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Wednesday
September 6, 1995

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG53

Prevailing Rate Systems; Abolishment of Certain Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to abolish the Federal Wage System special wage schedules for printing positions in the Los Angeles, California; San Diego, California; San Francisco, California; and Seattle-Everett-Tacoma, Washington, wage areas. Printing and lithographic employees in these wage areas will now be paid rates from the regular wage schedule for their respective wage area.

DATES: This interim rule becomes effective on September 6, 1995. Comments must be received by October 6, 1995. Employees paid rates from special wage schedules for printing positions in these areas will continue to to paid rates from those schedules until their conversion to the regular wage schedules for their respective wage areas effective on the first day of the first full pay period beginning on or after September 6, 1995.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense recommended to the Office of Personnel Management that the Los Angeles, San Diego, San Francisco, and Seattle-Everett-Tacoma Printing and Lithographic wage schedules be abolished and that the regular wage schedule for each area apply to printing employees. Federal employment in printing and lithographic occupations in these wage areas has declined in recent years. Only a small number of employees are now paid from these special wage schedules, and only a few of these employees actually benefit by being paid from the special schedule rather than the regular wage schedule. Most of the covered employees are paid ''floor rates'' established under the 5 CFR 532.279 provision that no maximum rate on a special printing schedule may be less than the maximum rate for the corresponding grade on the regular wage schedule for the wage area. In addition, with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process.

Los Angeles, California: Federal employment in printing and lithographic occupations in the Los Angeles wage area declined from 49 in 1993 to a current total of 16 in 1995. The special printing and lithographic wage schedule for the Los Angeles wage area now applies to 15 Defense Printing Service employees and 1 Department of Agriculture employee. The last full-scale survey involved the substantial work effort of contacting 72 printing establishments spread over Los Angeles County. Upon abolishment of the Los Angeles special printing schedule, three employees will become entitled to pay retention when converted to the regular wage schedule. The remaining 13 employees will benefit upon conversion by receiving higher regular wage rates.

San Diego, California: Federal employment in printing and lithographic occupations in the San Diego wage area declined from 46 in 1993 to a current total of 23 in 1995. The special printing and lithographic wage schedule for the San Diego wage area now applies to 23 Defense Printing Service employees. The last full-scale survey involved the substantial work effort of contracting 65 printing establishments spread over San Diego County. Upon abolishment of the San Diego special printing schedule, six employees will become entitled to pay retention when converted to the regular wage schedule. The remaining 17 employees will benefit upon conversion by receiving higher regular wage rates.

San Francisco, California: Federal employment in printing and lithographic occupations in the San Francisco wage area declined from 55 in 1993 to a current total of 16 in 1995. The special printing and lithographic wage schedule for the San Francisco wage area now applies to seven General Services Administration employees, five Defense Printing Service employees, two National Aeronautics and Space Administration employees, one Department of Agriculture employee, and one United States Coast Guard employee. The last full-scale survey involved the substantial work effort of contacting 71 printing establishments spread over 8 counties in the San Francisco metropolitan area. Upon abolishment of the San Francisco special printing schedule, two employees will become entitled to pay retention when converted to the regular wage schedule. The remaining 14 employees will benefit upon conversion by receiving higher regular wage rates.

Seattle-Everett-Tacoma, Washington: Federal employment in printing and lithographic occupations in the Seattle-Everett-Tacoma wage area declined from 45 in 1994 to a current total of 19 in 1995. The special printing and lithographic wage schedule for the Seattle-Everett-Tacoma wage area now applies to 11 Defense Printing Service employees and 8 General Services Administration employees. The last full-scale survey involved the substantial work effort of contacting 100 printing establishments spread over 4 counties. Upon abolishment of the Seattle-Everett-Tacoma special schedule, all 19 employees will benefit when converted to the regular wage schedule by receiving higher regular wage rates.

Upon abolishment of these special printing schedules, the printing and lithographic employees will be converted to the regular schedule for their wage area on a grade-for-grade basis. Their new rate of pay will be set at the applicable step of the regular schedule that equates to the employees' existing scheduled rate of pay. When the existing rate falls between two steps, the employee's new rate will be set at the rate of the higher of those two steps.

This conversion does not constitute an equivalent increase for within-grade increase purposes. In accordance with the OPM Operating Manual, *The Guide to Processing Personnel Actions,* this pay plan change will be processed as a ''Pay Adjustment,'' Nature of Action Code 894, authority code ZLM, citing this **Federal Register** notice as authority. Pay retention provisions will apply for employees not receiving increases upon conversion.

The Federal Prevailing Rate Advisory Committee has reviewed this recommendation and by consensus has recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the September 1995 wage surveys in Los Angeles, San Diego, San Francisco, and Seattle-Everett-Tacoma must begin immediately.

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 affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.279 [Amended]

2. In § 532.279, paragraphs (j) (5) through (8) are removed.

[FR Doc. 95–21904 Filed 9–5–95; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–95–21]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk order. Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs, requested the suspension. The suspension will make it easier for handlers to qualify milk for pool status and will prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market.

EFFECTIVE DATES: The suspension to § 1137.7 is effective from September 1, 1995, through February 29, 1996. The suspensions to § 1137.12 are effective from September 1, 1995, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued July 24, 1995; published July 28, 1995 (60 FR 38767).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with this market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

This suspension of rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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 its 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act, as amended, and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 28, 1995 (60 FR 38767), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the suspension was filed and no opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comment received and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1, 1995, through February 29, 1996: In the second sentence of § 1137.7(b), the words ''plant which has qualified as a'' and ''of March through August''; and

2. For the months of September 1, 1995, through August 31, 1996: In the first sentence of § 1137.12(a)(1), the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant''; and in the second sentence, the words ''30 percent in the months of March, April, May, June, July, and December

and 20 percent in other months of'', and the word ''distributing''.

Statement of Consideration

This rule suspends certain portions of the pool plant and producer definitions of the Eastern Colorado order. The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

For the months of September 1995 through February 1996, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1995 through August 1996, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended for several years to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. The marketing conditions which justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension action, to qualify certain of its milk for pooling, it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

There are ample supplies of locally produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting and no comments opposing the suspension were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1137, are amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1137.7 [Suspended in part]

2. In § 1137.7(b), the second sentence is amended by suspending the words ''plant which has qualified as a'' and ''of March through August'' from September 1, 1995, through February 29, 1996.

§ 1137.12 [Suspended in part]

3. In § 1137.12(a)(1), the first sentence is amended by suspending the words ''from whom at least three deliveries of milk are received during the month at a distributing pool plant'' from September 1, 1995, through August 31, 1996.

4. In § 1137.12(a)(1), the second sentence is amended by suspending the words ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing'' from September 1, 1995, through August 31, 1996.

Dated: August 29, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–22005 Filed 9–5–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Part 1942

RIN 0572–AB11

Community Facility Loans and Grants—Timber-Dependent Communities

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The regulations that are utilized by the Rural Utilities Service (RUS) and the Rural Housing and Community Development Service (RHCDS) in administering Community Facility Loans and Grants are being amended. This action is necessary to implement provisions of Public Law 103–427, provides for a temporary increase in the maximum population for eligibility for certain loans and grants as contained in the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) (CONACT) for certain timber-dependent communities in the Pacific Northwest. The temporary expanded eligibility applies to the following programs; (1) Water and Waste Disposal (WWD) loans and grants, (2) Community Facilities Loans (CF), and (3) Local Technical Assistance and Planning Grants.

DATES: This final rule is effective on September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Utilities Service, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Intergovernmental Review

These programs are listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and 10.766, Community Facilities Loans and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, ''Environmental Program.'' It has been determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR Part 1900 Subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR 1942–A. The assigned OMB control number is 0575–0015. This rule does not revise or impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Background

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking because they are merely following the specific directions of Public Law 103–427 and no discretion is left with the agency as to the population eligibility of certain timber-dependent communities in the Pacific Northwest. Good cause is found that notice and public procedure thereon are impractical, unnecessary and contrary to the public interest.

Public Law 103–427 addresses the financial needs of rural communities in the Pacific Northwest that are struggling to retool their economies in the face of necessary changes in timber-cutting policies. Certain rural communities in the Pacific Northwest are experiencing significant economic difficulties as a result of their proximity to the range of the northern spotted owl will benefit from the expanded loan and grant eligibility.

The CONACT caps the eligibility of cities or towns at 10,000 inhabitants for RUS WWD loans and grants and 20,000 inhabitants for RHCDS CF loans. Public Law 103–427 temporarily expands, until September 30, 1998, the population to 25,000 inhabitants if the cities or towns meet certain criteria. The communities must; (1) lie within 100 miles of the boundary of a national forest covered by the Federal document entitled ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; and (2) be located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

The Local Technical Assistance and Planning Grant program is impacted by this legislation. However, there are no existing regulations for this program, and therefore, that program is not included in this amendment.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. Section 1942.17 is amended by adding paragraph (b)(6) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(b) * * *

(6) Expanded eligibility for timber-dependent communities in Pacific Northwest. In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; the population limits contained § 1942.17(b) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(i) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; and

(ii) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

* * * * *

Dated: August 4, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95–22006 Filed 9–5–95; 8:45 am]

BILLING CODE 3410–32–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–51; Amendment 39–9361; AD 95–18–14]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6 series turbofan engines. This action requires a more detailed fluorescent penetrant inspection process for GE CF6 series high pressure compressor rotor (HPCR) stage 3–9 spools. This amendment is prompted by an uncontained failure of the HPCR stage 3–9 spool attributed to a material defect located in the hub to web transition area of the stage 6 disk. The actions specified in this AD are intended to prevent an uncontained HPCR engine failure, which can result in damage to the aircraft.

DATES: Effective September 21, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1995.

Comments for inclusion in the Rules Docket must be received on or before November 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–51, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7136, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report of an uncontained failure of a General Electric Company (GE) CF6–50 high pressure compressor rotor (HPCR) stage 3–9 spool. The failure resulted from a low cycle fatigue crack originating from a material defect located in the hub to web transition area of the stage 6 disk. The FAA has determined that a more detailed fluorescent penetrant inspection process is required for these high pressure compressor rotor stage 3–9 spools. This condition, if not corrected, could result in an uncontained HPCR engine failure, which can result in damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE All Operators' Wire, Subject: FPI of Deep Disk Spools, Best Practices, dated August 10, 1995, that describes a more detailed fluorescent penetrant inspection process for HPCR stage 3–9 spools.

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6 series engines of the same type design, this AD is being issued to prevent an uncontained HPCR engine failure, which can result in damage to the aircraft. This AD requires that a more detailed fluorescent penetrant inspection of the HPCR stage 3–9 spool be used whenever fluorescent penetrant inspection of these spools is accomplished. The actions are required to be accomplished in accordance with the All Operators' Wire described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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 this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD 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–ANE–51.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–18–14 General Electric Company: Amendment 39–9361. Docket 95–ANE–51.

Applicability: General Electric Company (GE) CF6 series engines. These engines are installed on but not limited to Airbus Industries A300, A310, and A330 series; Boeing 747 and 767 series; and McDonnell Douglas DC10 and MD11 series aircraft.

Note: This AD applies to each engine 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 engines 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 (b) 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 engine from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained high pressure compressor rotor (HPCR) engine failure, which can result in damage to the aircraft, accomplish the following:

(a) After the effective date of this AD all fluorescent penetrant inspections of HPCR stage 3–9 spools must be accomplished in accordance with the process described in GE All Operators' Wire, Subject: FPI of Deep Disk Spools, Best Practices, dated August 10, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) The actions required by this AD shall be accomplished in accordance with the following GE All Operators' Wire:

Document	Pages	Date
Subject: FPI of Deep Disk Spools, Best Practices. Total pages: 3.	1–3	Aug. 10, 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 General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on September 21, 1995.

Issued in Burlington, Massachusetts, on August 29, 1995.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–21955 Filed 9–1–95; 3:38 pm]

BILLING CODE 4910–13–U

14 CFR Part 97

[Docket No. 28315; Amdt. No. 1682]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

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

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

The Rule

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

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting

these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on August 25, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

** * * Effective September 14, 1995*

Willimantic, CT, Windham, VOR OR GPS–A, Amdt 8
Willimantic, CT, Windham, LOC RWY 27, Amdt 2
Memphis, TN, General Dewitt Spain, VOR RWY 16, Orig
Millington, TN, Charles W. Baker, VOR/DME RWY 18, Orig
Rutland, VT, Rutland State, GPS RWY 19, Orig

** * * Effective October 12, 1995*

Grand Canyon, AZ, Grand Canyon National Park, ILS/DME 1 RWY 3, Orig. CANCELLED
Columbus, GA, Columbus Metropolitan, LOC BC RWY 23, Amdt 13, CANCELLED
Columbus, GA, Columbus Metropolitan, ILS RWY 5, Amdt 24
Vincennes, IN, O'Neal, NDB or GPS–A, Amdt 5
Bellaire, MI, Antrim County, GPS RWY 2, Orig
Roseau, MN, Roseau Muni, VOR or GPS–A, Amdt 7A, CANCELLED
Roseau, MN, Roseau Muni, VOR or GPS RWY 34, Orig
Roseau, MN, Roseau Muni, VOR or GPS RWY 16, Amdt 7
Piqua, OH, Piqua, VOR/DME RNAV or GPS RWY 26, Amdt 7
Piqua, OH, Piqua, VOR RWY 26, Amdt 6
Piqua, OH, Piqua, VOR or GPS–A, Amdt 12
Spokane, WA, Felts Field, GPS–A, Orig

** * * Effective November 9, 1995*

Anvik, AK, Anvik, NDB RWY 35, Orig
Noatak, AK, Noatak, NDB/DME RWY 36, Orig
Selawik, AK, Selawik, VOR RWY 3, Orig
Selawik, AK, Selawik, VOR RWY 21, Orig
Freeport, IL, Albertus, VOR or GPS RWY 24, Amdt 6
Freeport, IL, Albertus, VOR/DME RNAV or GPS RWY 6, Amdt 5
Ely, NV, Ely Airport/Yelland Field, GPS RWY 18, Orig
Santa Fe, NM, Santa Fe County Muni, GPS RWY 28, Orig
Albany, NY, Albany County, ILS RWY 1, Amdt 8
Port Clinton, OH, Carl R Keller Field, VOR/DME or GPS–A, Amdt 7
Port Clinton, OH, Carl R Keller Field, NDB or GPS RWY 27, Amdt 11
Danville, VA, Danville Regional, VOR RWY 24, Amdt 9, CANCELLED

** * * Effective Upon Publication*

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28 Amdt 10

[FR Doc. 95–22068 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–13–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rule.

SUMMARY: EEOC is revising its procedural regulations at 29 CFR sections 1601.70 and .71 to rescind the delegations of authority to the Director of the Office of Program Operations to designate a State or local agency as a Fair Employment Practices (FEP) agency and to determine whether a FEP agency's designation shall be withdrawn. Those authorities are now vested in the full Commission. These changes are the result of a Motion adopted by the Commission on May 22, 1995.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or John D. Norquist, General Attorney, at (202) 663–4669 (voice) or (202) 663–7026 (TDD). This rule is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to the Office of Equal Employment Opportunity at (202) 663–7081 (voice) or (202) 663–7002 (TDD).

SUPPLEMENTARY INFORMATION: Section 706 of Title VII of the Civil Rights Act of 1964 recognizes a State or a political subdivision of a State that has a state or local law prohibiting unlawful employment discrimination and a State or local authority empowered to grant or seek relief from such practice or to institute criminal proceedings. The Commission's regulations allow such a State or local authority to apply for formal designation as a ''FEP Agency.'' The Commission's procedural regulations at 29 CFR 1601, Subpart G, sections 1601.70–.71 set forth the procedures for a FEP Agency to request designation and for the Commission to determine if a designation should be rescinded.

The current 1601.70 provides that any State or local agency or authority seeking FEP agency designation should submit a written request to the Program Director, Office of Program Operations. It also provides that the Program Director will provide to the State attorney general and to any corporation counsel of an involved local government an opportunity to comment upon aspects of State or local law which might affect the qualifications of any new agency. The Commission has determined that it needs to be more involved in the designation process. The Commission is therefore substituting the words ''Chairman of the Commission'' for ''Program Director, Office of Program Operations'' in 1601.70.

The current 1601.71 provides that the Program Director, Office of Program Operations, has the authority to determine whether State and local agencies should be designated as FEP agencies. It also provides that when the

Program Director becomes aware of events that lead him or her to believe that a deferral agency no longer meets the requirements for deferral or designation, the Director should notify the agency and request a response. Based on the response or after a hearing, the Program Director is authorized to render a final determination regarding continuation of the agency as a FEP agency. The Commission has determined that these decisions are better made by the full Commission. At its meeting on May 22, 1995, the Commission rescinded the delegation of authority to the Director of the Office of Program Operations to make determinations affecting the designation of a State or local fair employment practices agency as a FEP agency. As a result of this action, the Commission is substituting ''Commission'' or ''Chairman of the Commission'' for ''Program Director, Office of Program Operations'' in 1601.71 and making conforming grammatical adjustments.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. Under the Regulatory Flexibility Act, this rule will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Individuals with disabilities.

For the Commission,

Gilbert F. Casellas,

Chairman.

For the reasons set forth in the preamble, EEOC is amending 29 CFR part 1601 as follows:

PART 1601—[AMENDED]

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

§ 1601.70 [Amended]

2. Paragraph (b) of section 1601.70 is amended by substituting the words ''Chairman of the Commission'' for the words ''Program Director, Office of Program Operations'' in the first sentence.

3. Paragraph (e) of section 1601.70 is amended by substituting the words ''Chairman or his or her designee'' for the words ''Program Director, Office of Program Operations,'' in the first sentence.

4. Paragraph (a) of section 1601.71 is amended by:

(a) substituting the word ''Commission'' for the words ''Program Director, Office of Program Operations,''; and

(b) substituting the words ''the Commission'' for the words ''he or she''.

5. Paragraph (b) of section 1601.71 is amended by substituting the word ''Commission'' for the words ''Program Director, Office of Program Operations,'' in both places where it is found in the first sentence.

6. Paragraph (c) of section 1601.71 is amended by:

(a) substituting the word ''Chairman'' for the words ''Program Director, Office of Program Operations,'' in the first sentence;

(b) substituting the words ''the Chairman'' for the words ''such Director'' in the first sentence;

(c) substituting the word ''Chairman'' for the word ''Director'' in the second sentence; and

(d) substituting the word ''Commission'' for the word ''Director'' in the third sentence.

[FR Doc. 95–22025 Filed 9–5–95; 8:45 am]

BILLING CODE 6750–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–7–6789a; FRL–5280–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD) which control oxides of nitrogen (NO_X) from industrial, commercial, and institutional boilers, steam generators, and process heaters. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This final rule is effective on November 6, 1995 unless adverse or critical comments are received by October 6, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: SCAQMD Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; and Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking (NPRM) entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General

Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this notice of direct final rulemaking by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme;[1] therefore this area was subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by either a pre-enactment or post-enactment control technologies guideline (CTG) document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NOx sources and submitted as SIP revisions, are expected to require final installation of the actual NOx controls as expeditiously as practicable, but no later than May 31, 1995.

SCAQMD Rule 1146 and Rule 1146.1 were adopted by SCAQMD on May 13, 1994, and were submitted by CARB to EPA on July 13, 1994. These submitted rules were found to be complete on July 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[2] By today's notice, EPA is taking direct final action to approve these rules into the Federally approved SIP.

SCAQMD Rule 1146 and 1146.1 control emissions of NO_X from industrial, commercial, and institutional boilers, steam generators and process heaters. NO_X emissions contribute to the production of ground level ozone and smog. The rules were adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following section contains EPA's evaluation and final action for these rules.

