the Act.[20]

Proposed rule 58(a) would authorize a registered holding company or any subsidiary thereof to acquire securities of an energy-related company, as defined; provided that a registered holding company's aggregate investment in such companies does not exceed the greater of 15% of consolidated capitalization and $50 million. Proposed rule 58(b) would authorize a gas registered holding company or any subsidiary thereof to acquire securities of a gas-related company, as defined, without limitation. All acquisitions pursuant to the rule would be considered to be ''appropriate in the ordinary course of business'' within the meaning of section 9(c)(3), and thus exempt from the requirements of sections 9(a)(1) and 10.

An energy-related company is defined in proposed rule 58 as a company that derives or will derive substantially all of its revenues from one or more of the activities set forth in subsections (b)(i) through (xii) and such other nonutility activities as the Commission may from time to time, by order upon application under sections 9(a)(1) and 10, authorize a registered holding company to engage in, and, in so doing, designate as energy-related for purposes of rule 58. The rule identifies the following categories of activities as energy-related:

(1) the rendering of energy conservation and demand-side management services;[21]

(2) the development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;[22]

(3) the manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;[23]

(4) the sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;[24]

(5) the brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;[25]

(6) the production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;[26]

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[16] See, e.g., Hope Gas, Inc., Holding Co. Act Release No. 25739 (Jan. 26, 1993) and Georgia Power Co., Holding Co. Act Release No. 25949 (Dec. 15, 1993) (securities of local venture capital companies); Georgia Power Co., Holding Co. Act Release No. 26220 (Jan. 24, 1995) and East Ohio Gas Co., Holding Co. Act Release No. 25046 (Feb. 27, 1990) (securities of affordable housing partnerships); Potomac Edison Co., Holding Co. Act Release No. 25312 (May 14, 1991) (shares of for-profit economic development corporation).

[17] Section 2(a)(11) in pertinent part defines ''affiliate'' of a specified company to mean:

(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company; [and]

(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company.

[18] The Commission has rejected the attempted use of section 9(c)(3) to circumvent the requirements of section 11(b)(1), referenced in section 10(c)(1). See Michigan Consolidated Gas Company, 44 S.E.C. at 366–67 (''Section 9(c)(3) cannot be employed to evade the proscription of Section 11(b)(1) prohibiting the acquisition by a gas utility company of an interest in a business unrelated to its business'').

[19] Under rule 40(a)(5), a holding company or subsidiary may acquire annually up to $5 million of the securities of economic development companies created under special state laws promoting economic development, and up to $1 million annually in local industrial or nonutility enterprises.

[20] In this regard, the Commission notes in particular that it will have jurisdiction under sections 12(f) and 13(b) and the rules thereunder over affiliate transactions with these companies involving the sale of goods or services or other property. The Commission anticipates that the proposed quarterly reporting requirement on Form U–9C–3, discussed *infra,* will provide state commissions with a valuable additional source of information on affiliate transactions.

[21] See Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995); EUA Cogenex Corp., Holding Co. Act Release No. 25636 (Sept. 17, 1992); Northeast Utilities, Holding Co. Act Release No. 25114–A (July 27, 1990); Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992).

[22] See Southern Co., Holding Co. Act Release No. 23888 (Oct. 31, 1985) (investment in venture to construct, own and operate facilities for the manufacture and sale of photovoltaic cells); Entergy Corp., Holding Co. Act Release No. 25718 (Dec. 28, 1992) (acquisition of stock interest in company that develops, manufactures and markets energy efficient lighting technologies); American Electric Power Co., Inc., Holding Co. Act Release No. 25424 (Dec. 11, 1991) (acquisition of interest in company to develop, manufacture and market electronic light bulb); Allegheny Power System, Inc., Holding Co. Act Release No. 26225 (Feb. 1, 1995) and General Public Utilities Corp., Holding Co. Act Release No. 26230 (Feb. 8, 1995) (acquisition of limited partnership interest in venture capital fund that will invest in companies commercializing various electro-technologies).

[23] See Consolidated Natural Gas Co., Holding Co. Act Release No. 25615 (Aug. 27, 1992); Central Power and Light Co., Holding Co. Act Release No. 26160 (Nov. 18, 1994). As noted supra, Congress has enacted legislation to promote the development of activities related to vehicular natural gas as a part of a national energy policy to reduce automobile emissions.

[24] Historically, the Commission has allowed registered holding companies to engage in the marketing of standard appliances. See Engineers Public Service Co., 12 S.E.C 41 (1942). As a related matter, rule 48 provides an exemption for the acquisition of evidence of customer indebtedness in connection with the sale of standard appliances. The Commission has permitted the expansion of marketing and sales activities to encompass other types of appliances and energy-utilizing equipment. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 26234 (Feb. 23, 1995). The Commission contemplates that subsection (b)(1)(iv) will include all present and future types of equipment used for residential, commercial and industrial heating and lighting.

[25] The Commission has authorized registered holding companies to engage in a variety of gas and electricity brokering and marketing activities. See, e.g., Consolidated Natural Gas Co., Holding Co. Act Release No. 24329 (Feb. 27, 1987) (authorizing creation of a subsidiary to compete with independent gas marketing companies); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993) (authorizing sale of consulting services to nonaffiliates, including expertise relating to brokering of power resources); UNITIL Corp., Holding Co. Act Release No. 25816 (May 24, 1993) (authorizing organization of a new subsidiary to serve as power brokering agent).

[26] There are numerous instances in which the Commission has permitted retention of interests in steam production and distribution businesses. See, e.g., General Public Utilities Corp., 32 S.E.C. at 840–41. More recently, the Commission approved an acquisition of existing steam production facilities inside an industrial site. See Southern Co., Holding Company Act Release No. 26185 (Dec. 13, 1994).

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(7) the sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;[27]

(8) the ownership and operation of ''qualifying facilities'' within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended, and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;[28]

(9) the ownership and operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;[29]

(10) the production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;[30]

(11) the development and commercialization of technologies or processes which utilize coal waste by-products as an integral component of such technology or process;[31]

(12) the ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties);[32] and

(13) such other activities and investments as the Commission may, from time to time, upon application under section 10 designate as energy-related for purposes of the rule.

The last category is intended to encompass all other activities, not specifically identified in the first twelve categories, that the Commission may hereafter determine, by order upon application, to be energy-related. This feature of the rule will ensure that it does not remain static as the electric and gas industries continue to evolve. Applications concerning additional nonutility activities will of course be subject to public notice in the **Federal Register** pursuant to rule 23. The notice will specify that Commission approval of the application may involve a designation of the activity in question as energy-related for purposes of rule 58.

Proposed rule 58 defines a gas-related company as a company that derives or will derive substantially all of its revenues from activities permitted under sections 2(a) and 2(b) of the GRAA and such other nonutility activities as the Commission may, from time to time, by order upon application under sections 9(a)(1) and 10 and section 2(b) of the GRAA, authorize a gas registered holding company to engage in, and, in so doing, designate as gas-related for purposes of rule 58.

The proposed rule contemplates that both energy-related and gas-related companies will derive substantially all of their revenues from the respective activities designated in the rule so long as the registered holding company system holds the investment. The Commission requests comment on whether any special reporting requirements may be needed with respect to the revenues derived from any other activities of such companies, to ensure that this requirement is satisfied. The Commission also invites specific comment on whether the proposed rule should include other kinds or categories of energy-related activities.

The Commission believes that it is appropriate, as contemplated by section 9(c)(3), to limit the aggregate investment of a registered holding company in energy-related companies pursuant to the proposed rule, to ensure that these acquisitions are not detrimental to the public interest or the interest of investors or consumers.[33] Accordingly, the Commission proposes to limit acquisitions of the securities of such companies to an amount equal to the greater of 15% of the consolidated capitalization of the holding company and $50 million. Within these parameters, a registered holding company will have discretion and flexibility to invest in energy-related companies. In some cases, a registered holding company or its subsidiary may acquire a limited interest and/or invest a very small amount of capital in an energy-related company. In other cases, those, for example, involving ownership of a QF or a steam production plant, the acquisition may involve a large interest and/or substantial capital outlays.

The Commission contemplates that prior investments in energy-related companies pursuant to orders would not be counted toward the limitation on aggregate investment in proposed rule 58. The Commission requests specific comment, however, on the appropriateness of excluding such prior investment for purposes of the rule.

The proposed limitation to 15% of consolidated capitalization, as reported by the registered holding company in its most recent Form 10–K or Form 10–Q, as applicable, affords significant flexibility for investments in energy-

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The Commission has also approved the development of, and limited investments in, facilities for producing or recovering alternative fuels and energy resources. See Southern Co., Holding Co. Act Release No. 26221 (Jan. 25, 1995); New England Electric System, Holding Co. Act Release No. 26277 (Apr. 26, 1995).

[27] The Commission has authorized a number of registered holding companies to engage in consulting activities. See, e.g., Southern Co., Holding Co. Act Release No. 22132 (July 17, 1981); American Electric Power Co., Inc., Holding Co. Act Release No. 22468 (Apr. 28, 1982); Middle South Utilities, Holding Co. Act Release No. 22818 (Jan. 11, 1983); New England Electric System, Holding Co. Act Release No. 22719 (Nov. 19, 1982).

[28] Although a QF is a nonutility interest under the Act, a subsidiary company of a registered holding company that acquires such an interest remains subject to regulation under the Act. The proposed rule would exempt an acquisition of the securities of such subsidiary companies from section 9(a)(1) if the requirements of the rule are met.

The Commission has approved acquisitions of ancillary facilities, such as an integrated thermal host facility or fuel handling and transportation facilities, in connection with QF acquisitions. See Central and South West Corp., Holding Co. Act Release No. 25399 (Nov. 1, 1991) (18-acre thermal host greenhouse); Energy Initiatives, Inc., Holding Co. Act Release No. 25991 (Feb. 22, 1994) (interests in fuel partnership to supply gas to QF project).

[29] The Commission has authorized the retention and acquisition of interests in such businesses in connection with the utility operations of an integrated system. See, e.g., North American Co., 11 SEC 194, 225–226, 248 (1942); Arkansas Natural Gas Corp. v. SEC, 154 F.2d 597 (5th Cir.), cert. denied, 329 U.S. 738 (1946). See also Ohio Power Co., Holding Co. Act Release No. 19594 (June 25, 1976) (rail-to-barge coal handling facility); Middle South Utilities, Inc., Holding Co. Act Release No. 18221 (Dec. 17, 1973) (bulk oil storage facilities); Jersey Central Power and Light Co., Holding Co. Act Release No. 24664 (June 14, 1988) (reservoir, dam and related facilities for storage and discharge of water); New England Electric System, Holding Co. Act Release No. 26277 (Apr. 26, 1995) (investment in venture that would install equipment at power stations owned by nonaffiliates to separate unburned carbon from coal ash).

[30] See, e.g., Lone Star Gas Corp., 12 S.E.C. 286, 298–99 (1942) (finding gasoline, oil and butane and propane production operations to be related to retainable natural gas production operations).

[31] New England Electric System, Holding Co. Act Release No. 26277 (April 26, 1995).

[32] See, e.g., Consolidated Gas Transmission Corp., Holding Co. Act Release No. 23914 (Nov. 20, 1985) (lease of microwave radio facilities); Appalachian Power Co., Holding Co. Act Release No. 24772 (Dec. 9, 1988) (lease of optical fiber systems); Southern Co., Holding Co. Act Release No. 26211 (Dec. 30, 1994) (mobile radio system).

[33] Proposed rule 58 does not affect the Commission's jurisdiction over the issuance and sale of securities by a registered holding company or its subsidiary to finance investments in an energy-related or a gas-related company. In its review of financing applications under the standards of section 7(d) of the Act, the Commission must consider the effect of any financing on the consolidated capital structure of the registered system and must examine whether the security being sold is reasonably adapted to the underlying earning power of the holding company's subsidiary operations. Thus, in addition to the limitations on nonutility investments incorporated in proposed rule 58, the Commission has other statutory means to monitor the financial and other effects of nonutility activities on registered systems.

related companies by the larger registered systems.[34] The proposed alternative limitation of $50 million is intended to benefit the smaller registered systems.[35] The Commission invites specific comment on whether the proposed investment limitations are reasonable under the circumstances. The Commission also requests specific comment as to whether a different measure of financial capacity, such as consolidated retained earnings, should be used for purposes of the rule.[36]

The Commission is not proposing a similar limitation upon acquisitions of securities of a gas-related company. The activities contemplated by the GRAA are *per se* closely related to the core utility business of the gas registered holding companies, and currently represent more than 60% of the consolidated assets of these systems. There is no indication that Congress intended for the Commission to place investment limits on these activities.[37] Even if a limitation were deemed appropriate, it is difficult, as a practical matter, to select a limitation that would fairly take account of the disparities among the gas registered holding companies as to the nature and extent of GRAA-related investments to date.[38] The Commission requests particular comment, however, as to the appropriateness of a limitation in proposed rule 58 upon investments in gas-related companies.