EPA Evaluation

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), which identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, contains the following significant changes from the current SIP rule:

1. Expands applicability beyond steam generators with rated heat input capacity (RHIC) of 50 MBtu/hr or more.
2. Lowers emission limits.
3. Adds definitions, control plan requirements, recordkeeping, compliance determination provisions, a compliance schedule, and an equipment tuning procedure.

SCAQMD Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, is a new rule which controls emissions from units between 2 and 5 million Btu per hour. The major provisions of this rule include: emission limits, recordkeeping, compliance determination provisions, a compliance schedule, and an equipment tuning procedure.

For the source category of industrial, commercial, and institutional boilers, steam generators, and process heaters, CARB has made a determination on the emission levels that constitute RACT, and CARB has published a guidance document concerning their determination for this source category. EPA believes that the emission limits in Rule 1146 and Rule 1146.1 are consistent with guidance and policy for making RACT determinations, and that these limits satisfy the RACT requirement. A more detailed discussion of the sources controlled,[4] the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for each rule, available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD Rule 1146 and Rule 1146.1 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to

[1] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

[4] Rule 1146 and Rule 1146.1 will apply to sources which are not covered in the SCAQMD NO_X RECLAIM program.

relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995, unless, by October 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 6, 1995.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind state, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under state law. Therefore, no additional costs to state, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

Small Businesses

Under the Regulatory Flexibility Act, 5 U.S.C. Section 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. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic 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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. U.S. E.P.A. , 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

Part 52, 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 F—California

2. Section 52.220 is amended by adding paragraph (c) (198)(i)(H)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(H) South Coast Air Quality Management District.

(*1*) Rule 1146 and Rule 1146.1, adopted May 13, 1994.

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[FR Doc. 95–21877 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[SD6–1–6947a and SD5–1–6191a; FRL–5279–3]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves the State implementation plan (SIP) revisions submitted by the State of South Dakota on November 12, 1993 and March 7, 1995. EPA is replacing the existing rules approved in the SIP with the following chapters of the Administrative Rules of South Dakota (ARSD), as requested by the State: 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, as in effect on January 5, 1995. The State's submittals included revisions to the State's definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide (SO_2) rules, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements.

In addition, EPA is approving the State's construction and operating permit program under section 112(l) of the Clean Air Act (Act) for the purposes of creating federally enforceable permit conditions for sources of hazardous air pollutants (HAPs).

DATES: This final rule is effective on November 6, 1995 unless adverse comments are received by October 6, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500,

Denver, Colorado 80202–2405; South Dakota Department of Environment and Natural Resources, Division of Environmental Regulation, Joe Foss Building, Pierre, South Dakota 57501; and The Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, D.C. 20460.

Written comments should be addressed to Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 1993, the State of South Dakota submitted revisions to its SIP. Specifically, the State requested that the existing State rules approved in the SIP be replaced with the most recent codification of the ARSD, Chapters 74:36:01–04 and 74:36:06–13 inclusive. In addition to recodification, the State made numerous revisions to its air quality regulations, including definitions, minor source construction and operating permit rules, source category emission limitations, NSPS, national emission standards for hazardous air pollutants (NESHAPs), NSR requirements for new and modified sources impacting nonattainment areas, and other minor revisions.

In a July 13, 1994 letter, EPA noted many deficiencies in the State's November 12, 1993 submittal and requested that the State correct the major deficiencies before EPA would proceed with approval. The State made those corrections to its rules and submitted the rule corrections to EPA on March 7, 1995. In that submittal, the State also addressed EPA's July 7, 1994 call for revision of the South Dakota SIP to comply with the enhanced monitoring and compliance certification program requirements of sections 110, 113, and 114 of the Act. In addition, the State adopted other revisions to its rules, including its acid rain rules and updates to its incorporation by reference of the Federal requirements for NSPS and HAPs.

The March 7 submittal requested that the previous regulations approved in the SIP be replaced with ARSD Chapters 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, as in effect on January 5, 1995. The following State regulations were not included in the State's March 7 SIP submittal: ARSD 74:36:05 Operating Permits for Part 70 Sources, for which EPA granted interim approval on March 22, 1995 (see 60 FR 15066–15069); ARSD 74:36:08 National Emission Standards for Hazardous Air Pollutants, which the State has taken out of the SIP and has instead requested delegation of authority for these standards; ARSD 74:36:09 Prevention of Significant Deterioration (PSD), which incorporates by reference the corresponding Federal rules at 40 CFR 52.21 that EPA delegated authority to the State to implement on July 6, 1994 (see September 15, 1994 **Federal Register**, 59 FR 47260); ARSD 74:36:14 Variances, which the State did not include in the SIP because such a provision could not be approved as part of the SIP as it is inconsistent with section 110(i) of the amended Act; and ARSD 74:36:16 Acid Rain Program, which will be acted on by EPA separate from this SIP approval.

This document evaluates the State's submittal for conformity with the corresponding Federal regulations and the requirements of the Act.

II. This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565, April 16, 1992]. The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

The State of South Dakota held public hearings on February 18, 1993 and November 17, 1994 to entertain public comment on the SIP revisions, at which the rule revisions were adopted by the State. These rule revisions were formally submitted to EPA for approval in the SIP on November 12, 1993 and on March 7, 1995.

The SIP revisions were reviewed by EPA to determine completeness shortly after their submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated January 12, 1994 and June 28, 1995 were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the processing of the SIP submittals.

2. Evaluation of State's Submittals

The following summarizes the State's submittals and EPA's review for approvability:

a. ARSD 74:36:01 Definitions

The State made numerous revisions to its definitions in ARSD 74:36:01 in order to make the definitions consistent with other provisions in the State's rules and with the corresponding Federal regulations, including the State's recently adopted title V permitting program in ARSD 74:36:05 and the acid rain program in ARSD 74:36:16.

EPA has reviewed the definitions included in this chapter against the corresponding Federal definitions in 40 CFR parts 51, 60, and 70 and for conformity with the State's regulations. EPA believes the revised definitions are consistent with the corresponding Federal definitions, with the following clarifications.

As discussed in EPA's January 12, 1995 **Federal Register** notice of proposed interim approval of South Dakota's title V program (see 60 FR 2919), EPA believes clarification regarding two of the State's definitions is necessary to ensure that the provisions are interpreted consistently with the Federal regulations:

(1) The definition of ''federally enforceable'' which appears at ARSD 74:36:01:01(28) reads as follows:

> ''Federally enforceable,'' all limits and conditions that are enforceable by the administrator of EPA pursuant to federal law. These limits and conditions include those requirements developed pursuant to this article, those appearing in 40 CFR 60 and 61 (July 1, 1993), requirements within the state implementation plan and permit requirements established pursuant to this article or 40 CFR 51 Subpart I (July 1, 1993). The use of this term does not impede the Department's authority under state law to enforce these limits and conditions.

This definition is significant for determining whether a source is subject to preconstruction and operating permitting requirements as a major source or as a minor source, because it is used in defining the ''potential to emit'' of a source. To be consistent with EPA's definition of ''federally

enforceable,'' the second sentence of the above definition cannot and should not be read to expand on the first sentence of the definition. For example, requirements developed pursuant to ARSD Article 74:36 might be, but would not necessarily be, federally enforceable. Such Federal enforceability would depend on whether such requirements had been included in a source's preconstruction or operating permit issued under an EPA-approved program, whether such requirements had been approved by EPA as part of the SIP, or whether such requirements were already considered Federal regulations (such as NSPS promulgated in 40 CFR part 60 which South Dakota has incorporated by reference in ARSD 74:36:07). EPA's interpretation is that the requirements delineated in the second sentence of the definition are only federally enforceable if they are enforceable by the administrator of EPA pursuant to Federal law.

(2) The second sentence of the definition of ''major source'' in ARSD 74:36:01:08(1) reads as follows:

> Emissions from any oil exploration or production well and its associated equipment and emissions from any pipeline compressor or pump station may not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

To be consistent with the Federal regulations, this sentence must be read as only being applicable to a determination of whether a source is major under section 112 of the Act. This language cannot be applied when determining whether a source is major under other sections of the Act.

With these interpretations, EPA believes the definitions in ARSD 74:36:01 are consistent with the corresponding Federal regulations. EPA is approving all of the definitions in ARSD 74:36:01, with the exception of two definitions related to the State's acid rain program which EPA will be acting on separately: ''acid rain permit'' and ''acid rain program'' in ARSD 74:36:01:01(2) and (3).

b. ARSD 74:36:02 Ambient Air Quality

This chapter was revised to refer to the Federal regulations for the National Ambient Air Quality Standards (NAAQS), methods of sampling and analysis, air quality monitoring networks, and ambient air monitoring in 40 CFR parts 50, 53, and 58. The State's regulation is consistent with the relevant Federal requirements and is approvable.

c. ARSD 74:36:03 Air Quality Episodes

This chapter was revised to refer to the Federal guidelines for emergency episode plans in 40 CFR 51.151–153 and appendix L. The State's regulation is consistent with the relevant Federal requirements and is approvable.

d. ARSD 74:36:04 Operating Permits for Minor Sources

This chapter was revised extensively to combine the State's existing minor source construction permit and FESOP requirements into one permitting system and to ensure compliance with the Federal requirements for both construction permit programs and FESOP programs. This chapter only applies to sources which are not considered to be 40 CFR part 70 sources (i.e., sources which are not required to obtain a title V operating permit). (Note that the State's construction permitting program for new and modified major sources is the State's PSD permitting program in ARSD 74:36:09.) Specifically, a new source in South Dakota must obtain an operating permit prior to construction, and an existing source must obtain a permit in order to operate the source. Such operating permits will be valid for five years and must be renewed.

(1) Construction Permit Program.

The minor source construction permit element of the State's permitting program must meet the corresponding Federal requirements in 40 CFR 51.160–164, in order to be approved by EPA. As detailed in the Technical Support Document (TSD) accompanying this notice, EPA believes the State's construction permit requirements meet all of the corresponding Federal requirements in 40 CFR 51.160–164.

(2) FESOP Program.

On June 28, 1989, EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of FESOPs (see 54 FR 27282). Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered federally enforceable. The EPA has encouraged States to develop such FESOP programs in conjunction with title V operating permit programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the September 18, 1992 guidance document entitled, ''Limitation of Potential to Emit with Respect to Title V Applicability Thresholds,'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) In addition, on November 3, 1993, EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' from John S. Seitz, Director, OAQPS, that this mechanism could be extended to create federally enforceable limits for emissions of HAPs if the program were approved pursuant to section 112(l) of the Act. (See Section III. below for further details on EPA's section 112(l) approval of South Dakota's FESOP program.)

As detailed in the TSD, EPA has reviewed the State's permitting program for conformity with the FESOP criteria outlined in the June 28, 1989 **Federal Register** notice and believes the State's program adequately meets those requirements, although one clarification regarding their rules needs to be made:

South Dakota's rules do not specifically provide for submittal of each proposed and final permit to EPA on a timely basis. However, EPA has established procedures in the annual State-EPA agreement requiring the State to submit to EPA proposed and final permits which would limit the potential to emit of a source so that it would not be considered major. EPA reiterates that requirement in this document. That is, for any operating permit issued by the State to be considered federally enforceable, the State must submit the proposed and final permit to EPA in a timely manner, as well as meet all of the other requirements of its program and the June 28, 1989 **Federal Register**.

Thus, EPA is approving South Dakota's construction permit/FESOP program because it adequately meets the requirements of the June 28, 1989 **Federal Register** and 40 CFR 51.160–164. Permits issued by the State that conform to the State's rules and corresponding Federal requirements will be considered federally enforceable. See the TSD accompanying this document for further details.

e. ARSD 74:36:06 Regulated Air Pollutants

In this chapter, the State combined its Control of Particulate Emissions regulation previously codified in ARSD 74:26:06 and its Control of Sulfur Compound Emissions regulation previously codified in ARSD 74:26:07 into one chapter. The State made minor revisions to simplify its particulate matter emission regulations, which EPA believes are consistent with the Act and approvable.

In addition, the State made revisions to its regulations controlling SO_2 emissions in this chapter, as a result of EPA's nationwide effort to have SO_2 enforceability deficiencies identified

and corrected in SIPs before title V operating permit programs become effective. Because the title V operating permits will initially incorporate underlying SIP requirements, it is important that the underlying SIP is enforceable so that the permits themselves will be enforceable. Thus, on March 8, 1991, EPA provided a list of enforceability deficiencies in South Dakota's SO_2 emission control rules. The Region used the ''SO_2 SIP Enforceability Checklist'' when reviewing South Dakota's SO_2 rules for enforceability deficiencies. This checklist was included as an attachment to the November 28, 1990 memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs, and it focused on the following topics:

(1) Clarity;

(2) Averaging times consistent with protection of the SO_2 NAAQS;

(3) Clear compliance determinations;

(4) Continuous emission monitoring;

(5) Adequate reporting and recordkeeping requirements;

(6) Director's discretion issues; and

(7) Stack height issues.

The State of South Dakota subsequently adopted revisions to address the deficiencies outlined in EPA's March 8, 1991 letter. Those revisions include: clarifying the applicability of this chapter to include units required to be permitted under article 74:36; specifying a 3-hour rolling averaging time, consistent with the SO_2 NAAQS, for the SO_2 emission limitations of this chapter; and referring to test methods listed in chapter 74:36:11 and including appropriate reference methods in that chapter. Recordkeeping and reporting requirements are addressed through the operating permit rules in ARSD 74:36:05:16.

EPA believes the State has adequately addressed the SO_2 deficiencies identified in EPA's March 8, 1991 letter. Therefore, EPA is approving the State's SO_2 regulations.

f. ARSD 74:36:07 New Source Performance Standards

In this chapter, the State has adopted new NSPS by incorporating by reference the Federal NSPS for subparts Dc, QQ, RR, VV, XX, AAA, JJJ, NNN, and SSS of 40 CFR part 60, as in effect on July 1, 1993. Also, the State updated the incorporation by reference citations of its existing NSPS to reflect the July 1, 1993 version of 40 CFR part 60. In addition, the State added a provision clarifying that the term ''administrator,'' as used in the Federal regulations incorporated into the State's regulations, means the State except for those authorities which cannot be delegated to the State, in which case ''administrator'' means both EPA and the State. Since this chapter incorporates by reference the Federal NSPS in 40 CFR part 60, it is consistent with Federal requirements and approvable.

g. ARSD 74:36:10 New Source Review

In this chapter, the State adopted provisions for new and modified major stationary sources proposing to locate in attainment/unclassified areas but which cause or contribute to a violation of the NAAQS, in accordance with the requirements in 40 CFR 51.165(b). The State currently has no areas designated nonattainment for the NAAQS, so the State is currently not required to adopt nonattainment NSR provisions. EPA has reviewed the provisions in this chapter against the corresponding Federal requirements in 40 CFR 51.165 and found it to be consistent and therefore approvable.

h. ARSD 74:36:11 Stack Performance Testing

This chapter was revised to refer to the Federal test methods in 40 CFR part 51, appendix M, and 40 CFR part 60 as the test methods required to be used by sources and to make other minor revisions. EPA has reviewed the revisions to this chapter and has found they are consistent with the corresponding Federal requirements and approvable.

i. ARSD 74:36:12 Control of Visible Emissions

Minor revisions were made to this chapter, mainly to update the incorporation by reference of 40 CFR part 60, appendix A to reflect the July 1, 1993 version. EPA has reviewed the revisions to this chapter and has found they are consistent with the corresponding Federal requirements.

j. ARSD 74:36:13 Continuous Emission Monitoring Systems

(1) Continuous Emission Monitoring Requirements.

This new chapter was added to authorize the State to require major sources to install continuous emission monitors (CEMs) and to require that such CEMs meet the Federal performance specifications in 40 CFR part 60. EPA has reviewed these requirements adopted in ARSD 74:36:13:01–05 and has found these rules to be consistent with the corresponding Federal requirements and approvable.

(2) Enhanced Monitoring and Compliance Certification.

This regulation also address EPA's nationwide SIP call regarding the new enhanced monitoring and compliance certification requirements of the amended Act. On October 22, 1993, EPA announced in the **Federal Register** that SIP calls pursuant to section 110(k)(5) of the Act would be issued in order to implement the enhanced monitoring requirements of section 114(a)(3) of the Act and the periodic monitoring requirements for operating permits under sections 502(b)(2) and 504 of the Act (see 58 FR 54677). This SIP call is required because existing SIPs are inadequate in that they may be interpreted to limit the types of testing or monitoring data that may be used for determining compliance and establishing violations.

On July 7, 1994, the EPA notified the Governor of South Dakota that a SIP revision was necessary to meet the aforementioned requirements of the Act. EPA's letter provided the States with two options for regulatory language that, if adopted by the State and submitted to EPA for approval in the SIP, would satisfy the requirements of this SIP call. In Sections 74:36:13:06–07 of the ARSD, the State has adopted provisions which are essentially identical to the regulatory language provided in option 2 of the attachment to EPA's July 7, 1994 letter, as follows:

(a) In ARSD 74:36:13:06, the State has added a provision stating that, when submitting compliance certifications, an owner or operator of a source may use monitoring as required under 40 CFR 70.6(a)(3) in addition to any specified compliance methods. The practical effect of this provision is that the SIP is now more flexible and inclusive and does not preclude the use of enhanced monitoring.

(b) In ARSD 74:36:13:07, the State has added provisions stating that any credible evidence may be used to determine if a violation has occurred at a source. The rule provides that information from monitoring methods approved in a federally enforceable operating permit or in the SIP, as well as from any other federally enforceable monitoring and testing methods (including those in 40 CFR Parts 51, 60, 61, and 75), may be used by the State as credible evidence to determine compliance.

EPA believes the State has adequately satisfied the requirements of that SIP call letter and, therefore, is approving Sections 74:36:13:06–07 regarding enhanced monitoring and compliance certifications.

k. ARSD 74:36:15 Open Burning

The State made revisions to this chapter by further detailing those items that could not be disposed of by open burning, and by providing ability for small municipalities to burn solid wastes. Other minor revisions were also made. EPA has reviewed the revisions and believes they are consistent with the requirements of the Act and approvable.

III. Approval of South Dakota's Construction and Operating Permit Program Under Section 112(l) of the Act.

In this action, EPA is also approving South Dakota's combined construction/FESOP permit program in ARSD 74:36:04 under section 112(l) of the Act for the purpose of creating federally enforceable limits on the potential to emit of HAPs listed pursuant to section 112(b) of the Act. Approval under section 112(l) is necessary to allow the State to create federally enforceable limits on the potential to emit of HAPs, because SIP approval of this permitting program only extends to the control of HAPs which are photochemically reactive organic compounds or particulate matter. Federally enforceable limits on photochemically reactive organic compounds or particulate matter may have the incidental effect of limiting certain HAPs.[1] As a legal matter, no additional program approval by EPA is required in order for these ''criteria'' pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

As discussed above and in the TSD, the criteria which are used in approving minor source construction permit programs are located in 40 CFR 51.160–164. EPA believes the most significant criteria in 40 CFR part 51 for creating federally enforceable limits through construction permits are those in 40 CFR 51.160–162. Further, as discussed in EPA's January 25, 1995 memorandum from John S. Seitz, Director of the Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director of the Office of Regulatory Enforcement, entitled ''Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' in order for EPA to consider any construction permit terms federally enforceable, such permit conditions must be enforceable as a practical matter. South Dakota's permitting program will allow the State to issue permits that are enforceable as a practical matter. Thus, any permits issued in accordance with South Dakota's construction permit program and which are practically enforceable would be considered federally enforceable.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving such programs under section 112(l). The requirements outlined in the June 28, 1989 notice need not be unique to criteria pollutants since the reason that the notice does not address HAPs is simply that it was written prior to the 1990 Amendments to section 112.

In addition to meeting the criteria in 40 CFR 51.160–164 for construction permits and the criteria in the June 28, 1989 **Federal Register** notice for FESOPs, a permitting program that addresses HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAPs through amendments to subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) EPA believes it has the authority under section 112(l) to approve programs to limit the potential to emit of HAPs directly under section 112(l) prior to this revision to subpart E of 40 CFR part 63. Given the timing problems posed by impending deadlines under section 112 and title V, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving South Dakota's combined construction permit/FESOP program now so that South Dakota may begin to issue federally enforceable synthetic minor permits as soon as possible. EPA also plans to codify programs approved under section 112(l) without further rulemaking once the revisions to subpart E are promulgated.

As discussed in Section II.A.2.d. above and in the TSD, EPA believes South Dakota's combined construction permit/FESOP program meets the applicable Federal criteria for approval of such programs in the SIP. In addition, South Dakota's construction and operating permit program meets the statutory criteria for approval under section 112(l)(5), as follows:

Regarding the statutory criteria of section 112(l)(5), EPA believes South Dakota's permitting program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met, i.e., since the State's program does not provide for waiving any section 112 requirement. Sources that become minor through a permit issued pursuant to these programs would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, the State has committed to provide for adequate resources to implement and enforce the program. EPA will monitor the State's implementation of the program to assure that adequate resources continue to be available.

EPA also believes that South Dakota's construction and operating permit program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit so as to avoid being subject to a Federal requirement applicable on a particular date. Nothing in the State's program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of the section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit.

Accordingly, EPA finds that South Dakota's construction permit/FESOP program satisfies the applicable criteria for establishing federally enforceable limitations on potential to emit both criteria and hazardous air pollutants. Thus, EPA is approving South Dakota's construction permit/FESOP program in ARSD 74:36:04 under section 112(l) of the Act.

[1] EPA issued guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source levels. Please refer to the January 25, 1995 EPA policy from John Seitz and Robert Van Heuvelen entitled ''Options for Limiting the Potential to Emit of a Stationary Source under Section 110 and Title V of the Clean Air Act,'' available at the EPA office listed at the beginning of this document.

IV. Final Action

EPA is approving the revisions to the South Dakota SIP which were submitted by the State on March 7, 1995 and on November 12, 1993. Specifically, EPA is replacing the existing State regulations approved in the SIP with the following chapters of the ARSD, effective on January 5, 1995: 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15. However, EPA is not taking action at this time on two definitions in ARSD 74:36:01 related to the State's acid rain program which EPA will be acting on separately: ''acid rain permit'' and ''acid rain program'' in ARSD 74:36:01:01(2) and (3).

In addition to approving South Dakota's construction permit/FESOP program in ARSD 74:36:04 as part of the SIP, EPA is also approving this program under section 112(l) of the Act for the purposes of creating federally enforceable permit conditions on HAPs. Note that in order for EPA to consider operating permits issued under ARSD 74:36:04 to be federally enforceable, the State must submit the proposed and final permits to EPA in a timely manner, as well as meet the other requirements of its program and the June 28, 1989 **Federal Register**.

This approval provides the State with the authority for implementation and enforcement of the following subparts of 40 CFR part 60: A, D, Da, Db, Dc, E, Ea, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, QQ, RR, VV, XX, AAA, JJJ, NNN, OOO, and SSS, effective July 1, 1993. However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective November 6, 1995 unless, by October 6, 1995, adverse or critical comments are received.

If such comments are received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 6, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 economic 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.

Approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 10, 1995.

Jack W. McGraw,

Acting Regional Administrator.

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 QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(16) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(16) On November 12, 1993 and March 7, 1995, the designee of the Governor of South Dakota submitted revisions to the plan, which included revised regulations for definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide rule corrections, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements. The State also requested that the existing State regulations approved in the South Dakota SIP be replaced with the following chapters of the recently recodified Administrative Rules of South Dakota (ARSD): 74:36:01–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, as in effect on January 5, 1995.

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapters 74:36:01 (except 74:36:01:01(2) and (3)); 74:36:02–74:36:04, 74:36:06; 74:36:07, 74:36:10–74:36:13, and 74:36:15, effective April 22, 1993 and January 5, 1995.

3. A new section 52.2184 is added to read as follows:

§ 52.2184 Operating permits for minor sources.

Emission limitations and related provisions established in South Dakota minor source operating permits, which are issued in accordance with ARSD 74:36:04 and which are submitted to EPA in a timely manner in both proposed and final form, shall be enforceable by EPA. EPA reserves the right to deem permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures and will be based upon the permit, permit approval procedures, or permit requirements which do not conform with the operating permit program requirements of EPA's underlying regulations.

[FR Doc. 95–21879 Filed 9–5–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC–014–FC]

Medicare Program; Payments to HMOs and CMPs and Appeals: Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule clarifies and updates portions of the HCFA regulations that pertain to payment for services furnished to Medicare enrollees by health maintenance organizations (HMOs) and competitive medical plans (CMPs); appeals by Medicare enrollees concerning payment for those services; and appeals by HMOs and CMPs with regard to their Medicare contracts.

This rule completes the special project aimed at the total technical revision of part 417. Part 417 contains the regulations applicable to all prepaid health care organizations, that is, HMOs, CMPs, and health care prepayment plans (HCPPs).

These are technical and editorial changes that do not affect the substance of the regulations. They are intended to make it easier to find particular provisions, to eliminate needless repetition and remove obsolete content, and to better ensure uniform understanding of the rules.

DATES: *Effective dates:* These rules are effective as of October 1, 1995.

Comment date: We will consider comments received by October 6, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–014–FC, PO Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OMC–014–FC.

Written comments received timely will be available for public inspection as they are received—generally beginning approximately 3 weeks after publication of the document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, Monday through Friday, from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Although we cannot respond to individual comments, if we revise this rule as a result of comments, we will discuss all timely comments in the preamble to the revised rule.

FOR FURTHER INFORMATION CONTACT: Tracy Jensen, (410) 786–1033.

SUPPLEMENTARY INFORMATION:

A. Background

The previous 4 technical regulations of the special project have—

- Removed obsolete content;
- Designated the remaining text under 17 subparts that identify the different program aspects so that it is easier to refer to those aspects and to find particular rules;
- Through nomenclature and definition changes, established certain terms to be used throughout part 417, so as to preclude confusion, make clear that responsibility for the prepaid health care programs has been delegated to HCFA, and ensure use of the most precise terms available;
- Redesignated certain portions of part 417 to free section numbers needed so that new rules can be incorporated in logical order; and
- Established a separate subpart C to set forth the many requirements for the organization and operation of HMOs. Under previous rules, these were compressed into a single section (§ 417.107).

As a result of the redesignations, §§ 417.107 through 417.119 were made available for new rules that are required because of statutory amendments that affect the furnishing of services by Federally qualified HMOs, or may be needed because of future changes in the statute. Similarly, §§ 417.128 through 417.139 are available for additional rules on the organization and operation of those HMOs.

B. Changes made by this rule

This technical rule affects the following subparts:

Subpart N—Medicare Payment to HMOs and CMPs—General Rules

Subpart O—Medicare Payment: Cost Basis;

Subpart P—Medicare Payment: Risk Basis;

Subpart Q—Beneficiary Appeals; and,

Subpart R—Contract Appeals.

Changes to the first three subparts reflect a general change of approach—

use of the term ''payment'' rather than ''reimbursement''. Changes in all five subparts, such as use of the active voice, are intended to improve clarity. They also provide more headings, revise confusing word order, and remove obsolete provisions (rules that applied to contract periods that began before 1986).

In subpart Q, the revisions add a paragraph explaining the statutory basis for the beneficiary appeals rules and expand the ''Scope'' paragraph to reference a recently added provision that gives the beneficiary the right to request immediate PRO review of a determination that he or she no longer needs inpatient hospital care.

Other Required Information

Waiver of Proposed Rulemaking and Delayed Effective Date

The changes made by this rule are technical and editorial in nature. Their aim is to simplify, clarify, and update subparts N through R of part 417 without substantive change.

Accordingly, we find that notice and opportunity for public comment are unnecessary and that there is good cause to waive proposed rulemaking procedures.

In addition, it is important, for the convenience of the public, that these changes be effective as of October 1, 1995, so that they can be included in the 1995 edition of the Code of Federal Regulations on which the public relies. Therefore, we find good cause to also waive the usual 30-day delay in the effective date

As previously indicated, however, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance.

Paperwork Reduction Act

Sections 417.558, 417.576, and 417.600 of the regulations amended by this technical rule contain requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The requirement for a certified cost report (§ 417.576(b)) has OMB approval under number 0938–0165, with an expiration date of 9–30–95. The burden for this report is estimated at 200 hours for record keeping and 260 hours for completing the report. The requirements for justification of exception to cost limits (§ 417.558(c)) and for grievance and appeals procedures (§ 417.600(b)) are being submitted for OMB approval. If you comment on these requirements, please send a copy directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, Executive Office Building, Washington, DC 30503.

Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines ''small entity'' as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is not located in a metropolitan statistical area.

We have not prepared a regulatory flexibility analysis because we have determined and we certify that these rules (which make only technical and editorial changes with no substantive effect) will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMO), Medicare.

42 CFR part 417 is amended as set forth below.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for part 417 continues to read as follows:

Authority: secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

B. Subpart N is amended as set forth below.

Subpart N—Medicare Payment to HMOs and CMPs: General Rules

1. Section 417.524 is revised to read as follows:

§ 417.524 Payment to HMOs or CMPs: General.

(a) *Basic rule.* The payments that HCFA makes to an HMO or CMP under this subpart and subparts O and P of this part for furnishing covered Medicare services are in place of any payment that HCFA would otherwise make to a beneficiary or the HMO or CMP under sections 1814(b) and 1833(a) of the Act.

(b) *Basis of payment.* (1) HCFA pays the HMOs or CMPs on either a reasonable cost basis or a risk basis depending on the type of contract the HMO or CMP has with HCFA.

(2) In certain cases a risk HMO or CMP also receives payments on a reasonable cost basis for certain Medicare enrollees who retain nonrisk status, as provided in § 417.444, after the HMO or CMP enters into a risk contract.

§ 417.526 [Amended]

2. In § 417.526, ''reimbursement'' is revised to read ''payment'' each time it appears.

3. Section 417.528 is amended to revise the section heading to revise, paragraphs (a) through (c) and to add a heading to paragraph (d) to read as follows:

§ 417.528 Payment when Medicare is not primary payer.

(a) *Limits on payments and charges.* (1) HCFA may not pay for services to the extent that Medicare is not the primary payer under section 1862(b) of the Act and part 411 of this chapter.

(2) The circumstances under which an HMO or CMP may charge, or authorize a provider to charge, for covered Medicare services for which Medicare is not the primary payer are stated in paragraphs (b) and (c) of this section.

(b) *Charge to other insurers or the enrollee.* If a Medicare enrollee receives from an HMO or CMP covered services that are also covered under State or Federal worker's compensation, automobile medical, or any no-fault insurance, or any liability insurance policy or plan, including a self-insured plan, the HMO or CMP may charge, or authorize a provider that furnished the service to charge—

(1) The insurance carrier, employer, or other entity that is liable to pay for these services; or

(2) The Medicare enrollee, to the extent that he or she has been paid by the carrier, employer, or other entity.

(c) *Charge to group health plans (GHPs) or large group health plans (LGHPs).* An HMO or CMP may charge a GHP or LGHP for covered services it furnished to a Medicare enrollee and may charge the Medicare enrollee to the extent that he or she has been paid by the GHP or LGHP for these covered services if—

(1) The Medicare enrollee is covered under the plan; and

(2) Under section 1862(b) of the Act, HCFA is precluded from paying for the covered services .

(d) *Responsibilities of HMO or CMP.*

* * *

C. Subpart O is amended as set forth below.

Subpart O—Medicare Payment: Cost Basis

1. Section 417.530 is revised to read as follows:

§ 417.530 Basis and scope.

This subpart sets forth the principles that HCFA follows to determine the amount it pays for services furnished by a cost HMO or CMP to its Medicare enrollees. These principles are based on sections 1861(v) and 1876 of the Act and are, for the most part, the same as those set forth—

(a) In part 412 of this chapter, for paying the costs of inpatient hospital services which, for cost HMOs and CMPs, are considered ''reasonable'' only if they do not exceed the amounts allowed under the prospective payment system; and

(b) In part 413 of this chapter, for the costs of all other covered services.

§ 417.531 [Amended]

2. In § 417.531, the following changes are made:

a. In paragraph (a), ''reimbursement'' is revised to read ''payment'', and ''participating in the Medicare program'' is removed.

b. In paragraph (b), introductory text, ''the HMO or CMP may be reimbursed'' is revised to read ''HCFA pays the HMO or CMP''.

§ 417.532 [Amended]

3. In § 417.532, the following changes are made:

a. Throughout § 417.532, ''reimbursement'' is revised to read ''payment'' and ''reimburses'' is revised to read ''pays''.

b. In paragraph (a)(3), ''Except as specified in paragraph (a)(4) of this section,'' is removed and ''in judging'' is revised to read ''In judging''.

c. Paragraph (a)(4) is removed.

d. In paragraph (f), ''will determine'' is revised to read ''determines''.

e. Paragraph (g) is revised to read as follows:

§ 417.532 General considerations.

* * * * *

(g) *Direct payment by HCFA.* (1) If the HMO or CMP elects to have HCFA pay for provider services, HCFA pays each provider on a reasonable cost basis or under the PPS system, whichever is appropriate for the particular provider under part 412 or part 413 of this chapter.

(2) In computing the Medicare payment to the HMO or CMP, HCFA deducts these payments and any other payments made by the Medicare intermediary or carrier on behalf of the HMO or CMP (such as payment for emergency or urgently needed services under § 417.558).

§ 417.533 [Amended]

4. In § 417.533, the following changes are made:

a. In the introductory text, the phrase ''is responsible for'' is revised to read ''must''.

b. In paragraphs (a), (b), and (c), ''Determining'', ''Making'', and ''Carrying'' are revised to read ''Determine'', ''Make'', and ''Carry'', respectively.

§ 417.536 [Amended]

5. In § 417.536, the following changes are made:

a. The section heading is revised to read ''*Cost payment principles.*''

b. In paragraph (a), first sentence, the phrase ''or reasonable cost reimbursement'' is removed.

c. In paragraphs (a), (f)(3), and (m), ''reimbursement'' is revised to read ''payment''.

d. In paragraph (m), the heading is revised to read ''*Limitations on payment.*''; in the introductory text, ''reimbursed'' is revised to read ''paid''; and ''subpart E of part 405, and'' is removed.

§ 417.538 [Amended]

6. In § 417.538, the following changes are made:

a. Paragraph (a) is revised to read as set forth below.

b. The heading of paragraph (b) is revised to read ''*Included costs.*''

c. The heading of paragraph (d) is revised to read ''*Limitation on payment.*'' and in the last sentence, ''such costs'' is revised to read ''those costs''.

§ 417.538 Enrollment and marketing costs.

(a) *Principle.* Costs incurred by an HMO or CMP in performing the enrollment and marketing activities described in subpart k of this part are allowable.

* * * * *

§ 417.544 [Amended]

7. In § 417.544, in paragraph (a), the paragraph designations (1), (2), and (3) are added, preceding the first, second, and third sentences and in paragraph (b), the paragraph designations (1) and (2) are added preceding the first and second sentences.

§ 417.548 [Amended]

9. In § 417.548, the following changes are made:

a. In paragraph (a), ''reimbursable'' is revised to read ''payable''.

b. In paragraph (b), in the second sentence, ''For example, in'' is removed and ''(c) *Example.* In'' is inserted in its place, and the parenthetical phrase is revised to read ''(rather than the payment amounts determined under part 412 or part 413 of this chapter)''.

10. Section 417.550 is revised to read as follows:

§ 417.550 Special Medicare program requirements.

(a) *Principle.* HCFA pays the full reasonable cost incurred by an HMO or CMP for activities that are solely for Medicare purposes and unique to Medicare contracts under section 1876 of the Act.

(b) *Application.* HCFA pays the full reasonable cost of the following activities:

(1) Reporting increases and decreases in the number of Medicare enrollees.

(2) Obtaining independent certification of the HMO's or CMP's cost report to the extent that it is for Medicare purposes.

(3) Reporting special data that HCFA requires solely for program planning and evaluation.

(c) *Prior approval requirement.* The costs specified in paragraph (b) of this section must be separately budgeted and approved by HCFA before the contract period begins.

(d) *Limit on full payment.* Full payment is limited to the costs specified in paragraph (b) of this section. All other administrative costs must be apportioned in accordance with § 417.552.

§ 417.552 [Amended]

11. In § 417.552, the following changes are made:

a. In the introductory text of paragraph (a), ''Except as provided in § 417.556(c)'' is removed and ''the'' is revised to read ''The''.

b. In paragraph (a)(1), ''§§ 417.530 through 417.576; and'' is revised to read ''this subpart; and''.

§ 417.554 [Amended]

12. In § 417.554, the regulation citations at the end are revised to read ''§ 405.480, part 412, and §§ 413.5 and 413.24 of this chapter.''

13. Section 417.558 is revised to read as follows:

§ 417.558 Emergency, urgently needed, and out-of-area services for which the HMO or CMP accepts responsibility.

(a) *Source of payment.* Either HCFA or the HMO or CMP may pay a provider for emergency or urgently needed services or other covered out-of-area services for which the HMO or CMP accepts responsibility.

(b) *Limits on payment.* If the HMO or CMP pays, the payment amount may not exceed the amount that is allowable under part 412 or part 413 of this chapter.

(c) *Exception to limit on payment.* Payment in excess of the limit imposed by paragraph (b) of this section is allowable only if the HMO or CMP demonstrates to HCFA's satisfaction that it is justified on the basis of advantages gained by the HMO or CMP, as set forth in § 417.548.

§ 417.560 [Amended]

14. In § 417.560, the following changes are made:

a. In paragraph (a) introductory text, ''will base'' is revised to read ''bases''.

b. In paragraph (d)(1), ''(1) Except as provided in paragraph (d)(2) of this section,'' is removed, and ''the Medicare share'' is revised to read ''The Medicare share''.

c. Paragraph (d)(2) is removed.

15.–16. Section 417.564 is revised to read as follows:

§ 417.564 Apportionment and allocation of administrative and general costs.

(a) *Costs not directly associated with providing medical care.* Enrollment, marketing, and other administrative and general costs that benefit the total enrollment of the HMO or CMP and are not directly associated with furnishing medical care must be apportioned on the basis of a ratio of Medicare enrollees to the total HMO or CMP enrollment.

(b) *Costs significantly related to providing medical services.* (1) The following administrative and general costs, which bear a significant relationship to the services furnished, are not apportioned to Medicare directly; they must be allocated or distributed to the HMO or CMP components and then apportioned to Medicare in accordance with §§ 417.552 through 417.560:

(i) Facility costs.

(ii) Interest expense.

(iii) Medical record costs.

(iv) Centralized purchasing costs.

(v) Accounting and data processing costs.

(vi) Other administrative and general costs that are not included in paragraph (a) of this section.

(2) The allocation or distribution process must be as follows:

(i) If a separate entity or department of an HMO or CMP performs administrative functions the benefit of which can be quantitatively measured (such as centralized purchasing and data processing), the total allowable costs of this entity or department must be allocated or distributed to the components of the HMO or CMP in reasonable proportion to the benefits received by these components.

(ii) If a separate entity or department of an HMO or CMP performs administrative functions the benefit of which cannot be quantitatively measured (such as facility costs), the total allowable costs of this entity or department must be allocated or distributed to the components of the HMO or CMP on the basis of a ratio of total incurred and distributed costs per component to the total incurred and distributed costs for all components.

§ 417.568 [Amended]

17. In § 417.568, the following changes are made:

a. In paragraph (a)(1), ''payable by Medicare'' is revised to read ''payable by HCFA'', and the comma after ''enrollees'' is removed.

b. In paragraph (a)(2), the phrase ''the HMO or CMP must follow'' is added immediately before ''standardized definitions * * *'', and the last three words ''must be followed.'' are removed.

c. In paragraph (b)(2), ''as described in this paragraph'' is revised to read ''as provided in paragraph (b)(3) of this section''.

d. In paragraph (b)(3), ''based on this basis'' is revised to read ''developed on this basis'' and ''will be acceptable'' is revised to read ''is acceptable''.

e. Paragraph (c) is revised to read as set forth below.

f. In paragraph (d), ''the HMO or CMP'', the last time it appears, is revised to read ''it''.