The Commission is aware that the magnitude of the investments proposed to be exempted by rule 58 may cause concerns as to whether these investments, together with other factors affecting the registered holding company system, may have potential adverse effects on the system's utility companies and their customers. Consequently, the Commission seeks comment on whether rule 58 should include additional conditions to take account of other adverse conditions that may be present, and what form such conditions should take. Commenters are invited to address the need for additional conditions to use of the rule 58 exemption based on the financial condition of the registered holding company system, the extent of losses experienced by the system over recent periods, prior bankruptcies of system companies, and any other basis specified by the commenter.

The proposed rule defines the term ''aggregate investment'' to mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company. The term is intended to have a meaning similar to that given the term in rule 53.[39] Aggregate investment, for purposes of rule 58, would thus include amounts actually invested in an energy-related company, as well as any amounts committed under the terms of subscription agreements or stand-by or other similar capital funding agreements.[40]

In addition, proposed rule 58(c) would require a registered holding company relying upon the rule to file with this Commission and each state commission having jurisdiction over the retail rates of the registered system operating companies a quarterly report disclosing acquisitions pursuant to the rule and certain other information required by proposed Form U–9C–3, discussed further *infra*. The reporting requirements are intended to enable the Commission and the state and local regulatory authorities to monitor energy-related and gas-related investments and activities, including any intrasystem transactions involving the operating companies in registered systems.

The Commission believes it is unnecessary to restrict the extent to which an energy-related company or a gas-related company may serve nonassociate companies.[41] Prior orders of the Commission have not subjected gas-related businesses to any restriction in this regard. In addition, the Commission recently determined that it was appropriate to remove a percentage limitation that had previously been imposed upon the energy management services business of a nonutility subsidiary of a registered holding company.[42] The Commission's decision was based on a number of factors, including evidence of the fundamental changes that the utility industry has undergone in recent years, such that the industry no longer focuses primarily upon the need to meet increased demand through the construction of new generating capacity. Specifically, the Commission noted that energy conservation and demand-side measures are today ''an important complement to the utility business,'' and determined that the energy management services business would further an important national policy, namely, the promotion of energy conservation and efficiency.[43]

On the basis of the Commission's experience to date and its assessment of the significant changes now underway in the energy and energy services industries, the Commission believes that energy-related businesses (as defined in

[34] As an example, the Southern Company's consolidated capitalization was approximately $17.8 billion for the year ended December 31, 1994. Pursuant to proposed rule 58 and the related proposed amendment to rule 45(b), Southern could invest up to $2.7 billion in energy-related companies, excluding existing subsidiaries.

[35] For example, the consolidated capitalization of UNITIL Corporation, at December 31, 1994, was approximately $129.7 million. The proposed percentage limitation would allow UNITIL to invest an amount of up to $19.451 million in energy-related companies, excluding existing subsidiaries.

[36] See, *e.g.*, rule 53, which creates a safe harbor for a financing in connection with investments in exempt wholesale generators if, among other conditions, aggregate investment in exempt wholesale generators and foreign utility companies would not exceed 50% of consolidated retained earnings.

[37] As noted previously, Congress intended that the GRAA, by permitting gas registered holding companies to invest in gas production, transportation, storage, marketing and similar activities, would promote competition in the natural gas markets. The Commission retains jurisdiction over the financing activities of the gas registered holding companies, which finance the operations of their subsidiaries at the parent company level.

[38] With respect to section 2(a) of the GRAA, NFG had invested approximately $292.1 million in gas pipeline transportation and gas storage as of December 31, 1994, whereas Columbia had invested approximately $1.65 billion and CNG approximately $980.6 million. With respect to section 2(b), CNG had invested approximately $876.5 million in exploration and development as of that date, whereas Columbia had invested approximately $373.1 million and NFG approximately $237.5 million.

[39] See Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993). Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) defines ''aggregate investment'' to mean:

all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

[40] For purposes of the rule, aggregate investment would not include the portion of a registered holding company's book investment in an energy-related company that is attributable to increases in retained earnings or to indebtedness issued by any such subsidiary with respect to which there is no recourse directly or indirectly to the registered holding company. ''Aggregate investment'' would also not include the amount invested by one energy-related subsidiary company in another such company.

[41] Prior orders of the Commission have sometimes restricted transactions on behalf of nonassociates by imposing conditions to limit, geographically or otherwise, the operations or source of revenues of a nonutility business. See, e.g., Eastern Utilities Associates, Holding Co. Act Release No. 24273 (Dec. 19, 1986) (50% limitation upon energy management service activities outside New England); National Fuel Gas Co., Holding Co. Act Release No. 24381 (May 1, 1987) (50% limitation on gas well and pipeline construction on behalf of nonassociates); CSW Credit, Inc., Holding Co. Act Release No. 25995 (Mar. 2, 1994) (50% limitation on amount of accounts receivable factored for nonassociates).

[42] Eastern Utilities Associates, Holding Co. Act Release No. 26232 (Feb. 15, 1995).

[43] *Id.*

the proposed rule) may now be considered sufficiently related to the core utility business of registered holding companies as not to require the imposition of limitations upon transactions with nonassociates. It is also reasonable to expect that the participation in such activities by registered holding companies, together with exempt holding companies and investor-owned utilities not subject to the Act, will produce benefits to investors, consumers and the public. Further, it does not appear that the participation of registered holding companies will lead to a recurrence of the evils that the Act was intended to address.

IV. Proposed Amendments to Rule 52 and Rule 45

The Commission is also requesting comment on proposed conforming amendments to rules 52 and 45. Financings by registered system companies of the activities of energy-related businesses would be subject to these rules.

Rule 52, as recently amended,[44] exempts from the requirement of Commission approval under sections 6(a) and 7 the issue and sale by a nonutility subsidiary of a registered holding company of any common stock, preferred stock, bond, note or other form of indebtedness, subject to certain conditions. Rule 52 further exempts from the requirement of prior Commission approval under sections 9(a)(1) and 10 the acquisition by a registered holding company of any such security, provided that the transaction does not involve the formation of a new subsidiary. The Commission has proposed to amend rule 52 further to expand the types of securities that qualify for the exemption.[45] The exemptions under rule 52(b) and 52(d), both currently in effect and as proposed to be amended, are broader than, and thus are inconsistent with, the exemption in proposed rule 58. Accordingly, the Commission proposes to amend rule 52 to conform the limitation of the rule upon the aggregate amount of such securities that may be issued and sold by energy-related subsidiaries and acquired by registered holding companies to the limitation of proposed rule 58.

Rule 45(b) currently exempts from the requirement of Commission approval under section 12(b) and rule 45(a) thereunder certain investments by a registered holding company in its existing subsidiaries by means of cash capital contributions or open account advances. In particular, rule 45(b)(4), as recently amended, exempts without limitation any capital contribution or open account advance without interest to a subsidiary company.[46] For purposes of proposed rule 58, the exemption is over-inclusive. Accordingly, the Commission proposes to amend rule 45(b)(4) to conform the aggregate amount of capital contributions and open account advances that may be made to energy-related subsidiary companies to the limitations of proposed rule 58.

V. Proposed Quarterly Reports on Form U–9C–3

In recent years, the Commission has formalized the practice of including in its orders approving acquisitions of nonutility interests under section 10 a requirement for the filing of periodic, usually quarterly, reports under rule 24.[47] These reports typically provide continuous information on authorized business activities, intercompany guaranties and billings, and results of operations. Since these reporting obligations have been imposed on a case-by-case basis, there are instances in which some holding companies now must prepare and file as many as five different periodic reports under rule 24. Proposed Form U–9C–3 would require essentially the same information covered in these reports, and it is intended that a holding company may file a single Form U–9C–3 for all energy-related company subsidiaries in lieu of the separate rule 24 certificates required under the terms of any outstanding Commission orders. This procedure should lessen the reporting burden for holding companies. Moreover, a single, comprehensive report covering all energy-related and gas-related business activities of a registered holding company should be more useful for the state commissions, with which the report must also be filed. The Commission requests comment on the form and content of Form U–9C–3. In particular, the Commission requests comment on whether a report should be filed quarterly or on a semiannual or other basis. The Commission also notes the need to balance, on the one hand, the legitimate needs of regulators for information regarding nonutility activities, and, on the other, the needs of registered holding companies to protect from public disclosure commercially and competitively sensitive information. In this respect, the primary regulatory purposes of the report will be to provide financial and other information on transactions between energy-related company subsidiaries and their regulated associate companies. The report does not call for information that would be commercially sensitive, such as the identity of customers or information regarding revenues and earnings derived from specific business ventures. Nevertheless, there may be instances in which a holding company feels the need to claim confidential treatment under rule 104 for some items of information. Reasonable requests for confidential treatment would not be precluded.

VI. Conclusion

The Commission believes that the registered holding-company systems should be relieved of the regulatory burden of having to file multiple applications for authority to engage in nonutility activities, through investments in the securities of other companies, that are of the same or similar character or type as those the Commission has allowed in previous cases. The proposed rules are intended to permit investments in energy-related companies and gas-related companies, as defined, without geographic limits or other restrictions such as have been selectively incorporated into previous orders. The Commission believes that the proposed limitation of rule 58 on the aggregate amount that a registered holding company system may invest, directly or indirectly, in energy-related companies will assure that financial integrity of a registered holding company system will not be impaired by investments pursuant to the rule. In addition, the proposed reporting requirements should enable the Commission and interested state and local regulators to monitor the financial and other impact of such investments.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposed amended rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, may be obtained from Bonnie Wilkinson, Office of Public Utility Regulation, Division of Investment

[44] See Holding Co. Act Release No. 26311 (June 20, 1995).

[45] See Holding Co. Act Release No. 26312 (June 20, 1995).

[46] See Holding Co. Act Release No. 26311 (June 20, 1995).

[47] See, e.g., Southern Co., Holding Co. Act Release Nos. 26212 (Dec. 30, 1994) and 26221 (Jan. 25, 1995); American Electric Power Co., Holding Co. Act Release No. 26267 (Apr. 5, 1995); Entergy Corp., Holding Co. Act Release No. 25848 (July 8, 1993); Northeast Utilities, Holding Co. Act Release No. 26213 (Dec. 30, 1994).

Management, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549.

Costs and Benefits

Rule 58 will substantially decrease regulatory costs for the eleven (11) electric and three (3) gas registered holding companies. In calendar years 1993 and 1994, 122 applications would not have been filed had the proposed rule 58 and related rule amendments been in place. Estimated savings per application would have been approximately $70,000 including related legal, accounting, and management costs. Thus, for 122 applications filed in calendar years 1993 and 1994, the aggregate savings would have been approximately $8,540,000 or $4,270,000, respectively, per year. Moreover, the reduction in Commission staff hours would have been approximately 13,300 hours per year (6.5 staff years). The only cost to the registered holding companies in complying with the rule will be the cost of completing and filing Form U–9C–3 on a quarterly basis. It is estimated that approximately 16 hours will be required to complete each form at an estimated cost of $250 per hour. Assuming 61 acquisition applications per year, the cost of compliance reporting would approximate $244,000 per year.

Paperwork Reduction Act

The proposed rule and rule amendments are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 79 *et seq.*) and will be submitted for approval to the Office of Management and Budget.

Statutory Authority

The Commission is proposing to adopt rule 58 and to amend rules 45 and 52 pursuant to sections 6, 9, 12 and 20 of the Act.

List of Subjects in 17 CFR Parts 250 and 259

Electric utilities, Holding companies, Natural gas, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, chapter II, title 17, of the Code of Federal Regulations is proposed to be amended as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3) and 79t, unless otherwise noted.

2. Section 250.45 is amended by revising paragraph (b)(4) to read as follows:

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) *Exceptions.* * * *

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in rule 58 (§ 250.58), shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related subsidiary companies does not exceed the limitation in rule 58(a)(1) (§ 250.58(a)(1)).

3. Section 250.52 is amended by revising paragraph (b) as follows:

§ 250.52 Exemption of issue and sale of certain securities.

* * * * *

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of such security are solely for the purpose of financing the existing business of such subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company; Provided, That any security issued to an associate company by any energy-related company subsidiary, as defined in rule 58 (§ 250.58), shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such subsidiary and all other such energy-related subsidiary companies does not exceed the limitation in rule 58(a)(1) (§ 250.58(a)(1)).