§ 417.568 Adequate financial records, statistical data, and cost finding.

* * * * *

(c) *Provider services furnished directly by the HMO or CMP.* If the HMO or CMP furnishes provider services directly, the provider is subject to the cost-finding and cost-reporting requirements set forth in parts 412 and 413 of this chapter. The provider must use an approved cost-finding method described in § 413.24 of this chapter to determine the actual cost of these covered services.

* * * * *

§ 417.576 [Amended]

18. In § 417.576, the following changes are made:

a. In the following paragraphs, ''reimbursement'' is revised to read ''payment'': paragraphs (b)(2)(ii), (c)(1), (c)(2)(ii), (d) heading, introductory text, and (d)(1), and (e)(1).

b. In the following paragraphs, ''reimbursable'' is revised to read ''payable'': paragraphs (c)(1) and (d)(2).

c. In paragraph (b)(2), ''§§ 417.532 through 417.566'' is revised to read ''this subpart''.

d. In paragraph (c)(1), ''providing'' is revised to read ''furnishing''.

e. In paragraph (c)(2)(ii), ''an insignificant amount'' is revised to read ''an insignificant portion''.

f. Paragraphs (b)(3) and (e)(3) are revised to read as set forth below:

§ 417.576 Final settlement.

* * * * *

(b) *Certified cost report as basis for final settlement.* * * *

(3) *Failure to report required financial information.* If the HMO or CMP fails to submit the required cost report and supporting documents within 180 days (or an extended period approved by HCFA under paragraph (b)(1) of this section), HCFA may—

(i) Consider the failure to report as evidence of likely overpayment; and

(ii) Initiate recovery of amounts previously paid, or reduce interim payments, or both.

* * * * *

(e) *Basis for retroactive adjustment.* * * *

(3) Any withholding continues until the earliest of the following occurs:

(i) The overpayment is liquidated.

(ii) The HMO or CMP enters into an agreement with HCFA to refund the overpaid amount.

(iii) HCFA, on the basis of subsequently acquired information, determines that there was no overpayment.

(iv) The decision of a hearing specified in paragraph (d)(4) of this section is that there was no overpayment.

D. Subpart P is amended as set forth below.

Subpart P—Medicare Payment: Risk Basis

§ 417.580 [Amended]

1. In § 417.580, paragraph (a), ''reimbursed'' is revised to read ''pays''.

§ 417.582 [Amended]

2. In § 417.582 the heading is revised and three definitions are added in alphabetical order, to read as follows:

§ 417.582 Definitions.

AAPCC stands for adjusted average per capita cost.

ACR stands for adjusted community rate.

* * * * *

APCRP stands for average of per capita rates of payment.

* * * * *

§ 417.584 [Amended]

3. In § 417.584, the following changes are made.

a. The introductory text of the section and paragraph (c) are revised to read as set forth below.

b. In paragraph (d), ''§ 417.592(e)'' is revised to read ''§ 417.592(b)(2)''; ''will reduce'' is revised to read ''reduces''; and the last sentence is removed.

§ 417.584 Payment to HMOs and CMPs with risk contracts.

Except in the circumstances specified in § 417.440(d) for inpatient hospital care, and as provided in § 417.585 for hospice care, HCFA makes payment for covered services only to the HMO or CMP.

* * * * *

(c) *Adjustments to payments.* If the actual number of Medicare enrollees differs from the estimated number on which the amount of advance monthly payment was based, HCFA adjusts subsequent monthly payments to take account of the difference.

* * * * *

§ 417.585 [Amended]

4. In § 417.585, the following changes are made:

a. The section heading is revised to read: ''*Special rules: Hospice care.*''

b. In paragraph (a), ''No payment is made effective the first day'' is revised to read: ''This no-payment rule is effective from the first day''.

c. In paragraph (b), Introductory text, ''for only'' is revised to read ''but only for''.

d. In paragraph (b)(2), ''hospice care was elected'' is revised to read ''the enrollee elected hospice care''.

e. In paragraph (c), the clause ''are made to the hospice participating in Medicare elected by the enrollee'' is revised to read ''is made to the Medicare-participating hospice elected by the enrollee''.

§ 417.586 [Removed]

5. Section 417.586 is removed.

§ 417.588 [Amended]

6. In § 417.588, the following changes are made.

a. In paragraph (a), ''resulting in an AAPCC'' is revised to read ''to establish an AAPCC''.

b. In paragraph (c)(2), ''A further adjustment is made by HCFA'' is revised to read ''HCFA makes a further adjustment''.

7. Section 417.592 is revised to read as follows:

§ 417.592 Additional benefits requirement.

(a) *General rules.* (1) An HMO or CMP that has an APCRP (as determined under § 417.590) greater than its ACR (as determined under § 417.594) must elect one of the options specified in paragraph (b) of this section.

(2) The dollar value of the elected option must, over the course of a contract period, be at least equal to the difference between the APCRP and the proposed ACR.

(b) *Options*—(1) *Additional benefits.* Provide its Medicare enrollees with additional benefits in accordance with paragraph (c) of this section.

(2) *Payment reduction.* Request HCFA to reduce its monthly payments.

(3) *Combination of additional benefits and payment reduction.* Provide fewer than the additional benefits required under paragraph (b)(1) of this section and request HCFA to reduce the monthly payments by the remaining difference between the APCRP and the ACR.

(4) *Combination of additional benefits and withholding in a stabilization fund.* Provide fewer than the additional benefits required under paragraph (b)(1) of this section, and request HCFA to withhold in a stabilization fund (as provided in § 417.596) the remaining difference between the APCRP and the ACR.

(c) *Special rules: Additional benefits option.* (1) The HMO or CMP must determine additional benefits separately for enrollees entitled to both Part A and Part B benefits and those entitled only to Part B.

(2) The HMO or CMP may elect to provide additional benefits in any of the following forms—

(i) A reduction in the HMO's or CMP's premium or in other charges it imposes in the form of deductibles or coinsurance.

(ii) Health benefits in addition to the required Part A and Part B covered services.

(iii) A combination of reduced charges and additional benefits.

(d) *Notification to HCFA.* (1) The HMO or CMP must give HCFA notice of its ACR and its weighted APCRP at least 45 days before its contract period begins.

(2) An HMO or CMP that elects the option of providing additional benefits must include in its submittal—

(i) A description of the additional benefits it will provide to its Medicare enrollees; and

(ii) Supporting evidence to show that the selected benefits meet the requirements of paragraph (a)(2) of this section with respect to dollar value equivalence.

8. Section 417.594 is amended to revise paragraphs (a), (b)(1) and (b)(2), (c), (d), and (e) to read as follows:

§ 417.594 Computation of adjusted community rate (ACR).

(a) *Basic rule.* Each HMO or CMP must compute its basic rate as follows:

(1) Compute an initial rate in accordance with paragraph (b) of this section.

(2) Adjust and reduce the initial rate in accordance with paragraphs (c) and (d) of this section.

(b) *Computation of initial rates.* (1) The HMO or CMP must compute its initial rate using either of the following systems:

(i) A community rating system as defined in § 417.104(b); or

(ii) A system, approved by HCFA, under which the HMO or CMP develops an aggregate premium for all its enrollees and weights the aggregate by the size of the various enrolled groups that compose its enrollment.

(For purposes of this section, enrolled groups are defined as employee groups or other bodies of subscribers that enroll in the HMO or CMP through payment of premiums.)

(2) Regardless of which method the HMO or CMP uses—

(i) The initial rate must be equal to the premium it would charge its non-Medicare enrollees for the Medicare-covered services;

(ii) The HMO or CMP must compute the rates separately for enrollees entitled to Medicare Part A and Part B and for those entitled only to Part B; and

(iii) The HMO or CMP must identify and take into account anticipated revenue from health insurance payers for those services for which Medicare is not the primary payer as provided in § 417.528.

* * * * *

(c) *Adjustment of initial rates*—(1) *Purpose of adjustment.* The purpose of adjustment is to reflect the utilization characteristics of Medicare enrollees.

(2) *Adjustment by the HMO or CMP.* The HMO or CMP may adjust the rate for a particular service using more than one of the following factors if they do not duplicate each other:

(i) *Unit of service.* If the HMO or CMP purchases or identifies services on a unit of service basis and the unit of service is defined the same for all enrollees, the HMO or CMP may make an adjustment in its initial rate to reflect the number of units of services furnished to its Medicare enrollees in comparison to those furnished to other enrollees.

(ii) *Complexity or intensity of services.* The HMO or CMP may make an adjustment to reflect the differences in the complexity or intensity of services furnished to its Medicare enrollees if the calculation of its initial rate includes the elements of this adjustment.

(3) *Support documentation.* All adjustments made by the HMO or CMP must be accompanied by adequate supporting data. If an HMO or CMP does not have sufficient enrollment experience to develop this data, it may, during its initial contract period, use documented statistics from a nationally recognized statistical source.

(4) *Adjustment by HCFA.* If the HMO or CMP does not have adequate data to adjust the initial rate calculated under paragraph (b) of this section to reflect the utilization characteristics of its Medicare enrollees, HCFA will, at the HMO's or CMP's request, adjust the initial rate. HCFA adjusts the rate on the basis of differences in the utilization characteristics of—

(i) Medicare and non-Medicare enrollees in other HMOs or CMPs; or

(ii) Medicare beneficiaries (in the HMO's or CMP's area, or State, or the United States) who are eligible to enroll in an HMO or CMP and other individuals in that same area, or State, or the United States.

(d) *Reduction of adjusted rates.* The HMO or CMP or HCFA further reduces the adjusted rates by the actuarial value of applicable Medicare deductibles and coinsurance.

(e) *HCFA review*—(1) *Submission of data.* The HMO or CMP must submit its ACR and the methodology used to compute it for HCFA review and approval, and must include adequate supporting data.

(2) *Appeals procedures.* (i) If HCFA determines that an HMO's or CMP's ACR computation is not acceptable, the HMO or CMP may, within 30 days after receipt of notice of the determination, file with HCFA a request for a hearing.

(ii) The request must state why the HMO or CMP believes the determination is incorrect, and include any supporting evidence the HMO or CMP considers pertinent.

(iii) A hearing officer designated by HCFA conducts the hearing in accordance with the hearing procedures set forth in §§ 405.1819 through 405.1833 of this chapter.

§ 417.596 [Amended]

9. In § 417.596, the following changes are made:

a. In paragraphs (a), (b), and (c)(1), ''the average of its per capita rates of payment'' is revised to read ''its APCRP''.

b. In paragraphs (c)(1) and (c)(2), ''will not'' is revised to read ''does not''.

c. In paragraph (d), ''for the purpose of establishing and maintaining'' is revised to read ''to establish and maintain''.

§ 417.597 [Amended]

10. In paragraph (a) of § 417.597, in the introductory text, ''the average of its per capita rates of payment'' is revised to read ''its APCRP''.

§ 417.598 [Amended]

11. In § 417.598, ''will conduct'' is revised to read ''conducts''.

E. Subpart Q is amended as set forth below.

Subpart Q—Beneficiary Appeals

1. Section 417.600 is revised to read as follows:

§ 417.600 Basis and scope.

(a) *Statutory basis.* (1) Section 1869 of the Act provides the right to a hearing and to judicial review for any individual dissatisfied with a determination regarding his or her Medicare benefits.

(2) Section 1876 of the Act provides for Medicare payments to HMOs and CMPs that contract with HCFA to enroll Medicare beneficiaries and furnish Medicare-covered health care services to them. Section 1876(c)(5) provides that—

(i) An HMO or CMP must establish grievance and appeals procedures; and

(ii) Medicare enrollees dissatisfied because they do not receive health care services to which they believe they are entitled, at no greater cost than they believe they are required to pay, have the following appeal rights:

(A) The right to an ALJ hearing if the amount in controversy is $100 or more.

(B) The right to judicial review of the hearing decision if the amount in controversy is $1000 or more.

(iii) The Medicare enrollee and the HMO or CMP are parties to the hearing and to the judicial review.

(b) *Scope.* This subpart sets forth—

(1) The appeals procedures, as required by section 1876(c)(5)(B) of the Act for Medicare enrollees who are dissatisfied with an ''organization determination'' as defined in § 417.606;

(2) The applicability of grievance procedures established by the HMO or CMP under section 1876(c)(5)(A) of the Act and § 417.604(a) for complaints that do not involve an organization determination;

(3) The responsibility of the HMO or CMP—

(i) To develop and maintain procedures; and

(ii) To ensure that all Medicare enrollees have a complete written explanation of their grievance and appeal rights, of the steps to follow, and of the time limits for each step of the procedures; and

(4) The special rules that apply when a beneficiary requests immediate PRO review of a determination that he or she no longer needs inpatient hospital care.

§ 417.602 [Amended]

2. In § 417.602, the heading is revised to read ''*§ 417.602 Definitions.*'' and the definition of ''enrollee'' is removed.

3. Section 417.604 is revised to read as follows:

§ 417.604 General provisions.

(a) *Responsibilities of the HMO or CMP.* (1) The HMO or CMP must establish and maintain—

(i) Appeals procedures that meet the requirements of this subpart for issues that involve organization determinations; and

(ii) Grievance procedures for dealing with issues that do not involve organization determinations.

(2) The HMO or CMP must ensure that all enrollees receive written information about the grievance and appeals procedures that are available to them.

(b) *Limits on applicability of this subpart.* (1) If an enrollee requests immediate PRO review (as provided in § 417.605) of a determination of noncoverage of inpatient hospital care—

(i) The enrollee is not entitled to subsequent review of that issue under this subpart; and

(ii) The PRO review decision is subject to the appeals procedures set forth in part 473 of this chapter.

(2) Any determination regarding services that were furnished by the HMO or CMP, either directly or under arrangement, for which the enrollee has no further liability for payment are not subject to appeal.

(3) Services included in an optional supplemental plan under (§ 417.440(b)(2)) are subject only to a grievance procedure.

(4) Physicians and other individuals who furnish services under arrangement with an HMO or CMP have no right of appeal under this subpart.

(c) *Applicability of other regulations.* Unless otherwise provided in this

subpart, regulations at 20 CFR, part 404, subparts J and R, (pertaining respectively to conduct of hearings and representation of parties under title II of the Act) are applicable under this subpart.

§ 417.628 [Removed]

4. Section 417.628 is removed.

5. In § 417.632, paragraphs (c) and (d) are revised to read as follows:

§ 417.632 Request for hearing.

* * * * *

(c) *Parties to a hearing.* (1) The parties to a hearing must be the parties to the reconsideration and any other person or entity whose rights with respect to the reconsideration may be affected by the hearing, as determined by the ALJ.

(2) The HMO or CMP must be made a party to the hearing but does not have a right to request a hearing.

(d) *ALJ action when the amount in controversy is less than $100.* (1) If the request plainly shows that the amount in controversy is less than $100, the ALJ dismisses the request.

(2) If, after a hearing is initiated, the ALJ finds that the amount in controversy is less than $100, he or she discontinues the hearing and does not rule on the substantive issues raised in the appeal.

F. Subpart R is amended as set forth below.

Subpart R—Medicare Contract Appeals

§ 417.644 [Amended]

1. In § 417.644, the following changes are made:

a. In paragraph (a), ''will notify the HMO or CMP in writing'' is revised to read ''gives the HMO or CMP written notice''.

b. In paragraph (c), ''Notice of an initial determination specified in § 417.640 is mailed to the HMO or CMP'' is revised to read ''HCFA mails the notice to the HMO or CMP''.

2. Section 417.648 is revised to read as follows:

§ 417.648 Reconsideration: Applicability.

(a) Reconsideration is the first step for appealing an organization determination specified in § 417.640 (a) or (b).

(b) HCFA reconsiders either of the specified determinations if the HMO or CMP files a written request in accordance with § 417.650.

§ 417.652 [Amended]

3. In § 417.652, ''will provide'' is revised to read ''provides''.

4. Section 417.656 is revised to read as follows:

§ 417.656 Notice of reconsidered determination.

(a) HCFA gives the parties written notice of the reconsidered determination.

(b) The notice—

(1) Contains findings with respect to the HMO's or CMP's qualifications to enter into a contract with HCFA under section 1876 of the Act;

(2) States the specific reasons for the reconsidered determination; and

(3) Informs the party of its right to a hearing if it is dissatisfied with the determination.

§ 417.666 [Amended]

5. In § 417.666, ''will designate'' is revised to read ''designates''.

§ 417.668 [Amended]

6. In § 417.668, ''will designate'' is revised to read ''designates''.

§ 417.670 [Amended]

7. In § 417.670, the following changes are made:

a. In paragraph (a), ''will fix'', ''send'', and ''must also inform'' are revised to read ''fixes'', ''sends'', and ''also informs'', respectively.

b. In paragraph (c), ''any change in time or place or of adjournment'' is revised to read ''any change in time or place of hearing, or of adjournment or postponement''.

§ 417.676 [Amended]

8. In § 417.676, the following changes are made:

a. In paragraph (a), ''will be open'' is revised to read ''is open''.

b. In paragraph (b), ''will inquire'' is revised to read ''inquires'', and ''must receive'' is revised to read ''receives''.

c. In paragraph (c), ''The parties will be provided'' is revised to read ''The hearing officer provides the parties''.

d. In paragraph (d), ''will decide'' is revised to read ''decides''.

§ 417.678 [Amended]

9. In § 417.678, ''will rule'' is revised to read ''rules''.

§ 417.680 [Amended]

10. In § 417.680, paragraph (b), ''will be'' is revised to read ''are''.

§ 417.682 [Amended]

11. In § 417.682, in paragraphs (a) and (c), ''will be'' is revised to read ''is''.

§ 417.686 [Amended]

12. In § 417.686, in paragraph (a), ''will be'' is revised to read ''is''.

§ 417.690 [Amended]

13. In § 417.690, the following changes are made:

a. In paragraph (a), ''will issue'' is revised to read ''issues''.

b. In paragraph (b), ''will provide'' is revised to read ''provides''.

§ 417.692 [Amended]

14. In § 417.692, the following changes are made:

a. In paragraph (c)(1), ''will be'' is revised to read ''is''.

b. In paragraph (c)(2), ''will specify'' is revised to read ''specifies''.

§ 417.694 [Amended]

15. In § 417.694, ''final and binding'' is revised to read ''binding''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 31, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–21695 Filed 9–5–95; 8:45 am]

BILLING CODE 4120–01–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule with request for comments.

SUMMARY: The National Science Foundation is amending its regulations to designate additional Antarctic Specially Protected Areas, to redesignate one site as a Specially Protected Area which was formerly designated as a Site of Special Scientific Interest, and to revise the designations of Specially Protected Areas consistent with Antarctic Treaty Consultative meeting recommendations. These regulations, issued pursuant to section 6(b)(3) of the Antarctic Conservation Act of 1978 (16 U.S.C. 2405(b)(3)), are being revised to reflect recommendations adopted by the Antarctic Treaty parties at the 16th Antarctic Consultative Meeting.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Comments should be sent to Joyce A. Jatko, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko at the address above or by telephone at (703) 306–1030.

SUPPLEMENTARY INFORMATION: Since these regulations were originally issued

in 1979, several Antarctic Treaty Consultative Meetings have been held in accordance with Article IX of the Antarctic Treaty. The regulations have been amended from time to time based on recommendations adopted at these meetings. The amendments that are the subject of this rule implement recommendations XVI–4, XVI–8 and XVI–9 of the 16th Antarctic Treaty Consultative Meeting (16th ATCM). Because the amendments merely implement recommendations adopted at the 16th ATCM, public comments were not obtained before making the amendment effective.