4. Section 250.58 is added to read as follows:

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a).* Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or any subsidiary company thereof, of the securities of an energy-related company; provided that, after giving effect to any such acquisition, the aggregate investment by such registered holding company or any subsidiary thereof in all such companies does not exceed the greater of:

(i) $50 million; and

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a registered gas-utility holding company, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For the purpose of this section:

(1) The term *energy-related company* shall mean any company that derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following businesses:

(i) The rendering of energy conservation and demand-side management services;

(ii) The development and commercialization of electro-technologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The manufacture, conversion, sale and servicing of electric and compressed natural gas powered vehicles and ownership and operation of related refueling and recharging equipment;

(iv) The sale, installation, and servicing of electric and gas appliances for residential, commercial and industrial heating and lighting;

(v) The brokering and marketing of energy commodities, including but not limited to electricity or natural or manufactured gas;

(vi) The production, conversion, and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation;

construction; maintenance and operation; fuel procurement, delivery and management; environmental licensing, testing and remediation; and other similar areas;

(viii) The ownership or operation of ''qualifying facilities,'' as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), and facilities necessary or incidental thereto, including thermal energy utilization facilities purchased or constructed primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership or operation of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities;

(x) The production, transportation, distribution or storage of all forms of energy other than electricity and natural or manufactured gas;

(xi) The development and commercialization of technologies or processes which utilize coal waste by-products as an integral component of such technology or process;

(xii) The ownership, sale, leasing or licensing of the use of telecommunications facilities and equipment (such as fiber optic lines, coaxial cable, or other communications capacity, towers and tower sites and other similar properties); and

(xiii) Such other activities and investments as the Commission may, from time to time, upon application under section 10 of the Act (15 U.S.C. 79j) designate as energy-related for purposes of this section.

(2) The term *gas-related company* shall mean a business that derives or will derive substantially all of its revenues from activities permitted under the Gas-Related Activities Act of 1990, 104 Stat. 2810, and such other activities and investments as the Commission may, from time to time, upon application under section 10 of the Act (15 U.S.C. 79j) or section 2(b) of the Gas Related Activities Act, designate as gas-related for purposes of this section.

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company.

(c) *Report on Related Business Activities.* Within 60 days following the end of the first calendar quarter in which any acquisition that is exempt under this section is made, the registered holding company shall file (and thereafter continuously file) with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Certificate of Notification on Form U–9C–3 (§ 259.208 of this chapter).

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

6. Section 259.208 is added to read as follows:

259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).

This form shall be filed pursuant to rule 58(c) (§ 250.58(c) of this chapter) as the certificate of notification of the acquisition of securities exempted from the application of section 9(a) of the Act pursuant to rule 58 (§ 250.58 of this chapter).

[**Editorial Note:** The text of Form U–9C–3 appears in the Appendix to this document and will not appear in the Code of Federal Regulations.]

Dated: June 20, 1995.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

Note: This form will not appear in the Code of Federal Regulations.

Appendix—United States Securities and Exchange Commission

Washington, DC 20549

Form U–9C–3

Quarterly Report of Investments in Companies Engaged in Certain ''Energy-Related'' and ''Gas-Related'' Businesses

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Name and Address of Registered Holding Company

General Instructions

1. Use of Form

A quarterly report containing the information required by Form U–9C–3 shall be filed by a registered holding company with the Commission and with each state public-utility commission that has jurisdiction over the retail rates of a public-utility subsidiary company of the registered holding company. The report shall be filed within 60 days following the end of each calendar quarter commencing with the first calendar quarter in which such registered holding company directly or indirectly acquires any securities of any energy-related or gas-related company in reliance upon the exemption afforded by rule 58, 17 CFR 250.58.

2. Formal Requirements

(a) Two copies of the report on this form, including the exhibits specified, shall be filed with the Commission, and one copy, with exhibits, shall be filed with each of the appropriate state commissions. At least one of the copies filed with the Commission shall be manually signed and filed at the place designated by the Commission for filings under the laws it administers. The second copy shall be addressed to the Division or Office responsible for administering the Act.

(b) The quarterly report, and where practicable all documents filed as a part thereof, shall be on good quality, unglazed white paper, 8½'' × 11'' in size. All papers included in the quarterly report, except exhibits not especially prepared for such purpose, shall have a margin of at least 1½'' for binding, and each copy should be firmly bound on the left side.

(c) The report shall contain the item number and caption of each item in the form, but shall omit all instructions and text. If any item is inapplicable or the answer thereto is negative, it shall be so stated.

(d) The report shall identify and provide a telephone number for a person to whom inquiries concerning the contents of the report may be directed.

3. Definitions

All terms used in this form and the instructions have the same meaning as in the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder, particularly rule 58, 17 CFR 250.58.

Item 1.

Identify the name and describe the nature of the business of each newly formed energy-related or gas-related company whose securities were acquired during the calendar quarter.

Item 2.

Provide the amount and type (*e.g.*, equity or debt) of capital invested in each energy-related or gas-related company. Identify whether the investment is held by the top holding company or a subsidiary thereof (other than an energy-related or a gas-related subsidiary company). If any institutional third party financings were used or undertaken to finance the acquisition or ongoing business of any such company, identify (a) the name of the institution, bank, or other third party; (b) the amount and type of

investment; and (c) the cost of capital terms.

Item 3.

For each energy-related and gas-related company in which the registered holding company has invested, directly or indirectly, provide a balance sheet and a twelve months' ended income statement.

Item 4.

Aggregate Investment Analysis:

(a) State the total investment during the quarter of the registered holding company or any subsidiary thereof in all energy-related companies.

(b) If the total investment disclosed in Item 4(a) is greater than $50 million, state it as a percentage of the registered holding company's consolidated capitalization (as reported in the registered holding company's most recent Form 10–K or Form 10–Q filed under the Securities Exchange Act of 1934).

(c) State the aggregate investment to date of the registered holding company or any subsidiary thereof in all energy-related companies.

(d) If the aggregate investment disclosed in item 4(c) is greater than $50 million, state it as a percentage of the registered holding company's consolidated capitalization (as reported in the registered holding company's most recent Form 10–K or Form 10–Q filed under the Securities Exchange Act of 1934).

(e) State the aggregate investment by any registered gas utility holding company in all ''gas-related'' companies.

Item 5.

For each quarter following the calendar quarter, provide a narrative description of (a) any new activities within the scope of rule 58(b)(1) undertaken during the quarter by existing subsidiary companies; (b) any services, goods, construction, or other property sold to or purchased from any associate public utility company or service company during the quarter by any energy-related or gas-related subsidiary company, and costs billed therefor, together with a copy of the related contract.

Exhibit A

For each calendar year, provide as an attachment to the first quarterly report an organizational chart of the holding company system that includes the percentage owned of each energy-related or gas-related subsidiary company of the registered holding company.

Signature

The undersigned company has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized pursuant to the requirements of the Public Utility Holding Company Act of 1935, as amended.

_____

(Date)

_____

(Company)

_____

By:_____

(Type or Print Name and Title)

[FR Doc. 95–15838 Filed 6–27–95; 8:45 am]

BILLING CODE 8010–01–P

federal register

Wednesday
June 28, 1995

Part IX

Department of Education

34 CFR Part 201

Funding Under Part C of Title I of the Elementary and Secondary Education Act of 1965; Education of Migratory Children; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 201

Funding Under Part C of Title I of the Elementary and Secondary Education Act of 1965 (ESEA); Education of Migratory Children

AGENCY: Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) establishes an absolute priority for distribution of Migrant Education Program (MEP) funds under section 1308(a) of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's Schools Act (IASA) (Pub. L. 103–382). Under this priority the Department will make grant awards, on a one-time basis in fiscal year (FY) 1995, to provide additional resources to State educational agencies (SEAs) in order to assist them in their responsibilities, under the Migrant Education Program (MEP), to ensure the interstate and intrastate transfer of educational and health records of migratory children.

EFFECTIVE DATE: This priority takes effect on July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Room 4100, Washington, DC 20202–6135. Telephone: (202) 260–1934. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The MEP, authorized in Title I, Part C, of the ESEA, is a State-operated, formula grant program under which SEAs receive funds to improve the academic achievement and welfare of migratory children who reside in their States. Under section 1304(b)(3) of the ESEA, SEAs receiving MEP funds have a responsibility to carry out activities that promote the interstate and intrastate coordination of services for migratory children, and to provide for educational continuity through the timely transfer of pertinent school records, including health information, for migratory children.

In the past, the Department assisted SEAs in carrying out their responsibilities regarding the transfer of records on migratory children by contracting, using funds set aside from the overall MEP appropriation, for a national Migrant Student Record Transfer System (MSRTS). However, because the MSRTS is no longer available for records transfer and the contract for its operation will end on June 30, 1995, the SEAs are now in the process of enhancing, and in some cases reexamining, State and local recordkeeping and records transfer capabilities for migratory children. In this regard, the issue of how school records of migratory children can best be transferred after the end of MSRTS has been the subject of considerable discussion among State and local officials over the past year, and many SEAs have identified the enhancement of State and local capacities to maintain and transfer records on migratory children as a critical need that warrants further Federal assistance.

On May 4, 1995, the Department distributed a draft of a priority notice to SEAs that proposed, under the authority of section 1308(a) of the ESEA, to use $2.2 million in available FY 1994 MEP funds for special, one-time grants to the SEAs for activities that support their records transfer responsibilities. This draft notice proposed to award the $2.2 million in equal amounts to each SEA receiving MEP formula grant funds, except that no SEA could receive an amount that would exceed 20 percent of its FY 1995 MEP formula grant award. As of June 1, 1995, 49 of the 51 State ME Directors, as well as two other interested parties, commented on the draft priority notice.

Forty-two of the State MEP Directors expressed complete satisfaction with the proposed distribution of funds, while seven of the State MEP Directors and the two other commenters expressed some concerns about the proposal. Three State MEP Directors and the two other commenters suggested that it would be more reasonable to award additional funds for records transfer proportionally on the basis of the size of a State's MEP rather than in equal State amounts. One of the other commenters suggested a two-tiered distribution approach, with some of the funds to be distributed proportionally based on the size of the States' population of migratory children, and the remaining funds to be distributed equally. Two State MEP Directors suggested that some of the funds be reserved for new, national activities to enhance records transfer in the MEP, while a third State MEP Director noted that the Department was already adequately supporting national activities through the establishment of a Records Exchange Task Force. Two State MEP directors suggested that the funds be clearly reserved to support interstate transfer activities; and one of the other commenters also noted the need to emphasize interstate transfer activities without restricting funds exclusively for this purpose. Finally, one commenter also suggested that SEAs applying for these funds be required to provide more narrative detail than simply an assurance that the funds would be used to support records transfer activities.

In response to the comments, this notice incorporates changes to clarify the priority's intent and encourage the use of funds especially for activities to enhance the interstate transfer of records of migratory children. In addition, the notice expands the formula for distributing funds under this priority, as a result of comments, and also because, after the draft notice was circulated for comments, the Department identified an additional $0.5 million in funds beyond the $2.2 million originally proposed for distribution under this priority.

Priority

Under section 1308(a) of the ESEA, the Department has the authority, after consultation with the States, to issue grants or contracts to SEAs, local educational agencies (LEAs), institutions of higher education (IHEs) and other public or private nonprofit entities to improve the interstate and intrastate coordination of those agencies' educational programs for migratory children. Under this authority, the Department is reserving $2.7 million to be awarded, as an absolute priority in FY 1995, to SEAs for special grants to assist them in their responsibilities to ensure the maintenance and prompt transfer of pertinent educational and health records of migratory children on an interstate and intrastate basis. The Department believes that making these funds available to support SEA-sponsored interstate and intrastate records transfer activities is appropriate in view of the importance of records transfer in the educational continuity of migratory children, and the expressed needs of the SEAs for additional assistance to develop their records transfer capacity. Moreover, under this priority, the $2.7 million to be awarded will retain its original purpose, since the Department originally had reserved this sum from the FY 1994 MEP appropriation to support the SEAs'

records transfer activities through MSRTS.

Use of Funds Under This Priority

Funds awarded under this absolute priority must be used only for activities that clearly support an SEA's responsibilities to promote educational continuity of migratory children through the timely transfer of their pertinent educational records, including health information, on an interstate and intrastate basis. Such activities may include, but are not limited to: Development and implementation of procedures that an SEA or its operating agencies will use to maintain and transfer records for migratory children; the purchase of related equipment (e.g., computers, fax machines) and material (e.g., ''red bags'' to be used by migratory children and their parents to hand carry records from site to site); and the training of State and local educational personnel, as well as parents of migratory children, in the use of these procedures, equipment, and material. Given that greater difficulties may be associated with the timely transfer of records on an interstate basis, the Department encourages SEAs to consider how the funds awarded under this priority can be used to address the particular problems of interstate records transfer.

Amount of the Grant

After carefully considering all the comments received on the initial proposal to award equal grant amounts to SEAs, and because of the availability of additional funds that can be used for this priority, the Department will award a total of $2.7 million under this priority to SEAs receiving an FY 1995 MEP formula grant on the basis of the following two-tiered formula:

— $2.2 million in equal amounts to each SEA; and
— $0.5 million based on each State's calendar year 1994

full-time-equivalent (FTEs) count of migratory children ages 3–21 who are within three years of a qualifying move, as provided in section 1309(2) of the ESEA.

No SEA will receive an award that exceeds 20 percent of its FY 1995 MEP formula grant award. Six SEAs, those of the District of Columbia, New Hampshire, Rhode Island, Tennessee, West Virginia and Wyoming, are affected by this 20 percent limitation on the size of awards.

The Appendix to this notice contains a chart reflecting the size of each SEA's award under this priority assuming that all eligible SEAs apply. If an SEA does not apply for these funds, its share of grant funds under this priority will be distributed to the requesting SEAs, subject to the 20 percent limitation, on the basis of the number of those States' migratory children.

The Department believes that this two-tiered formula for awarding the $2.7 million available under this priority distributes these limited funds effectively to help promote long term benefits for the Nation's migratory children by helping all SEAs focus on the interstate and intrastate transfer of records of migratory children.

Under the first tier of the formula, the $2.2 million originally available for this priority will continue to be distributed in equal amounts to the SEAs (subject to the 20 percent limitation). This distribution method provides like amounts to each State, irrespective of the size of its MEP or its technological sophistication, since each State is likely to encounter threshold costs related to improving its own capacity and that of its operating agencies to maintain and transfer information on eligible migratory children. Indeed, for many States, the one-time grants available under this priority represent only ''seed money'' for their records transfer efforts. All SEAs may reserve funds from their basic MEP formula allocations to carry out their responsibilities to ensure the transfer of records for eligible migratory children. Yet, for those SEAs with relatively small basic MEP grant allocations, and therefore less flexibility than larger allocation States to use those funds to meet records-transfer needs, the small threshold amount that would be available under the Department's initial proposal will help address some basic development and implementation issues (including staff time). In comments received on this initial proposal, only one State MEP Director suggested that the proposed threshold amount would exceed the amount that some States need to implement the records transfer activities required under the MEP statute. At the same time, other State MEP Directors from large, basic MEP allocation States supported the proposed equal allocation of funds to each State under this priority. As one such State MEP Director noted, while his large, basic MEP allocation State would benefit to a greater degree from a distribution based wholly on numbers of migratory children, the proposed distribution of equal amounts seemed reasonable ''since each State has an equal responsibility [under the MEP] to develop and implement a method for transferring information on migrant children as they move.'' Similarly, another State director from a large, basic MEP allocation State noted that, unless those SEAs with smaller basic MEP allocations are able to develop an adequate records transfer capacity, the larger basic MEP allocation States from which migratory children move will be unable to send to, or receive records from, these States where the children migrate.

While all SEAs that receive MEP funds could use additional funds to meet their statutory responsibilities to ensure the timely transfer of education records of migratory children within and across States, as a practical matter, SEAs with larger basic MEP grant allocations can, as one State Director commented, draw upon those funds to the degree necessary for records transfer, consistent with their other MEP responsibilities, in ways that small-allocation States cannot. For example, with the end of the MSRTS, the larger amounts of funds that these States previously spent on MSRTS terminal operations now are available to meet existing records-transfer needs.

Under the second tier of the formula, the Department will distribute an additional $0.5 million, in excess of the $2.2 million originally identified by the Department. Given that States with larger numbers of migratory children have more student records to transfer, the Department has decided to distribute these additional funds on the basis of the number of migratory children in each State, using the same calendar year 1994 FTE count of migratory children that the Department is using to calculate MEP allocations under the MEP State formula grant formula in section 1303 of the ESEA.

Finally, the Department will limit the amount of an award under this priority to no more than 20 percent of an SEAs' basic MEP grant award.

The Department believes that this two-tiered formula for awarding the $2.7 million, with its 20 percent limitation, represents the most appropriate means of distributing these funds to support the development and implementation of appropriate records transfer procedures so that staff at new schools to which migratory children move, in whatever States they are located, can have the information needed to make sound educational decisions about these children.

Note: The $2.7 million available for award under this priority was originally reserved from the FY 1994 MEP appropriation. Therefore, the Department must obligate these funds by September 30, 1995, and SEAs (and their subrecipients) must do so by September 30, 1996.

Procedure for Award

Only an SEA that receives MEP formula grant funds for FY 1995 may receive a grant under this priority. To receive funding under this priority, an SEA must submit a letter, signed by the Chief State School Officer or his or her authorized representative, requesting funds under this absolute priority and providing an assurance that these funds shall be used only for activities that clearly support the SEA's responsibilities to ensure the maintenance and prompt transfer of pertinent records, including health information, of migratory children on an interstate and intrastate basis. This letter should be received by the Office of Migrant Education contact person identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice on or before July 18, 1995.

After careful consideration of a suggestion by one commenter, the Department has decided not to require SEAs to provide either a description of the proposed use of grant funds or a budget as a condition of receiving funds under this priority. This information would be of limited use since it would reflect only a portion of a State's record transfer activities for migratory children. Instead, the Department intends to use other means of program monitoring to obtain information on the full range of records transfer activities that SEAs and their local operating agencies are conducting, including activities funded under both the MEP formula allocation and this priority.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in accordance with section 437(d)(1) of the General Education Provisions Act, the Assistant Secretary has determined that it is desirable to waive formal public comment on this priority. At the same time, States were consulted as required under section 1308(a) of the ESEA. The Assistant Secretary makes this determination to waive formal public comment in order that funds under this priority may be made available to the SEAs as quickly as possible to assist them in meeting their records transfer responsibilities, and to ensure that these funds can be distributed to SEAs on or before September 30, 1995, as required by law. This waiver applies only to this FY 1995 priority.

Applicability of 34 CFR Part 75 and 34 CFR Part 205

In view of the process that the Department will use to obtain information and make awards under this priority, the regulations in 34 CFR part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR), and the regulations in 34 CFR part 205 (Migrant Education Coordination Program) do not apply. Instead, grants awarded under this priority will be administered, like the MEP itself, under the provisions of 34 CFR parts 76, 77, 80, 81, 85 and 86 of EDGAR. This includes, among other requirements, responsibility under 34 CFR 76.730 to maintain records, separately from the MEP formula allocation, on how the funds awarded under this priority have been used.

Intergovernmental Review

Grants to SEAs for the MEP are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Secretary's specific plans and actions for these programs.

Applicable Program Regulation: 34 CFR Part 201

(Program Authority: 20 U.S.C. 6394(d), 6398(a))

(Catalog of Federal Domestic Assistance Number 84.011, Migratory Education Basic State Formula Grant Program)

(Approved by the Office of Management and Budget under control number 1810–0584)

Dated: June 21, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

APPENDIX.—AWARD AMOUNTS UNDER SPECIAL FY 1995 MEP RECORDS TRANSFER PRIORITY

Alabama	$50,122
Alaska	57,851
Arizona	58,137
Arkansas	51,897
California	205,815
Colorado	50,918
Connecticut	47,999
Delaware	45,798
District of Columbia	38,501
Florida	84,041
Georgia	53,742
Idaho	54,417
Illinois	47,805
Indiana	49,671
Iowa	45,767
Kansas	55,204
Kentucky	57,154
Louisiana	48,885
Maine	50,044
Maryland	45,595
Massachusetts	48,716
Michigan	60,742
Minnesota	48,846
Mississippi	47,812
Missouri	46,699
Montana	46,373
Nebrasla	49,538
Nevada	46,099
New Hampshire	19,504
New Jersey	46,461
New Mexico	47,622
New York	52,493
North Carolina	52,948
North Dakota	46,240
Ohio	47,964
Oklahoma	47,706
Oregon	61,035
Pennsylvania	52,270
Rhode Island	30,598
South Carolina	46,333
South Dakota	46,407
Tennessee	19,799
Texas	124,769
Utah	47,410
Vermont	46,457
Virginia	46,598
Washington	65,270
West Virginia	19,976
Wisconsin	46,089
Wyoming	34,995
Puerto Rico	56,868
National Totals	2,700,000

[FR Doc. 95–15795 Filed 6–27–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
June 28, 1995

Part X

Environmental Protection Agency

40 CFR Part 142

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL–5227–5]

RIN–2040–AC19

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is promulgating final language revising the regulation that sets forth EPA's process for initiating the withdrawal of a State's primary enforcement responsibility (primacy) for the Public Water System Supervision Program under the Safe Drinking Water Act and making technical clarifying amendments to other parts of the primacy regulation. The revised language clarifies issues of EPA's timing and discretion in initiating the primacy withdrawal process and simplifies some of the rule language. The intended effects of these revisions are to eliminate confusion about the Agency's primacy withdrawal policy and to respond to a court ruling that requires a change to the regulatory language on withdrawals. These revisions reflect existing Agency policy and therefore should not impose any burden on States or otherwise affect EPA-State relations.

EFFECTIVE DATE: The final rule will take effect July 28, 1995. In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for purposes of judicial review at 1 p.m. eastern time on July 12, 1995.

ADDRESSES: Supporting documents for this rulemaking are available for review at EPA's Water Docket; 401 M Street, SW., Washington, DC 20460. For access to the Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, or Judy Lebowich; Drinking Water Implementation Division; Office of Ground Water and Drinking Water; EPA (4604), 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7595.

SUPPLEMENTARY INFORMATION:

A. Background

40 CFR part 142, subpart B, sets out requirements for States to obtain primacy for the Public Water System Supervision (PWSS) program, as authorized by section 1413 of the Safe Drinking Water Act (SDWA). In 1989, EPA promulgated amendments to these regulations establishing procedures for States to revise their primacy programs to adopt the requirements of new or revised EPA drinking water regulations. (54 FR 52126, December 20, 1989) The 1989 rulemaking also modified the regulatory language pertaining to EPA's initiation of procedures that could lead to withdrawal of primacy status. The provision on withdrawals is contained in § 142.17(a) and is the subject of today's action.

As promulgated in 1989, § 142.17(a)(2) leaves to the Administrator's discretion whether to initiate primacy withdrawal proceedings after he or she has determined that a State no longer meets federal primacy requirements. The National Wildlife Federation (NWF), in a petition for review filed in the U.S. Court of Appeals for the District of Columbia Circuit (*National Wildlife Federation* v. *Reilly*, No. 90–1072) challenged several aspects of the 1989 regulatory amendments, including the primacy withdrawal language.[1] Among other challenges, NWF alleged that EPA was without statutory authority to promulgate a revision making explicit that it is within EPA's discretion whether to initiate proceedings to withdraw a State's PWSS primacy program.

The U.S. Court of Appeals for the D.C. Circuit issued an opinion on December 11, 1992, in response to this challenge. *National Wildlife Federation* v. *EPA*, 980 F.2d 765. The Court found that while EPA has broad discretion under the SDWA on when to ''determine'' that a State is out of compliance with primacy requirements, once the Administrator has made this determination, the SDWA requires EPA to initiate the primacy withdrawal process by notifying the State of why such a determination was made, allowing the State 30 days to respond, and proceeding toward a final decision, including public notice and opportunity for hearing on decisions to withdraw primacy. The Court found EPA's primacy withdrawal regulation to be invalid because it does not require the Agency to take these steps—instead, the regulation says that after ''determining'' that the State is out of compliance with primacy, the Administrator ''may'' initiate withdrawal proceedings. The Court therefore remanded the regulation to EPA for modification.

The Court emphasized that its review focused only on what EPA ''may do following a formal determination of noncompliance and does not require delving into the Administrator's complex decision-making process regarding whether to make such a determination in the first instance.'' *Id.* at 774. The Court acknowledged that the Agency is ''free to decide that technical, temporary or otherwise unimportant violations of the primacy requirements do not warrant a 'determination' of noncompliance, or that the better approach for meeting the Act's goals is to negotiate with the offending state or to permit more time for the state to come back into compliance.'' Thus, EPA may ''negotiate with the state as long as necessary before determining that the primacy requirements are no longer met.'' *Id.* at 771.

The Court also noted that ''even where a 'determination' of noncompliance is made, the statute does not require the Agency to immediately withdraw primacy. Rather, the EPA is directed to provide notice and a public hearing before its determination of nonconformity with the primacy standards becomes effective. As a consequence of evidence adduced at the hearing, the EPA is entitled to conclude that its original decision was in error or that the State has remedied any deficiency and to decide against withdrawal.'' *Id.* at 771 (citations omitted).