The recommendations which are the subject of this amendment are as follows:

Recommendation XVI–4 re-designates Site of Special Scientific Interest No. 30, Avian Island, Marguerite Bay, Antarctic Peninsula as Specially Protected Area No. 21 and provides that it be subject to the management plan accompanying the description of the protected area.

Recommendation XVI–8 provides that Cryptogram Ridge, Mount Melbourne, Victoria Land, be designated as Specially Protected Area No. 22 and be subject to the management plan annexed thereto.

Recommendation XVI–9 provides that Forlidas Pond and Davis Valley Ponds be designated as Specially Protected Area No. 23 and be subject to the management plan annex thereto.

Specially Protected Area No. 21: Avian Island (67°46′ S, 68°54′ W) lies 0.25 km south of the south-west tip of Adelaide Island in north-west Marguerite Bay, south-west Antarctic Peninsula. The Area consists of Avian Island together with its littoral zone. It is 1.45 km long by 0.8 km at its widest (total area about 49 ha), and rises to just over 40 m altitude in the south. It is almost entirely ice-free in summer. There are several shallow melt pools, the largest being on the eastern raised beach terrace. There are two small dilapidated refuge huts, one near the north-west and the other near the mid-east shores of the island. The Area is unique in the Antarctic Peninsula region for its abundance and diversity of breeding seabirds. The Blue-eyed shag colony is one of the largest known in the Antarctic, and the Adelie penguin colony is the largest on the Antarctic Peninsula.

Specially Protected Area No. 22: Mount Melbourne (74°21′ S, 164°42′ W lies between Wood Bay and Campbell Glacier, northern Victoria Land, on the western side of the Ross Sea. The Area includes most of Cryptogram Ridge on the southern rim of the main summit crater (2,733 m altitude), and extends to about 1,200 m by 500 m. Geothermal activity occurs along about 300–400 m of the ridge and is marked by discontinuous areas of ice-free ground, surrounded by numerous ice hummocks up to 1 m high and scattered hollow ice towers up to several meters in diameter and 4 m high. The warm ice-free areas are mostly gently sloping with narrow terraces up to 1.5 m wide. The geothermal ground within the Area supports a unique community of bryophytes, algae and microbiota, including the only known occurrence in the Antarctic of the moss *Campylopus pyriformis*.

Specially Protected Area No. 23: Forlidas Pond, about 100 m in diameter, is situated near the east end of the Dufek Massif in a small unnamed dry valley about 1 km to the east of the northern edge of the Forlidas Ridge and about 1 km northwest of Davis Valley. The unnamed dry valley is separated from Davis Valley by a northeast trending ridge several kilometers long. The position of Forlidas Pond is 82°27′15″ S, 15°21′ W. The Area includes smaller ponds that occur along the ice margin at the northern edge of Davis Valley, a short distance east of Forlidas Pond. The Area consists of two parts about 500 meters apart and includes all that area within 500 m of the center of Forlidas Pond and all that area within a 500 m radius of several meltwater ponds at the ice margin along the northern edge of Davis Valley. The Area contains some of the most southerly freshwater ponds known in Antarctica containing plant life.

Determinations

I have determined, under the criteria set forth in Executive Order 12866, that this rule is not a significant regulatory action requiring review by the Office of Information and Regulatory Affairs. I have also determined that this rule involves a foreign affairs function of the United States and is, therefore, exempt from the notice requirements of section 553 of the Administrative Procedure Act and from regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Finally, I have reviewed this rule in light of section 2 of Executive Order 12778 and certify for the National Science Foundation that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Pursuant to the authority granted by 16 U.S.C. 2405(b)(3), NSF hereby amends 45 CFR Part 670 as set forth below.

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: 16 U.S.C. 2405, as amended.

2. Section 670.30 is revised to read as follows:

§ 670.30 Designation of specially protected areas.

The Act states that the Director shall designate as a specially protected area, each area identified under the Agreed Measures as needing special protection. The following areas have been so identified and designated as Specially Protected Areas:

(a) SPA 1, Taylor Rookery, MacRobertson Land
(b) SPA 2, Rookery Islands, Holme Bay
(c) SPA 3, Ardrey Island and Odbert Island, Budd Coast
(d) SPA 4, Sabrina Island, Balleny Islands
(e) SPA 5, Beaufort Island, Ross Sea
(f) SPA 7, Cape Hallett, Victoria Land
(g) SPA 8, Dion Islands, Marguerite Bay, Antarctic Peninsula
(h) SPA 9, Green Island, Berthelot Islands, Antarctic Peninsula
(i) SPA 13, Moe Island, South Orkney Islands
(j) SPA 14, Lynch Island, South Orkney Islands
(k) SPA 15, Southern Powell Island and adjacent islands, South Orkney Islands
(l) SPA 16, Coppermine Peninsula, Robert Island
(m) SPA 17, Litchfield Island, Arthur Harbor, Palmer Archipelago
(n) SPA 18, North Coronation Island, South Orkney Islands
(o) SPA 19, Lagotellerie Island, Marguerite Bay
(p) SPA 20, 'New College Valley', Caughley Beach, Cape Bird, Ross Island
(q) SPA 21, Avian Island, North-west Marguerite Bay
(r) SPA 22, Cryptogram Ridge, Mount Melbourne, Victoria Land
(s) SPA 23, Forlidas Pond and Davis Valley Ponds

Note: Maps specifying these areas in greater detail may be obtained from the Director.

§ 670.34 [Amended]

3. Section 670.34 is amended by removing paragraph (b)(30) and redesignating paragraphs (b)(31)–(b)(36) as paragraphs (b)(30)–(b)(35).

Dated: August 18, 1995.

Lawrence Rudolph,

General Counsel, National Science Foundation.

[FR Doc. 95–21978 Filed 9–5–95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–9]

RIN 2125–AD37

Parts and Accessories Necessary for Safe Operation; Automatic Brake Adjusters and Brake Adjustment Indicators

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting a final rule requiring the use of automatic brake adjusters (ABAs) on hydraulically-braked commercial motor vehicles (CMVs) and air-braked CMVs manufactured on or after October 20, 1993, and October 20, 1994, respectively. This rulemaking is intended to: Ensure that the operational standards for brakes in the Federal Motor Carrier Safety Regulations (FMCSRs) are consistent with the manufacturing standards in the Federal Motor Vehicle Safety Standards (FMVSSs), Nos. 105 and 121, which now require the installation of automatic brake adjusters and adjustment indicators on certain CMVs manufactured on or after these dates; and improve the safety of operation of CMVs by reducing the incidence of brakes that are out of adjustment.

EFFECTIVE DATE: October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1994, the FHWA published a notice of proposed rulemaking in the **Federal Register** (59 FR 39518) to require the use of ABAs on hydraulically-braked CMVs manufactured on or after October 20, 1993, and air-braked CMVs manufactured on or after October 20, 1994. These were the effective dates of the National Highway Traffic Safety Administration's (NHTSA) amendments to its Federal Motor Vehicle Safety Standards (FMVSSs) Nos. 105 and 121. The FHWA also proposed a requirement for brake adjustment indicators (BAIs) on air-braked CMVs with external adjustment mechanisms manufactured on or after October 20, 1994.

Because the FHWA also believed there were opportunities for improvements to the operational safety of CMVs manufactured prior to the effective dates of the amendments to FMVSS Nos. 105 and 121, the agency requested information regarding the potential impacts of requiring CMVs subject to the FMCSRs to be retrofitted with ABAs, and of requiring air-braked CMVs with external adjustment mechanisms to be retrofitted with BAIs. The FHWA requested comments on eight questions specifically concerning the issue of retrofits:

1. Should air-braked CMVs manufactured before the effective date of NHTSA's rule be required to be retrofitted with ABAs?

2. Should all air-braked CMVs with external brake adjustment mechanisms be required to be retrofitted with brake adjustment indicators?

3. If certain CMVs are to be retrofitted, how much time should be allowed for installation of the new equipment?

4. Are there certain types or configurations of air-braked vehicles that cannot be equipped with ABAs because of space limitations around the axles and wheels?

5. Should different periods be specified for retrofitting single-unit trucks, tractors, converter dollies, and trailers?

6. The requirements proposed by this NPRM would exclude air-braked vehicles that were not subject to FMVSS No. 121 on the date of manufacture. (Vehicles not subject to the requirements are listed under paragraph S3 of § 571.121, and include certain types of limited- or specialized-use vehicles such as wide trailers, vehicles equipped with an axle with a gross axle weight rating of 13,154 kilograms (29,000 pounds) or more, any truck or bus that has a speed attainable in 3.2 kilometers (2 miles) of not more than 53 km/hr (33 mph), heavy hauler trailer sets, and load divider dollies.) Should specific types of CMVs, or CMVs used in unique operations, (i.e., CMVs that are *not* subject to the requirements of FMVSS 121, but are subject to the FMCSRs) be exempt from a requirement to be retrofitted with ABAs? Should these specific types of air-braked CMVs manufactured on or after October 20, 1994, be required to be *equipped* with ABAs prior to being placed in operation in interstate commerce? Please provide details.

7. What are the costs associated with retrofitting an ABA compared to replacement of a manual brake adjuster (MBA)? Please include the cost of the device, the time required to complete the installation, and a representative hourly salary of the mechanic performing the installation. Please also include a ''loss of use'' cost figure if a CMV were to be taken out of revenue service for retrofitting at some time other than a time when a brake adjuster would normally be due for replacement. How often do tractors and trailers visit a facility where retrofitting could take place?

8. Should the FHWA consider a retrofitting requirement for hydraulically-braked CMVs? Please address the cost questions asked in Question 7.

Discussion of Comments

Twenty-seven commenters responded to the notice: The Heavy Duty Brake Manufacturers Council (HDBMC), an association of 10 heavy duty brake component manufacturers; 3 manufacturers of brake components (Rockwell International, Haldex Corporation, Midland-Grau Heavy Duty Systems); a manufacturer of brake adjustment indicators (Tattle-Tale); a motor carrier using a brake adjustment indicator of its own design (Sebring Container Corporation); a private motor carrier (Wilbur-Ellis); a manufacturer of trucks and truck-tractors (Volvo GM Heavy Truck Corporation); a manufacturer of heavy construction equipment (Cedarapids Inc.); 6 national transportation and trade associations (Steamship Operators Intermodal Committee (SOIC), American Trucking Associations (ATA), National Automobile Dealers Association (NADA), National Private Truck Council (NPTC), National School Transportation Association (NSTA), Petroleum Marketers Association of America (PMAA); 2 CMV leasing companies (Riteway Leasing Company and XTRA Corporation); a drivers' organization (the Owner Operator Independent Drivers Association (OOIDA)); a public transportation authority (Metro-Dade Transit Authority); an intermodal transportation provider (Union Pacific Railroad Company); the Commercial Vehicle Safety Alliance (CVSA), an association of Federal, State, and Provincial officials responsible for the administration and enforcement of motor carrier safety regulations in the United States, Canada, and Mexico; the European Union, which submitted its comments via the European Commission General Agreement on Tariffs and Trade (GATT) Enquiry Point; 2 State highway safety enforcement agencies (Maine State Police, State of

Connecticut Department of Motor Vehicles); 2 highway safety organizations (Insurance Institute for Highway Safety (IIHS) and Advocates for Highway and Auto Safety (AHAS)); and 1 private individual.

In-Use Requirement

Almost without exception, commenters who addressed the proposed requirement to adopt rules parallel to the NHTSA's recent amendments to FMVSSs Nos. 105 and 121 responded favorably. These commenters included the Maine State Police, the State of Connecticut Department of Motor Vehicles; HDBMC; Wilbur-Ellis; IIHS, NPTC, AHAS, OOIDA, NSTA, and Midland-Grau. Haldex and Rockwell International limited their comments to air-braked vehicles.

The ATA noted that manufacturers have provided, and motor carriers voluntarily used, automatic brake adjusters for a number of years, and that, even in the absence of Federal regulations, the marketplace is adopting this technology on its merits. Although it generally favored the proposed in-use requirement, the ATA raised several arguments concerning ABAs and brake maintenance. It stated that out-of-adjustment brakes are a maintenance problem that ''can be compounded if the addition of such equipment causes fleets to determine that they will no longer need to look at their brakes as frequently and if the automatic adjusters are not serviced.'' The ATA also quoted a NHTSA study, which noted that carefully-maintained manual brake adjusters (MBAs) can keep strokes within tolerances comparable to ABAs. The ATA added that MBAs ''can be set to a closer adjustment'' than ABAs because ABAs ''must provide extra stroke to prevent over-adjustment when brake drums are hot.''

The FHWA generally agrees with this portion of the ATA's comment; however, the cited research performed by the NHTSA (''Automatic Brake Adjusters for Heavy Vehicle Air Brake Systems,'' February 1991, report DOT–HS–807–724 (PB 91–215814)) and the National Transportation Safety Board (''Heavy Vehicle Airbrake Performance,'' April 29, 1992, report NTSB/SS–92/01 (PB 92–917003)) has demonstrated that not all MBAs are well maintained. (Copies of both of these reports have been placed in the docket.) The preambles to the FHWA's NPRM and the NHTSA's rulemakings on ABAs clearly stated that ''automatic'' brake adjusters do not in any way imply that they are ''maintenance-free'' devices. Nevertheless, the FHWA continues to believe that ABAs can reduce instances of brakes out-of-adjustment, and CMVs being declared out-of-service, due to this condition.

The ATA asserted that ABAs ''are not mandatory for safety.'' It argued that, should a regulation be imposed prohibiting the replacement of an ABA with an MBA, the vehicle should not be placed out of service because of the substitution unless the vehicle's brakes are found to be out of adjustment.

The FHWA's intent in issuing this rulemaking is to require an ABA installed in accordance with the requirements of FMVSS Nos. 105 or 121 to be replaced in kind, so the vehicle continues to perform as originally manufactured. Motor carriers have considerable experience selecting replacement parts; the replacements must be chosen to ensure that the systems in which they are installed continue to operate safely.

Regarding the ATA's concern about a CMV equipped with an MBA (where an ABA is required by the FMVSSs and the FMCSRs) being placed out of service, the FHWA notes that, under the current provisions of the CVSA's North American Uniform Out-of-Service Criteria, the presence of an MBA would not be a cause for placing a CMV out-of-service unless the condition of the brake, or its state of adjustment, were such that it would be likely to cause an accident or a breakdown. The FHWA notes that the CVSA's comments to this docket did not address changing the criteria with respect to the presence or absence of ABAs.

Finally, while the ATA agreed with the intent of the NPRM, it expressed concern that the proposed language would specifically reference an FMVSS. The ATA stated that, by requiring vehicle users to ensure that replacement parts meet the FMVSS, the FHWA would, in effect, require consumers [motor carriers, CMV operators] to ''create the technical expertise of manufacturers for themselves.'' The ATA asserted that, if the FHWA wants CMV users to purchase parts which meet the FMVSS, then the FHWA must work with the NHTSA to assure that new parts are labeled with compliance information or a code, similar to the requirements for fuel tanks under § 393.67(f) of the FMCSRs.

An in-use requirement for a CMV part or accessory that references an FMVSS does not place any unique burden on the CMV's operator. For example, § 393.11 provides an in-use standard for lighting devices and reflectors; it states that CMVs must meet the requirements of 49 CFR 571.108 (FMVSS 108) in effect at the time of manufacture of the vehicle. Commercial motor vehicle operators have ample experience in obtaining replacement parts for vehicle subsystems. In fact, at least one ABA manufacturer (Gunite) provides cross-reference lists to show appropriate replacements for original equipment manufacturers' devices.

In closing, the ATA recommended that the FHWA and the NHTSA work together to focus the FMVSSs and the FMCSRs on CMV maintenance difficulties. The ATA stated that such items as wear indicators, component identification, and access for inspection have been largely ignored in the Federal standards, yet they play a major role in equipment operation and ease of inspection. The FHWA takes these concerns into account to the greatest extent practicable, and will continue to do so as the agency works to develop performance-based regulations through its Zero-Base Regulatory Review Program.

The CVSA did not take a position on the proposed in-use requirements. It noted that most inspectors are familiar with ABAs, although they may need some minimal ''recognition'' training for new or different systems. The CVSA was concerned that BAIs provide consistent information to motor carrier personnel throughout the BAI's service life. The CVSA made the observation that some BAIs use paint on the pushrod to indicate adjustment status, and that, when the paint wears, it may give a false reading.

The FHWA has consulted with the NHTSA regarding this matter. Some manufacturers use epoxy and baked-on coatings for marking/color-coding pushrods, but it is possible that some may use paint. If a BAI is not maintained to provide an accurate reading of brake adjustment status, the motor carrier will be in violation of the FMCSRs.

Sebring Container Corporation commented on their favorable experience with BAIs. Two commenters noted that many buses are equipped with ABAs: the NSTA indicated that its members who responded to a small survey all used ABAs, and Metro-Dade Transit Authority buses all have ABAs. Union Pacific Railroad Company favored the in-use rule. The European Commission expressed a concern that the FMVSS requirement was more restrictive than European requirements.

Volvo and the ATA addressed the wording of the proposed rule. Volvo suggested the language be modified to define more clearly the class of vehicles subject to the requirement, specifically CMVs with air brake systems that meet the requirements of FMVSS No. 121 (49

CFR 571.121, paragraph S5.1.8) at the time of manufacture. It pointed out that FMVSS No. 121 exempts some vehicles, such as those with gross axle weight ratings in excess of 13,154 kg (29,000 lbs.), and that the language originally proposed would have required ABAs on all CMVs, irrespective of the FMVSS No. 121 requirements. This would necessitate retrofitting for which components may not exist.

The FHWA has revised the language of § 393.53(a) and § 393.53(b) to clarify their applicability to CMVs that are subject to the requirements of FMVSS Nos. 105 and 121, respectively, at the time of their manufacture.

The ATA also offered alternative language for the proposed rule: ''Each commercial motor vehicle manufactured with a hydraulic brake system on or after October 20, 1993, and equipped with an automatic means of brake adjustment to comply with FMVSS 105, shall remain equipped with an automatic brake adjustment system.'' Similarly for CMVs equipped with air brakes: ''Each commercial motor vehicle manufactured with an air brake system on or after October 20, 1994, and equipped with an automatic means of brake adjustment to comply with FMVSS 121, shall remain equipped with an automatic brake adjustment system.''

The FHWA disagrees with the ATA's suggested rewording because it could be interpreted to permit devices that do not comply with the ABA requirements of FMVSSs Nos. 105 and 121 at the time when the CMV was manufactured to be used as replacement parts. The agency's intent, in proposing an in-use rule, was to require that replacement ABAs continue to conform to the FMVSSs, much as replacement lighting devices and reflectors must continue to conform to the requirements of FMVSS No. 108.

Retrofitting ABAs on Hydraulically-Braked CMVs

The following commenters addressed the questions concerning a potential retrofitting requirement, but did not address the proposed in-use requirement: Riteway Leasing Company, SOIC, Tattle-Tale, NADA, PMAA, Cedarapids, Michael J. Meyer, and XTRA Corporation.

With two exceptions, those who commented on this issue were strongly opposed to a retrofitting requirement for these vehicles. Most cited potential major engineering changes that would be required for axles as well as brakes. For example, HDBMC stated that hydraulic disc brakes inherently provide automatic adjustment. It added that automatically-adjusted hydraulic drum brakes have internal adjustment mechanisms, and retrofitting would, in most cases, require replacement of the entire brake assembly. In some cases, the hub and drum, or even the entire axle, would have to be replaced. The HDBMC noted that, since the 1983 model year, all class 6, 7, and 8 hydraulic brake trucks [1] manufactured by major U.S. manufacturers have had automatic adjustment features. Mandating a retrofit would therefore be superfluous except for a very few vehicles, and their retrofitting costs would be exorbitant.

Both Rockwell International and Wilbur-Ellis noted that hydraulically-braked CMVs provide the driver an indication of brake adjustment through the brake pedal travel.