In response to the Court's remand, EPA published a Notice of Proposed Rulemaking (59 FR 40458, August 8, 1994) seeking public comment on the following proposed changes to the language of Section 142.17(a):

1. Revise the wording of § 142.17(a)(2) to clarify that the Administrator ''shall'' initiate primacy withdrawal proceedings once he or she formally ''determines'' that a State is out of compliance with primacy requirements;

2. Revise the wording of § 142.17(a)(2) to clarify that the Administrator intends to take at least two relevant factors into consideration, if appropriate, in making a formal determination that a State no longer meets primacy requirements. These factors are: (1) Whether the State has been granted, or is awaiting EPA's decision on, an extension of up to two years of the 18-month deadline for having submitted a final program revision application to EPA to address a new or revised federal drinking water regulation; and (2) whether the State is taking corrective actions that the Administrator may have required to correct State program deficiencies;

3. Revise the wording of § 142.17(a)(2) to clarify that the Administrator shall

[1] The Notice of Proposed Rulemaking (59 FR 40458, August 8, 1994), a copy of which is in the Docket, summarizes NWF's challenges to the 1989 rulemaking and the disposition of this litigation.

notify the State in writing that ''EPA is initiating'' (rather than ''of EPA's intention to initiate'') primacy withdrawal proceedings;

4. Revise the wording of § 142.17(a)(4) to clarify that EPA will make a ''final determination'' regarding primacy withdrawal after the State has had the opportunity to respond to the Administrator's written notice initiating primacy withdrawal; and

5. Clarify that States must meet all the primacy requirements specified in 40 CFR 142, subpart B, by replacing references to ''§ 142.10'' in §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) with references to ''40 CFR 142, subpart B.''

Today's action promulgates all of the revisions to the primacy withdrawal provisions that were proposed on August 8, 1994.

B. Summary of Comments and EPA Responses

Four groups (consisting of a State, an association of State drinking water programs, and two drinking water trade associations) submitted comments on the proposed regulations. These comments and EPA's response are part of the public Docket. Three of the commenters fully support the proposed rule because they believe it continues to provide EPA broad discretion in considering whether to initiate withdrawal. They stress the need for this discretion and note the importance of the Agency considering whether the conditions for not meeting the requirements for continued primacy are temporary and likely to be corrected or are of an on-going long-term nature. One of these commenters also notes that public health protection should be the key factor in any primacy withdrawal decision.

The fourth commenter agrees that EPA should have broad flexibility in making primacy withdrawal determinations. This commenter expressed concerns, however, that the proposed regulatory changes would severely restrict this flexibility, and this commenter opposes any such change in flexibility. This commenter reads the proposal to say, for example, that EPA must initiate primacy withdrawal if the State exceeds the two-year extension period, even if the State is making a good faith effort towards compliance. The commenter could support changes to the primacy regulations if more weight were given to the two listed factors that the Administrator considers in making the determination that a State is out of compliance with primacy requirements. Specifically, according to the commenter, the regulations should say that EPA ''must'' or ''shall'' consider the two listed factors (which are relevant to a State's good faith efforts toward compliance) rather than that EPA ''intends'' to consider these factors.

The commenter has misinterpreted the meaning and effect of the regulatory changes that were proposed and are now promulgated. To reiterate, even after today's revisions, the primacy regulations afford broad discretion to EPA. They do not set forth any specific factual situation in which the Administrator is required to determine that the State no longer meets primacy requirements and to initiate primacy withdrawal. For example, even where a State fails to have an approved program revision in place within the two-year extension period, the regulations do not require the Administrator to determine that the State no longer meets primacy requirements. It is still within the Administrator's discretion to make this determination, in light of factors that include the extent and timeliness of the State's continuing good faith efforts to adopt the revisions. EPA will judge each case on its own merits. EPA emphasizes, however, that it ordinarily intends to consider this particular example—i.e., where the State misses the two-year extension deadline—to be a strong candidate for initiating primacy withdrawal. Indeed, although the commenter cites specific problems that may prevent a State from meeting this deadline, there have been past instances in which States have resolved such problems only after receiving notice of EPA's intent to initiate primacy withdrawal. When the State provides a reasonable schedule for adopting the regulations and submitting a final primacy revision package to the Agency, the Agency's policy is to cancel the primacy withdrawal proceedings. The revised regulations will not alter this policy.

C. Summary and Explanation of Today's Action

After carefully considering all of the public comments, EPA is retaining the changes to §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) that were proposed on August 8, 1994. In addition, the Agency is making technical amendments to the language of §§ 142.11 and 142.13 to clarify the timing of the process for public notice and opportunity for comment.

1. Changes to Primacy Withdrawal Provisions

Today's action results in the following changes to the primacy withdrawal provisions.

First, EPA is modifying the language of § 142.17(a)(2) by substituting the term ''shall'' for ''may''. Specifically, the language of § 142.17(a)(2), as promulgated in December 1989, states that the Administrator ''may'' initiate primacy withdrawal proceedings once he or she determines that a State's primacy program fails to continue to meet federal requirements for primacy. Today's action requires the Administrator to initiate primacy withdrawal proceedings once the Administrator makes this formal determination.

The language of § 142.17(a)(2), as promulgated in December 1989, contains the clause, ''When, * * *, the Administrator determines * * *, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective action required by the Administrator, * * *.'' EPA is modifying § 142.17(a)(2) to delete this clause. In its place, EPA is revising the paragraph to read as follows: ''When, * * *, the Administrator determines * * *, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: Whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator.'' EPA explained its rationale for making this change in the August 8, 1994 proposal. EPA's intent in making this change is to clarify the Administrator's discretion and to note two cases where the Agency generally expects to find no reason to initiate primacy withdrawal since the State is taking timely and appropriate action to remedy program deficiencies. As discussed above, EPA does not believe that this language limits the Administrator's discretion to determine whether or when a State no longer meets the requirements for retaining primacy.

Section 142.17(a)(2) also requires the Administrator to provide the State written notification that the Agency is initiating primacy withdrawal proceedings. EPA is modifying the language of § 142.17(a)(2) to replace the term ''of EPA's intention to initiate'' with ''that EPA is initiating'' to be more direct about the action being taken. The Agency believes the phrase ''intention to initiate'' may be confusing since it

does not clearly state whether EPA is or is not initiating withdrawal as of that date.

These changes to the language of § 142.17(a)(2) require the Administrator to initiate primacy withdrawal proceedings once the Administrator makes a formal determination that the State no longer meets the requirements for primacy. EPA emphasizes that the Agency still retains full discretion to decide whether and when to reach this formal determination. For example, as explained in the August 8, 1994, proposal there may be no reason to formally determine that a State program no longer meets the requirements for primacy if the State has missed a deadline for adopting new drinking water regulations but has been granted or is seeking an extension of that deadline under § 142.12. Similarly, there may be no reason to makes this formal determination if the State is otherwise carrying out any corrective actions that EPA may have ordered that would eliminate the deficiencies in the State program. Nevertheless, EPA wishes to make clear its general policy and intention to continue to vigorously pursue the need for: corrections to State programs; and initiating primacy withdrawal whenever a State is not acting in good faith to maintain the requirements for primacy.

EPA also is making a minor change to the language of § 142.17(a)(4). As promulgated in December 1989, this provision states that after reviewing a State's submission made in response to the notice that EPA is initiating primacy withdrawal proceedings, '' * * * the Administrator shall either determine that the State no longer meets [primacy] requirements * * * or that the State continues to meet those requirements * * *. Any determination that the State no longer meets the requirements * * * shall not become effective except as provided in § 142.13.'' EPA is modifying the language of § 142.17(a)(4) by substituting the phrase ''make a final determination either'' for the phrase ''either determine.'' EPA also is substituting the phrase ''Any final determination'' for the phrase ''Any determination.'' This change, which was discussed in the August 8, 1994 proposal, clarifies that the Administrator's ''final determination'' under § 142.17(a)(4) is distinct from the initial determination made under § 142.17(a)(2) and is preceded by an opportunity for public comment.

EPA emphasizes that these changes do not alter the primacy withdrawal process. That process consists of the following sequential steps.

1. EPA's receipt of information, either through its annual review of the State program (§ 142.17(a)(1)) or otherwise, that the State program may no longer be in compliance with the requirements for primacy.

2. EPA's formal determination, made at its discretion, that the State no longer meets the primacy requirements and notification to the State that primacy withdrawal is being initiated (§ 142.17(a)(2)).

3. The State's response to EPA's notice (§ 142.17(a)(3)).

4. Final EPA determination that the State meets or does not meet the primacy requirements and notification to the State, including a notice to the public and opportunity for a hearing when the EPA's final determination is that the State does not meet primacy requirements. (§ 142.17(a)(4)).

Finally, EPA is replacing the references to ''§ 142.10'' contained in §§ 142.17(a)(1), 142.17(a)(2), and 142.17(a)(4) with references to ''40 CFR part 142, subpart B.'' Section 142.10 no longer contains all of the requirements a State must meet to obtain/retain primacy. Section 142.10 contains the basic requirements, however, other portions of 40 CFR part 142, subpart B, contain additional primacy requirements associated with individual drinking water regulations. EPA is therefore revising the language of § 142.17(a) to clarify that States are expected to meet all primacy requirements contained in 40 CFR part 142, subpart B.

2. Other Technical Amendments

EPA is today also making two technical clarifying amendments to the language of §§ 142.11(b)(1) and 142.13(a). First, EPA is replacing the word ''determination'' whenever it occurs in § 142.13(a) with the words ''final determination'' to clarify that the public notice and opportunity for public hearing requirements specified in § 142.13 occur after the Administrator has made a final determination on a State's or Tribe's primacy application under § 142.11, program revision application under § 142.12, or to withdraw primacy under § 142.17. Second, in order to clarify the Agency's intent that there be an opportunity for public notice and comment on a State's or Tribe's initial primacy application, regardless of whether the Administrator's final determination is to approve or disapprove that application, EPA is revising § 142.11(b)(2)as follows: (1) insert the word ''final'' before the word ''determination''; replace the words ''has met the requirements'' with the words ''has met or has not met the requirements''; and insert the words ''the public notice requirements and related procedures under'' before the word ''§ 142.13.'' This change is simply a clarification since § 142.13(a) already requires an opportunity for a public hearing in either case.

Because these changes to section § 142.11(b)(2) and § 142.13(a) are simply minor clarifications and are non-substantive, good cause exists for finding that an additional notice and comment period is unnecessary (see § 553 of the Administrative Procedures Act). Moreover, these changes are logical outgrowths of the proposal, which made it clear that through this rulemaking, EPA is distinguishing between its final determinations and the earlier formal determinations that require initiation of primacy withdrawal. Therefore, an additional comment period is unnecessary in any event.

D. Impact of These Revisions

1. Executive Order 12866

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

(a) 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;

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural

requirements for initiating withdrawal of State primacy by clarifying the extent of EPA discretion in initiating the process; States are not considered small entities under this rulemaking for RFA purposes.

3. Paperwork Reduction Act

This rulemaking contains no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

4. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, sets requirements for EPA with respect to rules that contain federal mandates that may result in certain specified costs to State, local, or tribal governments. Also, before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. Today's rule simply addresses the subject of EPA's discretion to initiate primacy withdrawal when a State is not maintaining the requirements for primacy and sets forth the circumstances in which EPA must begin the withdrawal process. This rule does not change the actual requirements that States must meet to maintain primacy or otherwise impose an enforceable duty on States. Similarly, this rule does not impose an enforceable duty on any other entities. Thus, there are no federal mandates in this rule for purposes of the UMRA. In addition, today's action does not establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 142

Environmental protection, Administrative practices and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Indians.

Dated: June 21, 1995.

Fred Hansen,

Acting Administrator.

For the reasons set forth in the preamble, part 142, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4 and 300j–9.

§ 142.11 [Amended]

2. Section 142.11 is amended by revising paragraph (b)(2) to read as follows:

§ 142.11 Initial determination of primary enforcement responsibility.

* * * * *

(b) * * *

(2) A final determination by the Administrator that a State has met or has not met the requirements for primary enforcement responsibility shall take effect in accordance with the public notice requirements and related procedures under § 142.13.

* * * * *

§ 142.13 [Amended]

3. Section 142.13 is amended by inserting the word ''final'' before the word ''determination'' in each of the three places where the word ''determination'' occurs in paragraph (a).

§ 142.17 [Amended]

4. Section 142.17 is amended by revising the word ''§ 142.10'' in paragraph (a)(1) to read ''40 CFR part 142, subpart B,'' and by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a)(1) * * *

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in 40 CFR part 142, subpart B, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator. The Administrator shall notify the State in writing that EPA is initiating primacy withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

* * * * *

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section, the Administrator shall make a final determination either that the State no longer meets the requirements of 40 CFR part 142, subpart B, or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any final determination that the State no longer meets the requirements of 40 CFR part 142, subpart B, shall not become effective except as provided in § 142.13.

* * * * *

[FR Doc. 95–15872 Filed 6–27–95; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
June 28, 1995

Part XI

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19, et al.