The ATA's comments reiterated many of the points made by others. It noted that adjustment systems for hydraulic drum brakes are internal to the brakes, integral to their design, and cannot practically be retrofitted.

The NADA and the NPTC were opposed to a retrofit for hydraulically-braked CMVs. Haldex stated that retrofit is impractical for hydraulic brakes. The NSTA was concerned with potential retrofitting problems, including safety and voiding of the FMVSS certification applicable at the time of manufacture. It also questioned whether retrofit kits would be available for older buses in fleets, some of which are over 20 years old, and whether they could be installed and made to operate properly. Midland-Grau Heavy Duty Systems noted that the majority of hydraulically-braked CMVs already are equipped with ABAs. Union Pacific Railroad Company recommended against retrofits for hydraulically-braked CMVs because of the high costs involved. It noted that hydraulically-braked vehicles have had self-adjusting brakes on most units for many years, and that relatively few CMVs currently in service are not so equipped. The CVSA commented that hydraulic brake systems are not disassembled to inspect their component parts during the course of inspecting a CMV, and that a decision regarding hydraulic brake systems would not affect inspection procedures.

Commenting in favor of a retrofit requirement for hydraulically-braked CMVs, the AHAS stated that ABAs are necessary for all CMVs. The AHAS was ''convinced that the benefits gained by retrofitting ABAs and BAIs to the entire existing commercial fleet would far outweigh any costs to industry, especially if a reasonable phase-in program was put in place.'' The AHAS did not, however, provide any figures to substantiate this statement. The AHAS also stated that it was unsure of the benefits of BAIs for hydraulic or air-over-hydraulic systems, and that it did not know how BAIs could be retrofitted.

The Maine State Police (Maine) also stated that retrofits should be required, without differentiating between air-braked and hydraulically-braked CMVs. It recommended effective dates of October 20, 1996, for tractors and trucks, and October 20, 1997, for trailers, semitrailers, and converter dollies. Maine also recommended that limited- or specialized-use vehicles also be subject to a retrofitting requirement, but it provided no additional information or technical material to support this viewpoint.

The FHWA acknowledges the concerns expressed by the commenters over retrofitting hydraulically-braked CMVs. The engineering work required to accomplish this retrofit would be complex and costly. The engineering complexity of designing and installing a retrofitted system would potentially go beyond the maintenance capabilities of all but the most sophisticated organizations. Because the design of hydraulic brakes is generally not amenable to this type of modification, an engineering retrofit, if done improperly, could actually degrade the performance of the brake system, or render it inoperative. Therefore, in view of the possible adverse safety impacts, the FHWA has decided not to require retrofitting for hydraulically-braked CMVs.

Questions Concerning Retrofitting of ABAs and BAIs on Air-Braked CMVs

The remaining questions posed by the NPRM covered retrofitting ABAs and BAIs on air-braked CMVs. While few commenters expressed strong opinions for or against retrofitting, nearly all voiced concerns. Commenters cited the current limited production capacity of ABA manufacturers, potential engineering modifications required for brake system component mountings because of the limited space around brake chambers on some vehicles, and potential difficulty in locating the vehicles and taking them out of revenue service to retrofit ABAs. Specific comments on each of the numbered questions asked in the NPRM follow, along with the FHWA's response:

1. Should air-braked CMVs manufactured before the effective date of NHTSA's rule be required to be retrofitted with ABAs?

[1] Class 6: 8,446–11,794 kg (19,501–26,000 lbs); Class 7: 11,795–14,969 kg (26,001–33,000 lbs); and Class 8: over 14,969 kg (33,000 lbs).

In Favor

The AHAS stated it would strongly support such an initiative as an appropriate complement to the FMVSSs. The AHAS strongly believes that the FHWA should not consider mandating ABAs without also requiring (1) the use of BAIs, and (2) submissions of certifications by interstate carriers of their preventive maintenance programs which ensure optimal maintenance and operation of ABAs.

Maine believed that retrofits should be required.

Metro-Dade stated it would support an ABA retrofit proposal, noting that its urban bus fleet is equipped with ABAs.

Sebring stated that it will install ABAs as replacements for manual brake adjusters, as needed.

Opposed

Wilbur-Ellis opposed retrofitting because the cost would not justify the safety benefit, and ABAs must still be maintained and brake clearances checked. It recommended aggressive roadside enforcement.

The ATA opposed mandatory retrofit for existing equipment, reasoning that motor carriers lack technical expertise to assure replacement parts comply with the FMVSSs; this is the responsibility of the manufacturer. It stated that hydraulic brakes and some air brakes cannot be retrofitted, and that motor carriers are ''unable to redesign equipment which was built not having to comply * * *.'' The ATA stated that most tractors manufactured since the late 1980s have ABAs, but that ABAs have not been standard equipment on most trailers. It contended that the current rule requiring brakes to be kept in adjustment is ''actually more comprehensive'' than a retrofit requirement, because the mere presence of ABAs does not guarantee that brakes will be kept in adjustment. The ATA added that retrofits should not be required because many installations lack the space to make the substitution; there may be design limitations within the initial system; and current systems operate safely but may not do so after retrofitting. It stated that consumer reworking of vehicles could create legal liability issues: an example would be a retrofit that could require removing brackets from heat-treated axles, potentially leading to a structural failure. Finally, the ATA asserted that the record demand for ABAs for new CMVs subject to FMVSS No. 121 has rationed aftermarket supply.

The NADA believed the requirements would be unduly burdensome to the motor carrier industry.

The NPTC stated ''There is still some concern surrounding the effectiveness of ABAs * * *. (T)he technology still has room for improvement * * *.'' While it opposed retrofitting, the NPTC proposed that vehicles that had already been retrofitted be required to maintain their ABAs.

The OOIDA stated that it was adamantly opposed to a retrofit requirement. ''Time and cost are not justified by the marginal safety benefit that would result.'' It believed that retrofitting would be cost-prohibitive ''for a vast portion of the trucking industry, especially owner-operators,'' and that the FHWA should defer to the opinion and expertise of the NHTSA.

Haldex was concerned that retrofitted ABAs might not be able to keep air chambers operating within allowable limits due to wear and lack of maintenance of other brake components. It stated that ''Improvement in overall operational safety of these retrofitted vehicles may be less than expected unless other brake maintenance is performed at the time of the retrofit.'' Haldex also stated that, although the company would benefit from a requirement to retrofit all CMVs, it could not enthusiastically support such a proposal because of the potential high costs to the trucking industry and because it believed that past maintenance histories would lead to uncertain future benefits from the devices.

The NSTA was concerned that retrofitting could affect safety and potentially void the FMVSS certification applicable at time of manufacture. It questioned whether retrofit kits would be available for older buses (up to 20 years old), and whether the ABAs could be installed and made to operate properly.

The PMAA cited safety and economic concerns, particularly for small businesses. The PMAA believed that current regulations requiring brake inspection and adjustment were sufficient.

Union Pacific cited an extremely high cost burden, and added that the time during which vehicles would be out of revenue service would jeopardize the transportation system's ability to move the Nation's freight on a timely basis.

Mr. Michael J. Meyer, a mechanic with 14 years of experience and 14 additional years as an owner-operator, believed a retrofitting requirement would lead drivers to ignore brakes, as well as to miss other potential equipment problems, because they would take shortcuts in performing under-vehicle inspections.

XTRA Corporation cited cost, possible customer non-awareness of the applicability of a retrofitting requirement to leased trailers, and the difficulty of customers in ''obtaining adequate compliance with the technical aspects of retrofitting.'' It added that a substantial number of its trailers are not used in long-distance hauls, but are drayed to and from intermodal ramps. It also noted that many of its trailers are leased for storage and for use as offices, and should not be required to be retrofitted.

Other Commenters' Concerns

The HDBMC believed that the FHWA should consider air-braked CMV ABA retrofits ''when physically possible and economically feasible.'' While the HDBMC declared that consideration of retrofitting ''is laudable,'' it cautioned that many concerns would need to be addressed; for example, not all automatic slack adjusters interchange with manual slack adjusters.

Volvo echoed the HDBMC's view, stating that retrofits will, in some cases, require more than a one-for-one replacement. Volvo noted that design changes go ''forward'' to new products, and that not all are backward-compatible for use as service replacements with older equipment.

Midland-Grau stated that a complete analysis of all combinations of ABAs and foundation brake set-ups must be made. It urged an evaluation of the risk of incomplete or incorrect installation against potential safety benefits, and advised the FHWA to review past experiences with retrofit requirements, such as that for steering axle brakes. Midland-Grau also recommended that the FHWA include requirements to use devices that meet the appropriate SAE Recommended Practices, and to perform technical evaluations to prevent safety degradation for incomplete or incorrect retrofits.

The State of Connecticut Department of Motor Vehicles supported a retrofit proposal, provided confirmation of compatibility could be made in advance.

Rockwell believed that ABAs ''do not function in exactly the same manner and that adjustment rate and clearance can affect brake certification,'' although it stated that it did not have data to validate its concern. Rockwell asserted it would be prudent to recommend that replacement ABAs and BAIs be of the same type with which the brake was originally equipped. Rockwell contended that ''new, small, unproven suppliers'' may introduce devices designed to conform to ''somewhat ambiguous NHTSA requirements,'' and

that their lack of knowledge and experience may result in the introduction of ineffective and non-conforming devices. If retrofitting were to be mandated, Rockwell asks the FHWA to consider (1) production capabilities and parts availability, (2) expense and inconvenience to CMV owners, and (3) such technical and performance issues as fit, possible mechanical incompatibility, and mixing of different types of ABAs on a single vehicle.

The CVSA questioned whether there would be a sufficient supply of ABAs over a short retrofit period. It suggested that ''[o]ne alternative to consider is the discontinuance of the manufacture of non-ABAs and when replacing systems, replace them with ABAs.''

Agency's Response to These Comments

It is certainly not the FHWA's intent to force CMV operators to attempt to redesign brake systems or axles in order to accommodate ABAs. If a motor carrier is considering retrofitting ABAs, it should consult with appropriate technical experts (such as the original-equipment manufacturers of the vehicle and the brake system) to ensure that the CMV and its brakes will continue to operate safely.

As for the AHAS' recommendation for certification of preventive-maintenance programs, it should be noted that § 396.3(a)(1) of the FMCSRs requires that: ''Parts and accessories shall be in safe operating condition *at all times*'' (emphasis added). Preventive maintenance is a central element of a CMV maintenance program, and FHWA compliance reviews include an assessment of motor carrier maintenance records. Furthermore, CMVs are subject to roadside inspection programs, using uniform CVSA inspection procedures, and to the periodic inspection requirement of § 396.17. In addition, § 396.25 requires brake inspectors to be capable of performing brake service or inspection tasks through brake-related training, experience, or a combination thereof totaling at least one year. The FHWA believes that an additional program to ''certify'' motor carriers' preventive maintenance programs would achieve little.

The agency disagrees with CVSA's comment that the manufacture of MBAs should be halted. The FHWA does not have the regulatory authority to place such a requirement on manufacturers. Also, as other commenters have pointed out, some CMVs were never designed to accept ABAs, even as an option. Replacing MBAs with ABAs could require engineering modifications to the affected CMVs.

In view of the potential adverse safety impact of a retrofit rule, should it be performed incorrectly, and the significant costs of such a rule, the FHWA will not require retrofitting ABAs on air-braked CMVs.

2. Should all air-braked CMVs with external brake adjustment mechanisms be required to be retrofitted with brake adjustment indicators?

In Favor

The HDBMC stated it would support BAI retrofit when it is physically possible and economically feasible. It asked that the FHWA consider specifying SAE standards designating BAI markings and identification. It also suggested that replacement brake chambers with SAE-marked BAIs be mandated.

Connecticut would strongly support BAI retrofit for air brakes to ease pretrip inspections and reduce the time necessary for maintenance and roadside inspections.

Riteway recommended that all tractors, trailers, trucks, and buses be equipped with ''air brake stroke indicators.'' It noted that the company has used indicators ''for some time'' and has not had a BAI-equipped unit cited for out of adjustment brakes.

Lindy's Enterprise Inc., manufacturer of Tattle-Tale, a visual brake stroke indicator, enclosed product literature and a partial list of customers. ''Our products have been on many over-the-road tractors, trailers, and trucks with great success. We not only feel that our product could save annual inspection costs but help achieve safety results as well.''

Sebring developed a BAI for its own fleet. It believes that its brake maintenance and adjustment programs have improved.

Wilbur-Ellis recommended BAI retrofit for s-cam brakes.

The NPTC stated it would support a BAI retrofit requirement, but that the method used to indicate brake out-of-adjustment status should not be specified.

Metro-Dade supported a BAI retrofit requirement.

The CVSA stated that retrofit of BAIs would be desirable as it would aid in recognizing brake adjustment problems.

Opposed

Maine opposed BAI retrofitting because benefits would be very limited.

Rockwell believed that the benefit of BAIs is marginal compared to ABAs. It cited factors such as the expense of the devices, control of the placement accuracy of retrofit marks/indicators, safety issues from owners improperly disassembling or assembling a brake chamber, and the production capability of established suppliers.

The ATA believed that internal system BAIs using air chamber assemblies incorporating marked pushrods are the most satisfactory arrangement. It feared that required retrofitting might involve replacing brake chambers to achieve a proper match of size and brake stroke. It was also concerned that aftermarket BAIs may be easily knocked out of position by road debris, dirt, snow, and physical contact with other vehicle parts.

The NADA opposed BAI retrofitting for the same reasons it opposed ABA retrofitting.

The AHAS believed that ABAs will not correct chronic problems with out-of-adjustment air brakes unless used with easily-seen adjustment indicators and ''vigorous educational campaigns by Federal and State authorities.'' It stated that the FHWA should not consider mandating ABAs without also requiring the use of BAIs. The AHAS expressed particular concern on retrofitting CMVs with ''boot-covered'' air brake pushrods, because it believed that BAIs were probably not feasible for that design. The AHAS added that ''this proprietary approach to air brake chamber design can permanently forswear the considerable additional benefits of supplementing ABAs with BAIs on air brakes,'' and recommended that the FHWA coordinate with the NHTSA.

The OOIDA opposed any requirement for retrofitting of brake components. It believed that, given the ''typical useful life'' of Class 7 or 8 motor vehicles, and allowing for ''any reasonable'' amount of time fully to implement a retrofit rule, a manufacturing standard would achieve virtually the same result.

Haldex cited fleet turnover in its opposition to BAI retrofit. It believed that a mandate for stroke indicators could be made without one for ABAs, but that an ABA retrofit without including BAIs could create a false sense of security due to maintenance concerns on older vehicles.

Midland-Grau cautioned that a complete brake system analysis would be required, as for an ABA retrofit.

Union Pacific and XTRA Corporation would oppose retrofit of BAIs for the same reasons that they would oppose ABA retrofit.

Agency's Response to These Comments

As several of the brake manufacturers pointed out, the original design of the brake system must be considered in

determining whether or not a retrofitted item would function properly. The accuracy, precision, and, most notably, the durability of most retrofitted BAIs is questionable. While marked pushrods on replacement air chamber assemblies might prove the most durable, it is not reasonable to expect a motor carrier to replace an air chamber in proper operating condition for that sole purpose.

The FHWA has consulted with the NHTSA on the matter of BAIs on boot-covered pushrods. Very few CMVs use boot-covered pushrods. Those CMVs that are so equipped are generally used for operations where the brake chambers could be contaminated with dust and debris. They are exempt from the FMVSS BAI requirement because they do not have an exposed pushrod. This is not a loophole for manufacturers, but a recognition that certain operating environments require enclosed pushrods.

3. If certain CMVs are to be retrofitted, how much time should be allowed for installation of the new equipment?

Comments

Commenters suggested phase-in periods ranging from one to seven years. Metro Dade suggested that only one year would be necessary to retrofit a transit fleet. The NPTC suggested a minimum two-year retrofit period for hydraulically-braked CMVs and a minimum of a five-year retrofit for air-braked CMVs. The OOIDA and Union Pacific recommended at least three years, while the ATA and the AHAS recommended four years. The SOIC and Haldex recommended at least five years. XTRA Corporation stated that the responsibility to retrofit would fall upon their customers because it has relinquished control to the lessee. It noted that most leases run five to six years, so its commercial situation dictated against requiring retrofitting in a shorter period than seven years.

Midland-Grau commented that retrofit time required would be a function of the specific products selected, and any vehicle modifications needed, such as brake chamber pushrod length changes to fit a new ABA and clevis, interference rework, and brake chamber modifications to fit stroke indicator components.

Other factors cited by commenters that would affect a phase-in period included the ability of manufacturers to meet the demands for new CMVs as well as retrofitted ones, time lags in distribution channels, scheduling of vehicles for retrofit, and costs to CMV operators. In particular, Haldex and the ATA contended that ABA manufacturers currently have inadequate capacity to simultaneously supply ''record levels'' of new CMVs and a large retrofit demand.

The AHAS recommended two alternative phased-in schedules. In the first, 10 percent of the entire existing commercial fleet would be retrofitted beginning one year following the promulgation of the final rule, followed by 25 percent in the second year, 60 percent in the third year, with 100 percent compliance by the end of the fourth year. The AHAS also suggested, as an alternative choice for motor carriers, a two-year implementation delay after a final rule was issued, followed by a requirement for 100 percent compliance in the third year.

Agency Response to These Comments

Since the agency has decided not to require retrofitting of any kind, a discussion of these comments is unnecessary.

4. Are there certain types or configurations of air-braked vehicles that cannot be equipped with ABAs because of space limitations around the axles and wheels?

Comments

Rockwell, Haldex, the PMAA, and the ATA stated that space limitations can prevent installation of ABAs, and have in fact done so. Rockwell added that an improperly installed ABA may impair brake performance by limiting brake chamber stroke, and that use of long stroke chambers may influence performance as well.

Haldex noted that, in the last five years, most U.S.-built CMVs offered ABAs at least as an option, but, because of design differences, not all manufacturers' ABAs fit each application. Haldex stated that some vehicles built over 15 years ago, as well as some Japanese vehicles, use a ''camshaft spline'' with uncommon dimensions which is not currently available from any ABA manufacturer. (Haldex did not provide specifics on the design.) Haldex stated that it has had difficulties retrofitting other Japanese vehicles which were not originally designed to offer ABAs as an option.

The ATA commented that slack adjusters, which it believes comprise at least 95 percent of the adjustment mechanisms used for air brakes, must fit into cramped quarters between brake, axle, suspension, and frame components. ''This problem is particularly difficult on tractors but also occurs with trailers, especially those of a specialty nature.'' The OOIDA repeated this concern, adding that ''[t]he modifications that would be necessary to accommodate ABAs on such vehicles vary from relatively small machining operations to outright wheel replacement.''

The PMAA also expressed concerns about space and necessary clearances for retrofitted ABAs to work effectively. The PMAA believes that ''[w]hile a newly-designed vehicles could easily accommodate the variety of components on the market, older vehicles would not be able to follow suit. This is primarily due to the fact that the brake and structural system of the existing vehicle or trailer is already fixed in place during the manufacturing process. Adding adjusters to these vehicles and trailers would require extensive alterations requiring cutting welded bracket anchors from the brake system and engineering a completely redesigned brake system.'' The PMAA believed that such redesign is beyond the technical capabilities of operators like petroleum marketers and truck/trailer service facilities. It believed that a leading cause of ABA failure is improper installation, and that, even when performed by factory-trained personnel, many units still fail. ''It is reasonable to surmise that the more technically-difficult retrofit by untrained personnel would yield a higher rate of brake failure * * *.''

The NADA and the NPTC also believed that some CMVs cannot be equipped with ABAs. XTRA Corporation stated that it owned approximately 1,000 older remanufactured trailers which cannot be converted.