Time for Payment and Deposits of Certain Excise Taxes (No. 277); Proposed and Final Rules

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285

[Notice No. 813]

RIN 1512–AB39

Implementation of Public Law 103–465, Section 712, Time for Payment and Deposits of Certain Excise Taxes (No. 277)

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

ACTION: Proposed rulemaking cross referenced to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of section 712 of Public Law 103–465, the ''Uruguay Round Agreements Act.'' The new law changed payment and deposit requirements for certain excise taxes. These regulations implement the law by incorporating the accelerated payment period for taxes or deposits due on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes and firearms and ammunition for the period September 16-September 26 (or September 25, for non-electronic fund transfer (EFT) taxpayers). Payment of taxes for this period is due on September 29 (or September 28, for non EFT taxpayers). The regulations also amend regulations in 27 CFR Part 53 relating to the requirements for making deposits of firearms and ammunition excise taxes by simplifying existing deposit rules in order to maintain consistency with other manufacturers excise taxes administered by the Internal Revenue Service (IRS). Finally, the regulations add provisions relating to records and variances and makes other technical amendments to regulations in 27 CFR Part 53.

DATES: Written comments must be received on or before September 26,1995.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Regulations Branch, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866, because the economic effects flow directly from the underlying statue and not from the proposed regulations. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The collections of information contained in this notice have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project 1512–0467, 1512–0497 or 1512–0509, Attention: Desk officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Information Programs Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

The collections of information in this proposed regulation are under control numbers 1512–0467, 1512–0497 and 1512–0509. This information is required by ATF to ensure compliance with the provisions of Public Law 103–465. The likely respondents and recordkeepers are individuals and businesses. The estimated average annual burden associated with 1512–0467 is 0.7 hours per respondent or recordkeeper, the estimated average annual burden associated with 1512–0497 is 0.25 hours per respondent or recordkeeper, and the estimated average annual burden associated with 1512–0509 is 0.21 hours per respondent or recordkeeper.

Public Participation

ATF requests comments on the temporary regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

The temporary regulations in this issue of the **Federal Register** amend the regulations in 27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285. For the text of the temporary regulations see T.D. ATF–365 published in the Rules and Regulations section of this issue of the **Federal Register**.

Drafting Information

The principal author of this document is Tamara Light, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: June 6, 1995.

Daniel R. Black,

Acting Director.

Approved: June 19, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–15549 Filed 6–26–95; 10:47 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285

[T.D. ATF–365]

RIN 1512–AB39

Implementation of Public Law 103–465, Section 712, Time for Payment and Deposits of Certain Excise Taxes (No. 277)

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

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements section 712 of Public Law 103–465, ''The Uruguay Round Agreements Act.'' The new law changed payment and deposit requirements for certain excise taxes. These regulations implement the law by incorporating the accelerated payment period for taxes or deposits due on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes and firearms and ammunition for the period September 16–September 26 (or September 25, for non-electronic fund transfer (EFT) taxpayers). Payment of taxes for this period is due on September 29 (or September 28, for non EFT taxpayers). This temporary rule also amends regulations in 27 CFR Part 53, relating to the requirements for making deposits of firearms and ammunition excise taxes, by simplifying existing deposit rules in order to maintain consistency with other manufacturers excise taxes administered by the Internal Revenue Service (IRS). Finally, the temporary rule adds provisions relating to records and variances and makes other technical amendments to the regulations in 27 CFR Part 53. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective January 1, 1995, except for section 53.159, which is effective July 1, 1995.

ADDRESSES: Send written comments to: Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Alcohol and Tobacco Programs Division, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, P.L. 103–465 (108 Stat. 4809) was enacted, amending the law relating to the payment and deposit of certain excise taxes. Federal excise taxes are imposed on firearms and ammunition, alcoholic beverages, and tobacco products. For the majority of these taxpayers, excise taxes must be remitted to ATF on a semimonthly basis within a 9–14 day period after the end of the semimonthly period. In order to receive these taxes during the fiscal year to which they relate, rather than in the subsequent fiscal year, P.L. 103–465 accelerates the due date for payment or deposit of such taxes for the second semimonthly period of September.

Alcohol and Tobacco Excise Taxes

With certain exceptions, the taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, are paid on the basis of a semimonthly return. The semimonthly periods covered by the tax return are from the 1st day through the 15th day of each month and from the 16th day of each month to the last day of that month. The return must be filed and the taxpayment must be made no later than the 14th day after the last day of each semimonthly period.

The amendments to the regulations covering distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes establish the accelerated period required by P.L. 103–465 by dividing the second semimonthly period in September into two payment periods, beginning from the 16th day through the 26th day, and from the 27th day through the 30th day. The return and taxpayment for the period September 16–26 are due on or before September 29. The return and taxpayment for the period September 27–30 are due on or before October 14. The accelerated payment period does not apply to wine excise taxes that are remitted on an annual basis.

Safe Harbor Rule

The amendments to the law specifically provide that, in the case of taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, the accelerated payment requirement will be met if the taxpayer pays not later than September 29 an amount equal to 11/15th (73.3 percent) of the taxpayer's liability for the first semimonthly period in September. This ''safe harbor'' provision is implemented in the regulations at §§ 19.523(c)(2), 24.271(c)(2), 25.164a(b), 250.112(d), 270.164(b), 275.114(b)(3) and 285.25(g)(3).

Special Rule for Taxpayers Not Required to Remit Taxes by Electronic Fund Transfer

The law provides special rules for taxpayers who are not required to remit taxes by electronic fund transfer for the calendar year. For those taxpayers, payment of taxes for the period September 16–September 25 are due on or before September 28. The regulations implementing this requirement provide that the requirement to pay tax for this period is satisfied if the taxpayer pays an amount equal to ⅔ (66.7 percent) of the taxpayer's liability for the first semimonthly period in September.

Last Day for Making Payment

The amendments to the law revise, in part, the special rules for due dates falling on, Saturday, Sunday, or legal holidays as defined in 26 U.S.C. 7503. The amendment relating to due dates falling on Sunday applies only to the accelerated return period in September. If the required due date for the accelerated payment period falls on a legal holiday or Saturday, taxpayment is due on the immediately preceding day, and as amended, if the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. These amendments are reflected in the regulations at §§ 19.523(c)(3), 24.271(c)(3), 25.164a(c), 70.306(a), 250.112(d), 270.164(c), 275.114(b)(4), and 285.25(g)(4).

Firearms and Ammunition Excise Taxes

Current regulations require taxpayers who incur more than $100 in tax liability for any calendar month (except the last month of the quarter) to make monthly deposits on ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposits. Monthly deposits are due by the last day of the month following the month in which the $100 liability was incurred.

Taxpayers who incur more than $2,000 of tax liability for any calendar month in the preceding calendar quarter are required to make semimonthly deposits for the current calendar quarter on ATF Form 5300.27. Deposits of tax for a semimonthly period generally must equal the amount of tax liability incurred during that semimonthly period. However, current regulations provide four exceptions to this rule. Taxpayers may use one of these exceptions in computing the amount of

tax required to be deposited. Each of the four exceptions requires the taxpayer to estimate and deposit an amount of tax based on certain percentages and requirements prescribed by the particular exception. Semimonthly deposits are due by the ninth day of the semimonthly period following the semimonthly period in which the tax was incurred.

Further, semimonthly depositors must deposit any underpayment of tax for the first and second month of the quarter by the ninth day of the second month following the month in which the tax liability was incurred. Any underpayment of tax for the third month of the quarter which exceeds $100 must be deposited by the last day of the first month following the end of the quarter.

P.L. 103–465 Amendments to the Requirement for Making Deposits

In the case of firearms and ammunition excise taxes required to be remitted on a semimonthly basis, P.L. 103–465 requires an accelerated payment for the period September 16–September 25. The due date for deposit of taxes incurred during this period is September 28. These dates apply because the firearms and ammunition excise taxes are not required to be made by electronic fund transfer. Taxes incurred for the remainder of the semimonthly period, September 26–30, are due on October 9. The amendments to the law enact a special rule where the due date of the deposit falls on Saturday or Sunday. If the required due date for the accelerated payment period falls on a Saturday, taxpayment is due on the preceding Friday. If the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. For due dates falling on a legal holiday, the general rule under 26 U.S.C. 7503 continues to apply, and the deposit is due on the day succeeding the legal holiday.

Simplification of Deposit Rule

This temporary rule modifies current regulations in 27 CFR Part 53 which provide a number of different methods for determining whether a taxpayer has complied with the semimonthly deposit rules. This temporary rule reduces the number of those rules, thereby simplifying the deposit system. The rule also complies with the congressional mandate that ATF modify existing regulatory safe harbors to reflect the accelerated taxpayment period. The legislative history for P.L. 103–465 states that both Congress and the Administration ''expected that the Treasury Department will modify existing safe harbors relating to excise deposits to reflect these changes.'' *See,* H.R. Rep. No. 103–826 (I), 103rd Cong., 2nd Sess. 177 (1984), and ''The Uruguay Round Agreements Act Statement of Administrative Action,'' page 1056. This simplification of the deposit rules enables taxpayers to use clear and concise safe harbors in determining their deposits required for the accelerated period.

The amendments to the regulations eliminate the current monthly and semimonthly deposit rules in order to have a single deposit rule apply to all persons required to make deposits of tax. The new regulation at § 53.159 requires semimonthly deposits of tax from all persons required to file returns. ATF believes that by having one deposit rule apply to all persons, the system will be easier for taxpayers to understand and for ATF to administer.

Generally, under this rule, the amount of tax deposited for a semimonthly period must equal the amount of tax liability incurred during that period. However, the regulations provide the following exceptions to this rule.

Special Rule for One-time or Occasional Filings

A special rule is provided for one-time or occasional filings of returns. A person may file a one-time or occasional return reporting liability with respect to taxable transactions in a calendar quarter if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business.

In addition, no deposit is required in the case of tax reported on a one-time or occasional filing. Instead, the tax reported on a one-time or occasional filing is paid with the quarterly return.

De Minimis Exception to the Deposit Requirement

The deposit requirement provided by these amendments to the regulations will not apply if the total tax liability for the quarter does not exceed $2,000. Instead, any tax incurred for the return period will be paid with the quarterly return.

Safe Harbor Rule

A general safe harbor rule is provided so that taxpayers required to pay firearms and ammunition excise taxes are not required to determine their actual tax liability during each semimonthly period in a quarter. The safe harbor rule allows taxpayers to deposit an estimated amount of tax based on prior liability, delaying calculation of their actual liability until the quarterly return is due. The adoption of this general safe harbor rule facilitates the promulgation of the modified rule, discussed below, for the accelerated deposit period in September.

The safe harbor rule applies to taxpayers who filed ATF Form 5300.26, Firearms and Ammunition Excise Tax Return, reporting tax for the second calendar quarter preceding the current calendar quarter (the look-back quarter). Such persons are considered to have met the semimonthly deposit requirement for the current quarter if (1) the deposit for each semimonthly period in the current quarter is not less than ⅙ of the total tax liability reported on Form 5300.26 for the look-back quarter, (2) each deposit is made on time, and (3) any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported. All three requirements must be satisfied in order for the safe harbor rule to apply.

Modification of Safe Harbor Rule Based on Look-back Quarter Liability for the Month of September

Under P.L. 103–465, deposits for the period September 16–25 are due on September 28. The deposit for the remaining 5 days, September 26–30, is due on October 9, the 9th day of the semimonthly period following the semimonthly period for which the tax is reportable. A modified safe harbor rule applies to the third calendar quarter and is met where deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12 (8.3 percent) of the tax liability reported for the look-back quarter.

Modification of Safe Harbor Rule Based on Look-back Quarter Liability to Adjust for Tax Rate Increases

Under the safe harbor rule, an increase in the rate of tax would generally not be reflected in deposits made by persons using the look-back quarter until the second quarter after the quarter for which the increased rate is effective (although the increased rate would be reflected in catch-up payments for each quarter). Therefore, the safe harbor deposit amounts for the first and second quarters beginning on or after the effective date of a tax rate increase are required to be calculated as if the new tax rate had been in effect during the look-back quarter. Thus, persons using the safe harbor rule in these quarters must deposit ⅙ of the amount of liability for which they would have been liable in the look-back quarter had the higher rate applied at that time. This rule would ensure that the statutory effective date of tax rate

changes would be appropriately reflected in deposits.

Look-back quarter liability is adjusted for determining safe harbor deposit amounts only where there is a change in the law increasing the rate of tax, and not when there is some other change that would have resulted in higher taxes in the look-back quarter.

First Time Filers

In addition to the de minimis exception which applies to all taxpayers, a special rule is provided for first time filers (new return filers). First time filers do not have a look-back quarter because the filing of ATF F 5300.26, Federal Firearms and Ammunition Tax Return, other than for a one-time or occasional return under section 53.151(a)(5), has not been required. Under this special rule, a person is considered to have met the semimonthly deposit requirement if the person's deposit for each semimonthly period in the current quarter is not less than 95 percent of the total tax liability incurred during the semimonthly period, each deposit is made on time, and any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported.

Technical and Clarifying Amendments

The definition of ''person'' is being added to § 53.11 in order to clarify what constitutes a person for purposes of Part 53.

Section 53.22 is being amended by exempting one-time or occasional filers from the requirement of obtaining an employer identification number; instead they may use their social security number.

Section 53.23 is being added to the regulations to advise taxpayers that upon approval by the Director, they may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part.

Section 53.24 is also being added to the regulations to impose the requirement to retain records for a period of three years.

Section 53.142 is being amended to incorporate a statutory amendment to section 4222(c), pertaining to tax-free registrations.

Section 53.152 paragraph (c) is being redesignated, as the subject matter is of an administrative nature and is more appropriately placed in a subpart governing administrative matters. As a result, § 53.152(c) is being deleted from subpart L and now appears as § 53.21(d) in subpart C.

Conforming Regulatory Changes to §§ 53.151 and 53.158

Language in §§ 53.151 and 53.158 is being amended to maintain consistency with the new deposit rule.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512–0467 and 1512–0509. The estimated average annual burden associated with 1512–0467 is 0.7 hours per respondent or recordkeeper, the estimated average annual burden associated with 1512–0497 is 0.25 hours per respondent or recordkeeper, and the estimated average annual burden associated with 1512–0509 is 0.21 hours per respondent or recordkeeper.

For further information concerning the collection of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal author of this document is Tamara Light, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Security measures, Spices and flavoring, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfer, Excise taxes, labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 250

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims,

Customs duties and inspection, Electronic fund transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Excise taxes, Packaging and containers, Penalties, Seizures and forfeitures, Surety bonds, Reporting requirements.

Authority and Issuance

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275, and 285 are amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 19.522 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 19.522 Taxes to be collected by returns.

(a) *Deferred taxes.* * * * Except as provided in section 19.523(c), the periods to be covered by semimonthly returns on Form 5000.24 shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. * * *

* * * * *

Par. 3. Section 19.523 is amended by revising paragraph (a) and by adding new paragraph (c) to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as provided by paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (c)(3) of this section.

* * * * *

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 19.524, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required taxpayment due date for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

PART 24—WINE

Par. 4. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 5. Section 24.271 is amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 24.271 Payment of tax by check, cash or money order.

(a) * * *

(b) *Return periods.* Except as provided for in paragraph (c) of this section and § 24.273, or where there is no tax due, return periods are from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month. The proprietor shall file returns with remittances, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 24.271(c)(3).

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 24.272, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 24.271(b)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 24.271(c)(2)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 24.271(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 24.271(c)(2)).

PART 25—BEER

Par. 6. The authority citation for 27 CFR Part 25 continues to read as follows:

Authority: 19 U.S.C. 81(c); 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 7. Section 25.163 is amended by revising the first sentences as follows:

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.164a, 25.173, and 25.175. * * *

Par. 8. Section 25.164 is amended by revising paragraphs (c) and (d) to read as follows:

§ 25.164 Semimonthly return

* * * * *

(c) *Return periods.* Except as provided in § 25.164a, return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* Except as provided in § 25.164a the brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 25.164a(c).

* * * * *

Par. 9. Section 25.164a is added to read as follows:

§ 25.164a Special Rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 25.165, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer shall file a return on Form

5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September.* (1) *Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Par. 10. The authority citation for 27 CFR Part 53 is revised to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502.

Par. 11. Section 53.11 is amended by adding the definition of the term ''Person'' to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

* * * * *

§§ 53.22 and 53.152 [Amended]

Par. 12. Section 52.152(c) is redesignated as section 53.21(d).

Par. 13. Section 53.22 is amended by revising the first sentence of paragraph (a)(1) and by adding paragraph (a)(3) to read as follows:

§ 53.22 Employer identification number.

(a) * * *

(1) Except for one-time or occasional filers, every person who makes a sale or use of an article with respect to which a tax is imposed by section 4181 of the Code, and who has not earlier been assigned an employer identification number or has not applied for one, shall make an application on Form SS–4 for an employer identification number.

* * * * *

(3) *One-time or occasional filers.* A person who files a return under the provisions of section 53.151(a)(5) is not required to make application for an employer identification number. Such persons may use their social security number on any return, statement or other document submitted to ATF by that person in lieu of an employer identification number.

* * * * *

Par. 14. Sections 53.23 and 53.24 are added to read as follows:

§ 53.23 Alternate methods or procedures.

(a) A taxpayer, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) Where the taxpayer desires to employ an alternate method or procedure, a written application to do so shall be submitted to the regional director for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The taxpayer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization.

§ 53.24 Records.

(a) *In general*—(1) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable an ATF officer to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(2) [Reserved]

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of the records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and

detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and Subpart L of this part.

(d) *Place and period for keeping records.* (1) All records required by this part shall be prepared and kept by the person required to keep them, at one or more convenient and safe locations accessible to ATF officers, and shall at all times be immediately available for inspection by such officers.

(2) Except as otherwise provided in this subparagraph, every person required by the regulations in this part to keep records in respect of a tax shall maintain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least three years after the date the claim is filed.

(e) *Reproduction of original records.* (1) General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records. Any process may be used which accurately and timely reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(2) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record. Such reproduced records shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record.

Par. 15. Section 53.142 is amended by revising the section heading, the introductory text of paragraph (a), and paragraphs (a)(4) and (b) to read as follows:

§ 53.142 Denial, revocation or suspension of registration.

(a) The regional director is authorized to deny, revoke or temporarily suspend, upon written notice, the registration of any person and the right of such person to sell or purchase articles tax free under section 4221 of the Code in any case in which he finds that:

* * * * *

(4) Such denial, revocation, or suspension is necessary to protect the revenue; or

* * * * *

(b) The denial, revocation, or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

Par. 16. Section 53.151 is amended by revising the last sentence of paragraph (a)(2), by adding a new paragraph (a)(5), and by revising paragraph (b)(1) to read as follows:

§ 53.151 Returns.

(a) In general. * * *

(2) *Return periods after September 30, 1992.* * * * Except as provided in paragraph (a)(5) of this section, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability for the entire calendar year and who has not filed a final return in accordance with § 53.152 shall file an annual return on ATF Form 5300.26.

* * * * *

(5) *Special rule for one-time or occasional filings for return periods on or after July 1, 1995.* One-time or occasional filers are not required to file quarterly or annual returns pursuant to paragraph (a)(2) of this section if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business. Such persons shall file and pay tax for periods only when liability is incurred. See § 53.159(b)(2), providing that a deposit of taxes is not required for a one-time or occasional filing.

(b) *Monthly and semimonthly returns.*—(1) *Requirement.* If the regional director determines that any taxpayer who is required to deposit taxes under the provision of §§ 53.157 or 53.159 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the regional director, to file a monthly or semimonthly return on ATF Form 5300.26. Every person so notified by the regional director shall file a return for the calendar month or semimonthly period in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 53.152 or is required to file returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

* * * * *

Par. 17. Section 53.157 is amended by revising the section heading and by adding a note preceding paragraph (a) to read as follows:

§ 53.157 Deposit requirement for deposits made for calendar quarters prior to July 1, 1995.

Note: For deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995, see § 53.159.

* * * * *

Par. 18. Section 53.158 is amended by revising the second sentences of paragraphs (b)(2) and (b)(3) to read as follows:

§ 53.158 Payment of tax by electronic fund transfer.

(b) *Requirements.* * * *

(2) * * * The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account no later than the close of business on the last day for making the deposit or filing the return as prescribed in §§ 53.157 or 53.159, and 53.153. * * *

(3) * * * Taxpayers electing to discontinue making remittances by EFT shall remit the tax with the next deposit or return as prescribed in §§ 53.157 or 53.159, and 53.151 for remittances not made by EFT and notify the regional director by attaching a written notification to the tax deposit form or return stating that remittance of firearms and ammunition excise taxes will no longer be made by EFT.

* * * * *

Par. 19. Section 53.159 is added to read as follows:

§ 53.159 Deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995.

(a) *Definitions*—

(1) *Definition of tax liability*. For purposes of this section, the term ''tax liability'' means the total tax liability for the specified period plus or minus any allowable adjustments made in accordance with the instructions applicable to the form on which the return is made.

(2) *Semimonthly period*. Except as provided in paragraph (c)(4)(ii) of this section, the term ''semimonthly period'' means the first 15 days of a calendar month or the remaining portion of a calendar month following the 15th day of that month.

(b) *In general*—(1) *Semimonthly deposits.* Except as provided in paragraphs (b)(2), (c)(2), and (j) of this

section, any person required to file a quarterly excise tax return on ATF Form 5300.26 must make a deposit of tax for each semimonthly period as prescribed in paragraph (c) of this section.

(2) *One-time or occasional filings.* No deposit is required in the case of any taxes reportable on a one-time or occasional filing (as defined in § 53.151(a)(5)).

(c) *Amount of deposit*—(1) *In general.* Except as provided in paragraphs (c)(2), (c)(3) and (c)(6) of this section, the deposit of tax for each semimonthly period must be equal to the amount of tax liability incurred during that semimonthly period. Except as provided in paragraph (c)(3) of this section, no deposit is required for any semimonthly period in which no tax liability is incurred.

(2) *De minimis exception.* Except as provided in paragraph (c)(3) of this section, any person who has a tax liability for the current calendar quarter of $2,000 or less is not required to make deposits for that quarter. However, semimonthly deposits of tax are required beginning with the semimonthly period in which unpaid tax liability exceeds $2,000 and for every semimonthly period thereafter in which tax liability is incurred. The first deposit for the current quarter shall be equal to the unpaid tax liability; thereafter, deposits shall be equal to the amount of tax liability incurred during that semimonthly period.

(3) *Amount of deposit; safe harbor rule based on look-back quarter liability*; *In general.* Except as provided in paragraph (c)(6) of this section, any person who made a return of tax on ATF Form 5300.26 reporting taxes for the second preceding calendar quarter (the ''look-back quarter''), or who did not file a return for the look-back quarter because of the provisions of § 53.151(a)(2), is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the current calendar quarter is an amount equal to not less than 1/6 (16.67 percent) of the total tax liability incurred for the look-back quarter;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(4) *Modification for third calendar quarter.* The safe harbor rule in paragraph (c)(3) of this section does not apply for the third calendar quarter unless—

(i) the deposit of taxes for the semimonthly period July 1–September 15 meets the requirements of paragraph (c)(3) of this section; and

(ii) each deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12th (8.34 percent) of the total tax liability incurred for the look-back quarter.

(5) *Modification for tax rate increase.* (i) *Application.* The safe harbor rule as prescribed in paragraph (c)(3) is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax prescribed by 26 U.S.C. 4181 to which this part 53 applies.

(ii) *Modification.* The amount of deposit for calendar quarters referred to in paragraph (c)(3) of this section must be adjusted so that the deposit of taxes for each semimonthly period in the calendar quarter is not less than 1/6 (16.67 percent) of the tax liability the person would have had with respect to the tax for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(6) *First time filers.* Any person who did not file a return of tax on ATF Form 5300.26 for the first and second preceding calendar quarters because they were not engaged in any activity with respect to which tax is reportable on the return in the course of a trade or business, is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the tax liability incurred with respect to those taxes during the semimonthly period;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(d) *Failure to comply with deposit requirements.* (1) If a person fails to make deposits as required under this part, the regional director may withdraw the person's right to use the safe harbor rule provided by paragraph (c)(3) of this section.

(2) *Cross reference.* The regional director may also require a taxpayer who fails to make deposits of tax to file a monthly or semimonthly return, see § 53.151(b)(1).

(e) *Time for making deposit.* Except for deposits for the period September 16–25, each deposit required to be made by this section shall be made not later than the 9th day of the semimonthly period following the close of the period for which it is made. The deposit for the period September 16–25 shall be made not later than September 28. The deposit for the period September 26–30, is due not later than October 9.

(f) *Last day for filing.* (1) Except as provided by paragraph (f)(2) of this section, if the due date of the deposit falls on a Saturday, Sunday, or legal holiday, the deposit and remittance shall be due on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this section, ''legal holiday'' is defined by section 7503 of the Code and 27 CFR 70.306(b) of this chapter.

(2) If the required due date of the deposit for the period September 16–25 falls on a Saturday, the deposit and remittance shall be due on the preceding day. If such required due date falls on a Sunday, the return and remittance shall be due on the following day.

(g) *Forms and procedures.* Each remittance of amounts required to be deposited shall be accompanied by ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions. Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions contained in ATF Procedure 92–1, Publication 5000.11. The timeliness of the deposit will be determined by the date it is received by the lockbox financial institution, or the ATF officer designated on the form accompanying the deposit, or the Treasury Account, when made by EFT. In order for deposits of less than $20,000 made by U.S. Mail to be considered received timely, the date of mailing must be on or before the second day preceding the due date of the deposit as evidenced by the official postmark of the U.S. Postal Service stamped on the cover in which the deposit was mailed. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the deposit by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the deposit. Any deposit of $20,000 or more must be received by the last day prescribed for making such deposit, regardless of when mailed. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns),

or at the time deposited, whichever is later.