Several commenters did not view a potential retrofitting requirement as a problem. Sebring believed that all its tractors and trailers could be easily equipped. Union Pacific stated that it was not aware of any type of trucks, tractors, or trailers that cannot be equipped due to space limitations. The HDBMC, Midland-Grau, Metro Dade, and the CVSA recommended that the FHWA defer to the judgement of CMV manufacturers.

While it opposed the notion of a retrofitting requirement, the ATA suggested that the requirement only apply to those CMVs which, when new, had ABAs offered as a substitute option for MBAs. The ATA stated that it recognized that there may be problems identifying those vehicles.

Agency's Response to These Comments

The FHWA agrees with the commenters' concerns regarding the difficulty of making engineering modifications (relocation of welded brackets, replacement of atypical components, reconfiguration of components in tight quarters) to permit

some CMVs originally equipped with MBAs to retrofit ABAs. With the exception of Haldex, none of the commenters provided information on specific classes of CMVs that could be readily identified as presenting unique retrofit challenges.

As discussed in the agency's response to the comments to Question 1, it has never been the FHWA's intent to promulgate a rule which would force CMV operators to attempt to redesign brake systems or axles in order to accommodate an ABA. The FHWA will not prohibit retrofitting of ABAs. Nevertheless, motor carriers considering retrofitting ABAs when MBAs are replaced should consult the appropriate technical experts to ensure that the brake system of the affected CMV will continue to operate safely.

5. Should different periods be specified for retrofitting single-unit trucks, tractors, converter dollies, and trailers?

Comments

Maine recommended that trucks and tractors be retrofitted by October 20, 1996, and that trailers, semitrailers, and converter dollies be retrofitted by October 20, 1997.

Rockwell suggested that the FHWA might set priorities for vehicle types based on model years and benefit-risk analysis.

The HDBMC and Haldex advised that any retrofitting requirement be phased-in by vehicle type and year of manufacture. Haldex believed that trailers should have priority over tractors because they have longer useful lives, but receive less maintenance during their lives. Haldex cautioned that combination vehicles are susceptible to jackknife accidents if the tractor brakes are in better working order than trailer brakes. Haldex also noted that new vehicles accumulate more miles, and older vehicles would be retired from service before a retrofit were to be required.

While the NADA indicated that its survey respondents were universally opposed to retrofits, it requested that the time-frame for a potential requirement consider limitations in labor, parts, and shop facilities.

The AHAS believed that its recommended phase-in period discussed earlier should apply simultaneously to tractors, trailers, and single-unit tankers that carry hazardous materials. It suggested that additional lead time be provided for other CMVs and non-air-braked CMVs.

While opposing retrofitting, the OOIDA maintained that different periods should not be specified because they would lead to confusion, needless enforcement activity, and penalties for mistakes of fact.

Sebring said that different periods may be needed but did not elaborate on that statement.

Midland-Grau believed that different periods should be specified according to potential installation problems, but it did not elaborate.

Metro-Dade stated that this issue was not applicable to transit agencies.

Union Pacific opposed the notion of different retrofit periods for different types of CMVs because it would require excessive management to enforce.

The CVSA asked that the FHWA consider a phase-in period and the need for mechanic training.

XTRA Corporation urged that no retrofitting requirements be imposed on intermodal containers, trailers, or chassis, or on remanufactured trailers, or on mobile storage trailers.

Agency's Response to This Comment

As stated earlier in this notice, retrofitting requirements will not be imposed.

6. Should specific types of CMVs, or CMVs used in unique operations, (i.e., CMVs that are *not* subject to the requirements of FMVSS 121, but are subject to the FMCSRs) be exempt from a requirement to be retrofitted with ABAs? Should these specific types of air-braked CMVs manufactured on or after October 20, 1994, be required to be *equipped* with ABAs prior to being placed in operation in interstate commerce?

Comments

Maine and Sebring believed that limited or specialized use vehicles not subject to the FMVSS No. 121 requirements should be subject to a requirement for retrofit of ABAs. Neither provided elaboration. The CVSA recommended that CMVs currently equipped with slack adjusters be required to have ABAs unless there is a specific retrofitting problem for that type of vehicle. Those situations should be handled as exceptions.

The HDBMC, Rockwell, Haldex, Midland-Grau, and the ATA recommended against including CMVs not subject to the FMVSSs. Rockwell believed it ''might be awkward'' to require ABAs on vehicles ''not subject to other federal braking requirements.'' Haldex argued that there was insufficient justification for ABAs on limited- and specialized-use vehicles, noting that there is little industry experience with ABAs on these vehicles, and that retrofitting might be impractical because of installation difficulties.

The ATA stated that specialized vehicles which are exempt from FMVSS No. 121 requirements have been given this status by the NHTSA ''based on the facts that doing so will not compromise public safety and that these vehicles cannot be constructed in a manner consistent with more 'normal' equipment.'' The ATA added that these vehicles could not have been readily built with ABAs, that retrofit should not be considered, and that these vehicles must still meet the FMCSR's requirements for inspection and safe operation.

The NADA stated that its members support ''maximum possible grandfathering'' of non-FMVSS 121 CMVs as part of their universal opposition to a retrofit mandate.

The NPTC stated that a member had suggested that trucks and trailers over 8,165 kg (18,000 lbs) GVW, which have been equipped with ABAs, be required to maintain the ABAs or improve them, but that any retrofitting requirement exempt trucks under 8,165 kg (18,000 lb) GVW because the benefits of ABAs on those vehicles are not clear. The NPTC did not elaborate on that comment.

The AHAS believed that no vehicle or load-carrying dolly should be exempted if it can sustain highway speeds. However, it allowed that low-speed vehicles that usually operate for short distances and under special permit can be considered as long as the FHWA ''will avoid the creation of a loophole for exploitation.''

The OOIDA opposed retrofitting of any air-braked vehicles, and stated that the FHWA ''should defer to NHTSA'' on this issue.

Union Pacific stated that certain vehicles should be excluded.

Cedarapids opposed retrofitting construction equipment, citing an economic impact without an increase in highway safety. It was concerned that ABAs could exacerbate brake problems because dirt and dust would cause high failure rates of ABAs while providing a false sense of security to construction equipment operators. However, ''[f]or normal highway vehicles, we agree and applaud your efforts to increase highway safety.''

XTRA Corporation urged that no retrofitting requirements be imposed on intermodal containers, trailers, or chassis, or on remanufactured trailers, or on mobile storage trailers.

Agency's Response to This Comment

As noted above, this final rule does not require retrofitting of any kind.

Some of the comments nonetheless deserve a brief response.

The FHWA agrees with the ATA's and Cedarapids' comments. The NHTSA is responsible for determining compliance with, or exemptions from, FMVSS No. 121. The definition of off-road construction equipment is to be narrowly construed and limited to equipment which, by its design, appearance, and function, is obviously not intended for use on a public road. The FHWA has provided regulatory guidance (58 FR 60734, November 17, 1993) concerning the applicability of the FMCSRs to ''off road'' motorized construction equipment, i.e., motor scrapers, backhoes, compactors, excavators, tractors, trenchers, and bulldozers (Question 6 to § 390.5, Definitions), as follows:

> Such equipment is routinely found at construction sites and is operated by personnel requiring specialized skills. Occasionally, such equipment is moved to or from construction sites by ''driving'' the ''vehicles'' short distances on public highways. Their appearance on the highway is only incidental to their primary function, they are not designed to operate in traffic, and their mechanical manipulation often requires a different set of knowledge and skills. The types of construction equipment discussed above do not come within the definition of a ''CMV'' and hence the operators and equipment are not subject to the FMCSRs.

As for the NPTC's comment concerning an exemption for CMVs under 8,165 kg (18,000 lbs) GVWR, the general applicability of the FMCSRs to CMVs over 4,536 kg (10,000 lbs) GVWR is required by statute (49 U.S.C. 31132(1)).

The FHWA cannot ''defer to NHTSA'' on operational standards for CMVs, as OOIDA suggested, because that agency's regulatory authority is limited to manufacturing standards. However, the FHWA and the NHTSA work closely together on regulations of common interest to both agencies.

7. What are the costs associated with retrofitting an ABA compared to replacement of an MBA? Include: the cost of the device, installation time, mechanic's hourly salary, and a ''loss of use'' cost figure if a CMV were to be taken out of revenue service for retrofitting at some time other than a time when a brake adjuster would normally be due for replacement. How often do tractors and trailers visit a facility where retrofitting could take place?

Comments

The HDBMC stated that detailed answers to this question would be furnished in individual responses from HDBMC member companies.

The SOIC estimated a range of labor and materials costs for each intermodal chassis from $185 to $275, averaging around $220. It estimated a cost of $48 million for its members to retrofit, and questioned the ''indeterminate reductions in traffic accidents'' that would result. The SOIC stated that it anticipated no technical problems related to a retrofitting requirement, but that administrative difficulties of locating, capturing, and transporting chassis to repair facilities may be significant and difficult to quantify. It suggested a program of conversion ''in association with annual inspections required by the FMCSRs.''

Sebring estimated that in 1990 a local repair shop needed one hour per wheel to install four automatic slack adjusters (ASAs). Labor charges were $25 per hour, and the ASAs cost approximately $55 each. The first retrofit of a BAI of Sebring's own design took 30 minutes, and others took 10 minutes/wheel.

Rockwell estimated the cost of parts and labor to replace MBAs at $50 per wheel; to retrofit an ABA, $100 per wheel.

Wilbur-Ellis estimated costs at around $80 for an ASA, installation time of 0.75 to one hour each, and a labor rate of $45 to $50 per hour. Downtime was estimated at one day per truck, and perhaps more. The total retrofitting cost for three-axle delivery truck would be approximately $700. Most of Wilbur-Ellis' locations are in rural areas where air brake repair facilities are not readily available.

The ATA believed that ''re-engineering'' systems to accommodate ABAs on CMVs not originally designed for them would be a major cost element of retrofitting. The ATA stated that, ''in many instances, the vehicle would have to be either scrapped or sold somewhere else in the world where it could be used, since the retrofit could not be economically justified.'' The ATA estimated the following costs for retrofit of vehicles originally designed to accommodate ASAs: One hour per brake, assuming no severe corrosion or other interfering factor; labor, $25 per hour (different in various parts of the country); $65 for an ABA, $12.50 for an MBA. If brake chambers needed to be replaced to accomplish a BAI retrofit, they would cost an additional $55 each. The ATA believed that costs for parts and labor alone would make retrofit cost-prohibitive; it did not include costs of vehicle down-time in these figures. The ATA estimated that 3.8 million trailers would require 12 million ABAs to be retrofitted ''within the given period'' at a cost of $108 million.

The NADA estimated costs at from $75/brake to $250/tandem and believed there would be considerable CMV-to-CMV variation.

The NPTC estimated costs at $200 to $750 for straight trucks and single axle trailers, and $900 to $1000 for tandem-axle tractors.

While the AHAS was ''convinced that the benefits gained by retrofitting ABAs and BAIs to the entire existing commercial fleet would far outweigh any costs to industry, especially if a reasonable phase-in program was put in place,'' it did not provide any figures to substantiate this statement.

The OOIDA stated that costs can vary considerably, depending on application, configuration of foundation brake mounting, make and type of ABA, and where the work is performed. It provided the following information, based on discussions with several midwest truck dealerships: ABAs, $35 to $75; hourly shop rates from $47 to $49.50; time to simply remove brake adjusters and install ABAs, from 20 to 90 minutes. The OOIDA added that retrofit may require replacement of other system components to conform to ABA design and various mounting configurations. The OOIDA asserted that owner-operators are already operating on thin profit margins, and that any that any loss of use of a CMV would be an unjustifiable burden.

Haldex stated that ABAs retail for approximately 4 to 5 times the cost of an MBA; aftermarket prices range from $50 to $75. It estimated installation time at around 15 minutes per wheel; however, the potential need to change air chamber pushrod length could double that time. ''On the average, a vehicle would be out of [revenue] service for no less than 90 minutes for an ABA retrofit.'' Haldex also stated that data available to the company indicated that major fleets generate an average of approximately $100 to $150 per hour in revenue, so each vehicle undergoing retrofit would also cost the motor carrier $150 to $225 in revenue foregone.

Metro-Dade stated that the ''Cost to retrofit would be insignificant if done in conjunction with a brake rebuild.''

The PMAA believed that costs might include re-engineering of brake and structural systems to provide additional space needed for installation. It believed that, in many cases, retrofitting may not be economically feasible because of the complexity of the redesign. In other cases, redesign would not be technically possible. It stated ''In cases such as these, the cost of compliance would equal the cost of the vehicle and

trailer.'' The PMAA estimated the following costs for CMVs that could be retrofitted: $65 for ABAs; labor, $40 per hour; 6 hours for installation if there is no extensive corrosion; total: $670. For a complex brake system redesign, it estimated costs up to $2300 per vehicle. The PMAA estimated costs for its industry segment at $14,740,000.

Midland-Grau stated that it was difficult to estimate a typical cost, and that an evaluation was needed.

Union Pacific provided the following cost estimates. Tandem tractors: material, $400; labor, 2 hours at $60 per hour; total $520. Tandem trailers: material, $300; 3 hours labor at $60 per hour; total $480.

XTRA Corporation estimated direct costs of approximately $300/unit for its entire fleet of trailers and chassis, including materials and an average of 2.5 hours of labor. It noted that additional costs that needed to be considered included loss of revenue, recordkeeping, and customers' costs resulting from temporary removal of their trailers from service. Logistical considerations would be XTRA Corporation's time to locate the CMV and to plan and schedule its retrofit, and their customers' cooperation in accomplishing it.

Agency's Response to This Comment

The ABAs were estimated to cost between $35 and $75; most commenters estimated a range of $50 to $75. They might take from 20 minutes to 1.5 hours to install; 45 minutes to one hour was the most common range noted. Mechanics' hourly salaries were figured at $25 to $60, with $40 to $45 most commonly noted.

At the low end of the range, a $50 ABA that takes a mechanic earning $40 per hour 0.75 hour to install would cost the motor carrier $80. At the high end, a $75 ABA that takes a $45 per hour mechanic one hour to install would cost the motor carrier $120. For purposes of estimating, the FHWA will use a rounded average of $100 per ABA installed, excluding the motor carrier's revenue loss for the time the CMV is not in service.

Estimates of the numbers of registered CMVs from the FHWA's 1993 edition of *Highway Statistics* are as follows: Commercial and private trucks (excluding truck tractors, and light and farm trucks), 2.4 million; truck tractors, 1.3 million; private and commercial trailers and semitrailers, 3.9 million; and private and commercial buses, 115,000. However, many of these 7.6 million CMVs are not in interstate commerce. The FHWA estimated in 1993 that there were 3.6 million CMVs operating in interstate commerce. The agency believes that the ATA's estimate of 3.8 million CMVs potentially subject to a retrofitting requirement may be somewhat high because single-unit trucks and buses with hydraulic brake systems would not have been included in such a proposal. The ATA estimated slightly more than three retrofitted ABAs per vehicle (12 million ABAs/3.8 million CMVs=3.15 ABAs/CMV). This also might be a low estimate: Most semitrailers would need 4 ABAs, and one-axle semitrailers would need two ABAs, but tractors would need up to 6. However, using the ATA's estimate of 12 million ABAs, the cost for parts and labor would be $1.2 billion, rather than the $108 million figure stated in its docket comment. If we were to exclude tractors and air-braked single-unit CMVs, some 2.7 million trailer retrofits (two-thirds of the U.S. trailer and semitrailer fleet), requiring four ABAs each, would cost an estimated $1.08 billion for parts and labor.

Some commenters noted, and the FHWA agrees, that the logistical costs of locating a CMV for retrofitting and removing it from revenue service could exceed the costs of labor and materials. On the other hand, the cost of retrofitting ABAs probably would not exceed the value of the CMV unless the vehicle was at or past the end of its useful life. In general, however, the data and cost estimates show that retrofitting ABAs would involve significant expense to the motor carrier industry.

While ABAs have real advantages over MBAs, the FHWA has determined that the costs associated with a retrofitting requirement do not clearly exceed the benefits that could be anticipated. This is especially true given that the estimated $1 billion retrofit cost would only apply to trailers, and semitrailers, not to truck-tractors or air-braked single-unit trucks. Even with several years of lead time, the annual cost to the motor carrier industry would be several hundred million dollars. None of the commenters that favored a retrofit requirement provided an analysis or estimate of its expected impact on CMV accidents. The FHWA, therefore, will not require retrofitting.

Discussion of Final Rule

Proper brake adjustment is critical to safe CMV operation. The NHTSA has estimated that nearly 4,000 CMV accidents per year are caused by out-of-adjustment brakes. The NTSB's review of 97 serious heavy truck accidents investigated from 1969 to 1981 cited out-of-adjustment brakes as a causal or contributing factor in 28 percent of those accidents. Out-of-adjustment brakes are also the primary equipment-related cause for CMVs to be placed out of service during roadside inspections; for Fiscal Year 1992, 36.2 percent of vehicles placed out-of-service were cited for this deficiency.

Aside from the clear safety benefits of maintaining proper brake adjustment, ABAs can have a positive benefit on motor carrier productivity by preventing CMVs from being placed out of service, reducing roadside service calls and the resulting delays to transportation operations.

Virtually all commenters to the NPRM who responded to the in-use requirement were in favor of it. The ATA noted that manufacturers have provided, and motor carriers voluntarily have been using, ABAs for a number of years. Even in the absence of Federal regulations, the marketplace was adopting the technology on its merits.

Finally, the FHWA strives to maintain consistency between the manufacturing standards for commercial motor vehicles contained in the NHTSA's Federal Motor Vehicle Safety Standards (FMVSSs), and the operations and maintenance regulations contained in the FMCSRs.

The FHWA has concluded that both motor carriers and the traveling public may derive substantial operational and safety benefits from the use of automatic brake adjusters and brake adjustment indicators.

The final rule, therefore, amends the FMCSRs by adding a new § 393.53, Automatic Brake Adjusters and Brake Adjustment Indicators, to Subpart C, Brakes.

The provisions of paragraphs (a), (b), and (c) require that automatic brake adjusters and brake adjustment indicators installed on newly manufactured CMVs to comply with the requirements of FMVSS Nos. 105 and 121 be maintained by the motor carriers operating those CMVs.

These provisions will apply to all CMVs operated in the United States, irrespective of the country where the CMV is based. Canadian and Mexican vehicles manufactured on or after the effective dates of the NHTSA rules will be required to conform to this regulation.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of

Transportation regulatory policies and procedures. This rule makes the operational standards for brakes in the FMCSRs consistent with the manufacturing standards in the FMVSS Nos. 105 and 121. It requires automatic brake adjusters and brake adjustment indicators installed on newly manufactured CMVs in accordance with those manufacturing standards to be maintained by the motor carriers operating those vehicles. The FHWA believes that promulgation of this final rule is necessary to assure that the safety benefits of the NHTSA rule are fully realized. Based on the NHTSA's research, the FHWA believes that operation and maintenance costs of the automatic brake adjusters and adjustment indicators required under the new FMVSSs will be lower than costs of the devices previously required. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This rule modifies the operational standards for brakes in the FMCSRs to make them consistent with the manufacturing standards in the FMVSS Nos. 105 and 121, which now require the installation of automatic brake adjusters and adjustment indicators on certain newly-manufactured CMVs. Under this final rule, motor carriers are only required to maintain these devices. The final rule does not impose a retrofitting requirement for vehicles manufactured prior to the effective date of the NHTSA's rules. This is consistent with other requirements linking the FMCSRs to the FMVSS Nos. 105 and 121. The FHWA believes that operation and maintenance costs of the vehicles equipped with automatic brake adjusters and adjustment indicators will be lower than costs of the manual devices previously required. Therefore, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

To be eligible for Motor Carrier Safety Assistance Program funds, a State's regulations for interstate transportation must be the same as the FMCSRs and Federal Hazardous Materials Regulations. Regulations for intrastate transportation may be at variance only so long as they fall within the parameters of the Tolerance Guidelines in 49 CFR part 350, Appendix C.