(h) *Number of remittances.* A person required by this section to make deposits shall make one deposit for a semimonthly period.

(i) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit however, by the fact that no form has been furnished. A person not supplied with the form is required to obtain the form in ample time to make the required deposits within the time prescribed. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5950.

(j) *Taxpayers required to file monthly or semimonthly returns.* This section does not apply to taxes for:

(1) Any month or semimonthly period in which the taxpayer receives notice from the regional director pursuant to section 53.151(b) to file ATF Form 5300.26; or

(2) Any subsequent month or semimonthly period for which a return on ATF Form 5300.26 is required.

(3) Taxpayers required to file monthly returns shall make semimonthly deposits of 100 percent of the liability incurred during each semimonthly period by the 9th day of the month following the last day of the semimonthly period. Taxpayers required to file semimonthly returns shall pay any tax due for the semimonthly period with each return.

(k) *Examples.*

Example 1. One-time filing or occasional filing. (1) *Facts.* On October 18, 1995, A, an individual who lives in the United States purchases a custom made rifle outside the United States and imports it into the United States. A uses the rifle on October 20, 1995. A is liable for the firearms excise tax imposed by sections 4181 and 4218(a). Since A does not regularly sell rifles in arm's length transactions, a constructive sale price of $20,000 is determined (§ 53.115(b)). The amount of A's tax liability is $2200, 11 percent of the constructive sale price of the rifle. The liability is incurred during the fourth calendar quarter of 1995, the quarter during which the rifle is used (§ 53.111(d)). A did not import the rifle in the course of its trade or business and does not engage in any activities with respect to which tax is reportable on ATF Form 5300.26 in the course of a trade or business.

(2) *Filing requirement.* A must file a return on Form 5300.26 (§ 53.151(a)) for the fourth calendar quarter of 1995 reporting A's $2200 firearms excise tax liability. The Form 5300.26 is due by January 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). Because A did not import the firearm in the course of its trade or business and does not engage in any activities with respect to which tax is reportable in the course of a trade or business, the return is a one-time filing or occasional filing.

(3) *Payment requirement.* Because A's Form 5300.26 is a one-time filing, A is not required to make deposits of tax (§ 53.159(b)(2)). Instead, A pays the $2200 of tax with the return.

Example 2. Deposit requirement; based on look-back quarter liability. (1) *Facts.* B is a manufacturer of firearms. B sells 75 pistols which have a taxable sale price of $500 each during the second calendar quarter of 1996. B sold 50 of the pistols in the first semimonthly period of May, 1996, and the other 25 pistols in the second semimonthly period of April, 1996. B did not incur tax liability in any other semimonthly period in the second quarter. The amount of B's tax liability for the second calendar quarter is $3,750, 10 percent of the taxable sale price of the pistols. B filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter, on January 31, 1996 reporting tax liability in the amount of $2,700.

(2) *Deposit requirement.* B is required to make deposits of tax for each semimonthly period in the calendar quarter because B has incurred more than $2,000 in liability for the current quarter. B may use the safe harbor rule based on look-back quarter liability to determine the amount of the required deposits (§ 53.159(c)(3)). Under this safe harbor rule, B's deposit for each semimonthly period must equal at least $450.00, 1/6 (16.67 percent) of the tax liability incurred for the look-back quarter. B's deposit must be timely and B must pay the amount of any underpayment by the due date of the return. Accordingly, B meets the deposit requirement if B makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
April 1–15	April 24, 1996 .	$450.00
April 16–31	May 9, 1996	450.00
May 1–15	May 24, 1996 ..	450.00
May 16–30	June 10, 1996 .	450.00
June 1–15	June 24, 1996 .	450.00
June 16–30	July 9, 1996	450.00

The deposit due on June 10, 1996, would ordinarily be due on June 9, 1996. However, because June 9, 1996 is a Sunday, under section 7503, B has an additional day to make the required deposit.

(3) *Filing requirement.* B must file a return on Form 5300.26 for the second calendar quarter of 1996 reporting B's $3750 tax liability (§ 53.151(a)). The form 5300.26 is due by July 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). B must also pay $1050.00, the underpayment amount by which the total tax liability for the second calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

Example 3. Deposit amount; no liability in look-back quarter. (1) *Facts.* C, a manufacturer of ammunition, filed returns for the first, second and third quarters of 1995 reporting C's tax liability. During the fourth quarter of 1995, C did not make any taxable sales of shells or cartridges, thereby incurring no tax liability for that return period. C did not file Form 5300.26 for the fourth calendar quarter since no tax liability was incurred (§ 53.151(a)(2)). C made taxable sales in the second quarter of 1996 amounting to $25,500.00, incurring a tax liability of $2805.

(2) *Deposit requirement.* Ordinarily, C would be required to make deposits of tax for each semimonthly period in the calendar quarter because C's total liability for the current calendar quarter exceeds $2,000. However, since C incurred a tax liability of $0 in the second preceding calendar quarter (the look-back quarter) (§ 53.159(c)(3)), under the safe harbor rule, C is not required to make deposits of tax.

(3) *Filing requirement.* C is required to file a return on Form 5300.26 reporting C's $2805 ammunition excise tax liability. The form 5300.26 is due by July 31, 1996.

(4) *Payment requirement.* C must pay the $2805 tax with the return.

Example 4. Deposit requirement; First time Filer. (1) *Facts.* D, a manufacturer of firearms, began business on 2/16/96. D sold 300 shotguns which had a taxable sales price of $210 each during the first quarter of 1996. D sold 70 shotguns in the second semimonthly period of February, 1996, 130 shotguns in the first semimonthly period of March, 1996 and 100 shotguns in the second semimonthly period of March, 1996. The amount of D's tax liability for the first quarter of 1996 is $6,930, 11 percent of the taxable sale price of the shotguns.

(2) *Deposit requirement.* D is required to make a deposit of tax when D's tax liability exceeds $2,000 (§ 53.159(c)(2)). Therefore, D must make a deposit of tax beginning with the first semimonthly period in March, the semimonthly period in which D's unpaid tax liability exceeded $2,000. Because D, a first time filer, does not have an established look-back quarter, D's deposit of tax must be at least 95 percent of the incurred tax liability. D is required to make deposits of at least 95 percent of incurred tax liability for every semimonthly period in the quarter thereafter. D's deposits must be timely and any underpayment of tax must be paid by the due date of the return. Accordingly, D meets the deposit requirement if D makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
Feb. 16–29	March 11, 1996	$0
March 1–15	March 25, 1996	4,389
March 16–31 ...	April 9, 1996 ...	2,194.50

The deposits due on March 11, 1996, and March 25, 1996, would ordinarily be due on March 9, 1996, and March 24, 1996, respectively. However, because March 9, 1996, is a Saturday, and March 24, 1996, is a Sunday, under section 7503, D has until March 11, 1996, to make the deposit due on March 9, 1996, and until March 25, 1996, to make the deposit due on March 24, 1996.

(3) *Filing requirement.* D must file a return on Form 5300.26 for the first calendar quarter of 1996 reporting D's $6,930 tax liability (§ 53.151(a)). The form 5300.26 is due by April 30, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). D must also pay $346.50, the amount by which the tax liability for the quarter was underpaid, by the due date of the return.

Example 5. Deposit amount; third calendar quarter. (1) *Facts.* E, a manufacturer of firearms, is a semimonthly depositor who makes deposits of tax using the safe harbor rule based on the look-back quarter to determine the amount of tax required to be deposited for the third calendar quarter of 1995. E incurred a tax liability amounting to $38,000 for the third quarter. E filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter on May 1, 1995, reporting tax liability in the amount of $30,000.

(2) *Deposit requirement.* Because E has incurred more than $2,000 in liability and has chosen to make deposits of tax based on the look-back quarter, E is required to make deposits of tax equal to $5,000, 1/6 (16.67 percent) of the tax liability incurred in the look-back quarter, for each semimonthly period in the calendar quarter. However, because of the special rule which modifies the safe harbor rule for deposits of tax for the month of September (§ 53.159(c)(4)), E must make deposits equal to $2500.00 each, 1/12th (8.34 percent) of the tax liability incurred in the look-back quarter for the periods September 16–25 and September 26–30. E's deposits must be timely and E must pay the amount of any underpayment by the due date of the return. Accordingly, E meets the deposit requirement if E makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
July 1–15	July 24, 1995 ..	$5000.00
July 16–31	August 9, 1995	5000.00
Aug. 1–15	August 24, 1995.	5000.00
Aug. 16–31	Sept. 11, 1995	5000.00
Sept. 1–15	Sept. 25, 1995	5000.00
Sept. 16–25	Sept. 28, 1995	2500.00
Sept. 26–30	October 9, 1995.	2500.00

The deposits due on September 11, 1995, and September 25, 1995, would ordinarily be due on September 9, 1995, and September 24, 1995, respectively. However, because September 9, 1995, is a Saturday, and September 24, 1995, is a Sunday, under section 7503, D has until September 11, 1995, to make the deposit due on September 9, 1995, and until September 25, 1995, to make the deposit due on September 24, 1995.

(3) *Filing requirement.* E must file a return on Form 5300.26 for the third calendar quarter of 1995 reporting E's $38,000 tax liability (§ 53.153(a)). E must also pay $8,000, the underpayment amount by which the total tax liability for the third calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

PART 70—PROCEDURE AND ADMINISTRATION

Par. 20. The authority citation for 27 CFR Part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552: 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5376, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 21. Section 70.306 paragraph (a) is amended by revising the last sentence to read as follows:

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday or legal holiday.

(a) * * * For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E relating to alcohol, tobacco and certain other excise taxes, see 26 U.S.C. §§ 5061 and 6302 and the regulations covering the specific commodity.

* * * * *

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 22. The authority citation for 27 CFR Part 250 continues to read as follows:

Authority: 19 U.S.C. 81c: 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805: 27 U.S.C. 203, 205: 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 23. Section 250.112 is amended by revising paragraphs (b) and (d) and the last sentence of (c)(1) to read as follows:

§ 250.112 Returns for semimonthly periods.

* * * * *

(b) *Periods.* Except as provided for in paragraph (d) of this section, the periods to be covered by returns on ATF Form 5000.24 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(c) * * *

(1) * * * If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (d) of this section.

* * * * *

(d) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 250.112a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (d)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (d)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the

return and remittance shall be due on the immediately following day.

* * * * *

PART 270—MANUFACTURER OF TOBACCO PRODUCTS

Par. 24. The authority citation for 27 CFR Part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 25. Section 270.163 is revised to read as follows: § 270.163 Semimonthly tax return periods.

Except as provided in section 270.164, the periods to be covered by semimonthly tax returns shall be from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

Par. 26. Section 270.164 is added to read as follows:

§ 270.164 Special rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 270.165a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September.*

(1) *Facts.* X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 270.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 270.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 270.164(b)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 270.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 270.164(b)).

Par. 27. Section 270.165 is amended by revising paragraph (a), removing paragraph (b) and redesignating existing paragraph (c) as paragraph (b) to read as follows:

§ 270.165 Times for filing semimonthly return.

(a) *General.* Except as provided by § 270.164, and paragraph (b) of this section, semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 270.164(c).

* * * * *

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 28. The authority citation for 27 CFR Part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 29. Section 275.113 is revised to read as follows:

§ 275.113 Return periods.

Except as provided by § 275.114, the periods to be covered in the semimonthly tax returns shall be from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month.

Par. 30. Section 275.114 is amended by revising paragraphs (b) and (d) to read as follows:

§ 275.114 Time for filing.

* * * * *

(b) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 275.115a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The bonded

manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (b)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (b)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

* * * * *

(d) *Weekends and holidays.* Except as provided in paragraph (b)(4) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

PART 285—MANUFACTURER OF CIGARETTE PAPERS AND TUBES

Par. 31. The authority citation for 27 CFR Part 285 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 32. Section 285.25 is amended by revising paragraph (c), the first sentence of paragraph (f) and adding paragraph (g) to read as follows:

§ 285.25 Return of manufacturer.

* * * * *

(c) *Semimonthly return periods.* Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the 1st day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

* * * * *

(f) *Time for filing.* Except as provided by paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period.

* * *

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 285.27, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15th, and if any underpayment of tax is paid by October 14th.

(ii) Taxpayers are considered to have met the requirements of paragraph (g)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

Signed: June 6, 1995.

Daniel R. Black,

Acting Director.

Approved: June 19, 1995.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–15950 Filed 6–26–95; 10:47 am]

BILLING CODE 4810–31–U

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