The FHWA intends to provide training and informational materials to the States to aid them in this process. The FHWA works with the Commercial Vehicle Safety Alliance on training and enforcement issues, and will continue to do so.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, part 393, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 is revised to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. In subpart C, § 393.53 is added to read as follows:

§ 393.53 Automatic brake adjusters and brake adjustment indicators.

(a) *Automatic brake adjusters (hydraulic brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 105 (49 CFR 571.105, S5.1) applicable to the vehicle at the time it was manufactured.

(b) *Automatic brake adjusters (air brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system shall meet the automatic brake adjustment system requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

(c) *Brake adjustment indicator (air brake systems).* On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

Issued on August 30, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–22077 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 60, No. 172
Wednesday, September 6, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 23

[95–21]

RIN 1557–AB45

Leasing

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing the personal property lease financing transactions of national banks. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens. The proposal revises the regulation to improve its clarity. In addition, the OCC has identified several areas where substantive changes may be appropriate based upon comments received in this rulemaking.

DATES: Comments must be received by November 6, 1995.

ADDRESSES: Comments should be directed to: Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 95–21. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Morris Morgan, Credit and Management Policy, Chief National Bank Examiner's Office 202/874–5170; Jacqueline Lussier, Senior Attorney, Legislative and Regulatory Activities 202/874–5090, Aline J. Henderson, Senior Attorney, Bank Activities and Structure, Chief Counsel's Office 202/874–5300.

SUPPLEMENTARY INFORMATION:

Introduction

The OCC is proposing to revise 12 CFR part 23, which governs personal property lease financing transactions by national banks. This proposal is another component of the OCC's Regulation Review Program. The principal goal of the Program is to review all of the OCC's rules with a view toward eliminating provisions that do not contribute significantly to maintaining the safety and soundness of national banks or to accomplishing the OCC's other statutory responsibilities. Another important goal is to clarify regulations so that they more effectively convey the standards the OCC seeks to apply.

The OCC first adopted part 23 in mid-1991.[1] The OCC's experience to date suggests that a complete, substantive rewrite of the regulation is not warranted at this time, but that revisions to improve its clarity would be useful. Accordingly, the proposal revises the regulation by shortening and streamlining its text; reorganizing many of its provisions and adding paragraph headings; and conforming its style to that of the OCC's other rules. In addition, the OCC has identified several areas, described in the Discussion section below, where substantive changes may be appropriate based upon the comments received in response to this proposal.

Background

National banks may engage in leasing activities pursuant to two independent sources of authority. First, under 12 U.S.C. 24(Seventh), national banks may engage in personal property lease financing transactions (Section 24(Seventh) Leases) when the lease is the functional equivalent of a loan.[2] The OCC has interpreted the functional equivalency standard to mean that Section 24(Seventh) Leases must be ''net, full-payout leases.'' Under the current regulation, the net lease requirement means that the lessor national bank may not provide certain enumerated services such as repairs, maintenance, or insurance in connection with the leased property. The full-payout requirement means that the bank must expect to recover the full acquisition and financing costs of the leasing transaction from sources that include the estimated, unguaranteed residual value of the leased property, but that the bank may rely on estimated residual value only to a limited extent. There is no aggregate limit on a national bank's investment in Section 24(Seventh) Leases.

In 1987, Congress gave national banks a second, explicit source of authority to engage in the personal property lease financing. The Competitive Equality Banking Act (CEBA)[3] amended 12 U.S.C. 24 by adding a new paragraph Tenth, which allows national banks to invest in tangible personal property, including vehicles, manufactured homes, machinery, equipment, and furniture, for lease financing transactions on a net lease basis. Investment in personal property to be leased under the authority of 12 U.S.C. 24(Tenth) (CEBA Leases) may not exceed 10 percent of a national bank's assets. Although a national bank must expect to recover its full acquisition and financing costs in a CEBA leasing transaction from the same sources as the regulation specifies for a Section 24(Seventh) leasing transaction, CEBA Leases are not subject to a maximum estimated residual value limit.

Both Section 24(Seventh) Leases and CEBA Leases are governed by standards set forth in part 23. The current version of part 23 contains three subparts: subpart A applies to all lease financing transactions; subpart B contains additional requirements applicable only to CEBA Leases; and subpart C contains additional requirements applicable only to Section 24(Seventh) Leases. The proposal retains the three-subpart structure, but revises and reorganizes the rule's provisions to enhance clarity. A derivation table showing these changes appears at the conclusion of this preamble.

The *Discussion* portion of the preamble contains a section-by-section description of the proposed revisions.

[1] 56 FR 28314 (June 20, 1991). The final regulation replaced the OCC's interpretive ruling on lease financing transactions, which had been codified at 12 CFR 7.3400. Much of the substance of this interpretive ruling was retained, however, in the portions of part 23 that apply to Section 24(Seventh) Leases.

[2] *See M & M Leasing Corp.* v. *Seattle First National Bank,* 563 F.2d 1377 (9th Cir. 1977), *cert. denied,* 436 U.S. 956 (1978) (upholding national banks' authority under 12 U.S.C. 24(Seventh) to engage in personal property lease financing transactions if the lease is the functional equivalent of a loan).

[3] Pub. L. 100–86, § 108, 101 Stat. 552, 579 (August 10, 1987). *See also* S. Rep. No. 100–19, 100th Cong., 1st Sess. 43 (1987) (CEBA expanded national banks' leasing authority in order to enable them to respond to customer demand for a broader range of lease financing transactions and to compete with thrift and other nonbank lessors).

Discussion

Subpart A—General Provisions

Authority, Purpose, and Scope (Proposed § 23.1)

Current Section 23.1(a) sets out the authority of national banks to engage in personal property lease financing transactions. The proposal does not change the authority provision, but it adds subsections describing the purpose of part 23 and the scope of its respective subparts. Current 23.1(b), which authorizes a national bank to recover its acquisition and financing costs from rentals, tax benefits, and the residual value of the leased property, is relocated to proposed § 23.3.

Definitions (Proposed § 23.2)

The current regulation does not contain a definitions section. Proposed § 23.2 defines several terms, including ''CEBA Lease,'' ''conforming lease,'' ''off-lease property,'' and ''Section 24(Seventh) Lease'' for the purpose of making the operative provisions of the regulation shorter and easier to read.

Current § 23.2 contains both a definition of the term ''net lease'' and operative provisions, including the so-called ''distress clauses,'' which allow a national bank to take reasonable action to protect its interest in leased property, and a provision that allows a national bank to arrange for a third party to provide operational services that the bank is precluded from providing under a net lease. The definition of ''net lease'' is retained in proposed § 23.2(d) without substantive change; the operative provisions are moved to proposed § 23.4.

Proposed § 23.2(c) contains a definition of the term ''full-payout lease.'' The term is defined as a lease financing transaction in which the unguaranteed portion of the estimated residual value of the leased property [4] on which a bank relies for recovery of its acquisition and financing costs is no greater than 25 percent of the cost of the leased property to the lessor. This estimated residual value limit is the same as the limit that currently appears at § 23.11(a) of the current regulation. Other, operative provisions of the current regulation that pertain to residual value are retained in subpart C of part 23, as described below.

The purpose of a residual value limit is to ensure that a lessor bank relies primarily on the creditworthiness of the lessee to recover its entire investment in the leased property. When the OCC adopted the current residual value limit in 1979, it selected 25 percent as the level that best protected national banks from the increased risk that results from excessive reliance on residual value. That amount was based in part on the OCC's experience at that time in examining and supervising banks engaged in Section 24(Seventh) lease financing activities. *See* 44 FR 22388, 22390 (April 13, 1979) (adoption of interpretive rule establishing estimated residual value limit of 25 percent).[5]

Since then, national banks have been given authority to enter into CEBA Leases, which are not subject to a maximum residual value limit (but are restricted in aggregate amount to 10 percent of a national bank's total consolidated assets). National banks do not appear to be engaged in CEBA leasing to the full extent of their statutory authority, and liberalization of the residual value limit for Section 24(Seventh) Leases may therefore be unnecessary.

The OCC is interested in commenters' views on this question, and specifically invites comment on whether the residual value limit for Section 24(Seventh) Leases should be modified. In addressing this question, commenters may wish to discuss the effect of Financial Accounting Standards Board Statement of Financial Accounting Standard 13, ''Accounting for Leases,'' which, as a practical matter, may affect the extent to which a national bank relies on residual value. Commenters who support a more flexible limit on residual value for Section 24(Seventh) Leases are asked to identify any increased risk that may accompany a new limit and to discuss how the OCC should address that risk.

Recovery of Investment (Proposed § 23.3)

Proposed § 23.3 is the same as current § 23.1(b), which requires that a national bank entering into a lease financing transaction must reasonably expect to recover its full investment in the leased property as well as its estimated financing costs over the life of the lease from three sources: rentals, estimated tax benefits, and the estimated residual value of the leased property.

As its placement in subpart A of part 23 indicates, the recovery of investment provision applies both to CEBA Leases and to Section 24(Seventh) Leases. The maximum estimated residual value requirement that appears in the definition of the term ''full-payout lease,'' however, applies only to Section 24(Seventh) Leases. Neither the current regulation nor the proposal limits the extent to which a national bank may rely on residual value to recover its acquisition and financing costs in a CEBA Lease transaction.

Net Lease Requirement (Proposed § 23.4)

A new paragraph (a) is added to proposed § 23.4. This paragraph contains an explicit statement of the requirement that national banks may engage in a lease financing transaction, and in activities incidental to the transaction, only if the lease is a net lease. The current rule does not contain a plain statement of this basic requirement. The statement is added for purposes of clarity and completeness; it is not intended to change the requirement.

The incidental activities clause in proposed § 23.4(a) reflects the OCC's long-standing interpretations authorizing national banks to engage in activities incidental to leasing. As the placement of the incidental activities reference within subpart A of part 23 indicates, the OCC takes the position that a national bank may engage in incidental activities with respect both to Section 24(Seventh) Leases and CEBA Leases.

The activities incidental to leasing that the OCC has authorized to date for national banks acting as lessors include: [6] providing management,

[4] The ''estimated residual value'' is the estimated market value of leased property at the end of the lease term; the ''unguaranteed portion'' of the estimated residual value is the estimated residual value at the end of the lease term less any portion of the estimated residual value guaranteed by the lessee, the manufacturer, or a third party. *See* 12 CFR 23.1(b), 23.11.

[5] In 1979, the regulations promulgated by the Board of Governors of the Federal Reserve System (FRB) that authorized a bank holding company or its subsidiary to engage in lease financing activities limited the reliance placed on residual value to a maximum of 20 percent of the cost of the property. In 1992, the FRB decided to conform its residual value provisions to the OCC's limit for Section 24(Seventh) Leases. The FRB based its decision, in part, on the fact that the OCC had not identified any significant increased risk from permitting reliance on the slightly higher level of 25 percent. *See* 57 FR 20958, 20959–60 (May 18, 1992) (final regulation; discussion of bases for FRB action). The FRB's regulation appears at 12 CFR 225.25(b)(8).

[6] The OCC has also authorized national banks to engage in incidental activities with respect to lease financing transactions to which the bank is not a party. These activities include acting as finder or performing similar functions as agent or broker. *See* 12 CFR 7.7200. They also include providing lease consulting services such as financial advice; providing management, brokerage, and finder services; and performing lease servicing for third parties. *See, e.g.*, OCC Interpretive Letter No. 567 (Oct. 29, 1991) *reprinted in* [1991–92 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337; Letter from Wallace S. Nathan (Oct. 28, 1985) (unpublished); Letter from Peter Liebesman (June 15, 1981) (unpublished).

Copies of unpublished letters are available in the OCC's public comment file for this rulemaking.

marketing, and administrative services through an operating subsidiary; offering credit life insurance to lessees; and acquiring rights under maintenance contracts associated with purchased leases.[7] The OCC does not propose to include a list of permissible activities incidental to leasing in part 23. Commenters are, however, invited to address the desirability of retaining this case-by-case approach and to discuss incidental activities that may be appropriate for OCC consideration. In particular, the OCC is seeking comment on whether it should, on a case-by-case basis, permit national banks to lease real estate when the real estate lease is incidental to a personal property lease financing transaction. This issue may arise, for example, when a bank wishes to lease personalty, such as machinery, that is affixed to the land on which it sits.

The substance of proposed § 23.4(b) is the same as that of current § 23.2(b), (c), and (d), but the text has been revised so that it is shorter and simpler. For example, the provisions specifying the conditions under which a national bank may take appropriate action to protect its interests have been amended so that they no longer require that a change in condition be ''unexpected'' or that a bank's increased exposure to risk be ''significant.'' As is the case in current § 23.2, proposed § 23.4(b) provides that the actions a national bank may take to salvage or protect its investment under the distress clauses include the actions described in the definition of net lease at § 23.2(d).

Investment in Personal Property (Proposed § 23.5)

Current § 23.3, which governs the acquisition of property to be leased, the disposition of the property at the conclusion of the lease term or upon the lessee's default, and the use of short-term leases, has been moved to proposed § 23.5 with certain clarifying changes. For example, the text of the provision covering bridge or interim leases has been rewritten to state more clearly the current rule that a bank's use of a bridge or interim lease pending the long-term disposition of off-lease property does not extend the off-lease holding period. Property is ''off-lease'' at the expiration of the lease term or upon the lessee's default on the lease agreement prior to expiration.

Current § 23.3(b) requires that a national bank dispose of or re-lease off-lease property as soon as practicable, but not later than two years from the date the lease expires. Proposed § 23.5(b) is substantively the same but contains new language to clarify that the two-year holding period runs either from the date the lease expires or from the date of the lessee's default, depending on the reason that the national bank takes possession or control of the leased property.

Both Section 24(Seventh) Leases and CEBA Leases are subject to this holding period limitation for off-lease assets. Property that the bank retains in anticipation of re-leasing must be revalued when it comes off-lease at the lower of current fair market value or book value. Upon the expiration of the two-year period, national banks are required to write-off any remaining book value for off-lease assets.

The OCC has considered whether it should extend the holding period for off-lease property. For example, a longer holding period may be appropriate where markets for particular types of property become depressed, and the two-year period might be insufficient to allow national banks to proceed with the orderly liquidation or re-lease of the property. The OCC, however, lacks empirical data on the experiences national banks have had in attempting to liquidate or re-lease specific kinds of off-lease property within the current holding period and, accordingly, is not now proposing any change.

The OCC would consider modifying the holding period in the final revisions of part 23 if commenters present persuasive reasons, supported by empirical evidence, for doing so. Accordingly, the OCC requests comment on the following issues: (1) Should the holding period for off-lease assets be extended and, if so, should it be extended for all categories of assets or only for particular categories? (2) If the holding period were extended, what is a reasonable additional time period, in general or for particular categories of assets? (3) What evidence supports extension of the holding period? (4) If the holding period were extended, how should the OCC ensure that banks do not use the longer period to retain property for essentially speculative purposes? The OCC invites specific comment on the experiences of national banks in attempting to liquidate or re-lease specific kinds of off-lease personal property that are relevant to the issue of extending the holding period requirement.

Requirement for Separate Records (Proposed § 23.6)

Proposed § 23.6 retains the requirement in current § 23.4 that national banks maintain separate records for CEBA Leases and Section 24(Seventh) Leases. Minor revisions have been made to shorten and clarify the text.

Applicability of Consumer Laws (Current § 23.6; Removed in Proposal)

Current § 23.6 states that nothing in part 23 shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 12 U.S.C. 1667 *et seq.* (CLA). The OCC is proposing to remove this section because other consumer protection laws and regulations may also apply to personal property lease financing, making the cross-reference potentially misleading. Of course, this change does not affect the applicability of the CLA or any other consumer credit laws to national banks' lease financing activities, and national banks must know and comply with the full range of requirements that govern these activities.

Application of Lending Limits; Restrictions on Transactions With Affiliates (Proposed § 23.7)

The proposal continues to subject lease financing transactions to lending limits and transactions with affiliates restrictions, but clarifies that the transactions with affiliates restrictions apply only if the lessee is an affiliate of the lessor bank. The proposal also retains the reservation of the OCC's authority to impose other limits or restrictions. These provisions currently appear at § 23.5; they are relocated in the proposal to § 23.7.

Subpart B—CEBA Leases

Provisions Applicable to CEBA Leases (Proposed §§ 23.8, 23.9, and 23.10)

Proposed §§ 23.8, 23.9, and 23.10 contain the requirements applicable to CEBA Leases, including a statement of the general rule authorizing investment in CEBA Leases, the limits placed on banks' exercise of their CEBA leasing authority, and a transition rule for CEBA Leases entered into after CEBA's enactment but before the effective date of the OCC's final implementing rule. The substance of these provisions is the same as that of current §§ 23.7. 23.8, and 23.9. Minor changes have been made to shorten and clarify the text.

[7] *See* Letter from H. Joe Selby, Nov. 24, 1976 (unpublished) (management, marketing, and administrative services through an operating subsidiary); Letter from Peter Liebesman, Jan. 14, 1985 (unpublished) (credit life insurance); Letter from J.T. Watson, May 14, 1975 (unpublished) (rights under maintenance contracts associated with purchased leases).

Subpart C—Section 24(Seventh) Leases

General Rule (Proposed § 23.11)

Current § 23.10 states the general rule authorizing national banks to engage in lease financing pursuant to 12 U.S.C 24(Seventh). The substance of proposed § 23.11 is the same as this current rule. The reference to incidental activities in the current rule has been deleted as redundant, however, given the treatment of incidental activities in proposed § 23.4. Other, minor revisions have been made to shorten and clarify the text.

Estimated Residual Value (Proposed § 23.12)

Current § 23.11 prescribes not only the residual value limit that applies to Section 24(Seventh) Leases but also certain other provisions that apply to a bank's reliance on or estimate of residual value. First, the amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party that is not an affiliate of the bank may exceed 25 percent of the original cost of the property if the bank has determined that the guarantor has the resources to meet the guarantee and the bank can document its determination. Second, the estimated residual value amounts must be reasonable given the type of property leased and the relevant circumstances, so that realization of the lessor bank's full investment and the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item. Finally, when a bank leases personal property to a government entity, its estimates of residual value may be based on future transactions that it reasonably anticipates will occur.

The estimated residual value limit has been incorporated into a definition of the term ''full-payout lease'' that appears in proposed § 23.2. The other provisions remain substantively unchanged but have been moved to proposed § 23.12 with minor revisions to shorten and clarify the text.

Transition Rule (Proposed § 23.13)

Current § 23.12 provides that leases executed before June 12, 1979,[8] are not subject to part 23 and prescribes rules for renewing those leases. Proposed § 23.13 retains these provisions with minor revisions to shorten and clarify the text.

[8] June 12, 1979, was the effective date of the OCC's final rule amending 12 CFR 7.3400 to reflect the Ninth Circuit's decision in the *M&M Leasing* case.

The OCC welcomes comments on any aspect of the proposed regulation, particularly on those issues specifically noted in this preamble.

DERIVATION TABLE

[This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed revision is based.]

Revised provision	Original provision	Comments
§ 23.1	§ 23.1(a)	Modified.
§ 23.2(a), (b), (c)		Added.
§ 23.2(d)	§ 23.2(a)	Modified.
§ 23.3	§ 23.1(b)	Modified.
§ 23.4(a)		Added.
§ 23.4(b)	§ 23.2 (b), (c), (d).	Modified.
§ 23.5	§ 23.3	Modified.
§ 23.6	§ 23.4	Modified.
§ 23.7	§ 23.5	Modified.
	§ 23.6	Removed.
§ 23.8	§ 23.7	Modified.
§ 23.9	§ 23.8	Modified.
§ 23.10	§ 23.9	Modified.
§ 23.11	§ 23.10	Modified.
§ 23.12	§ 23.11	Modified.
§ 23.13	§ 23.12	Modified.

Regulatory Flexibility Act

It is hereby certified that this proposal, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This proposal, if adopted as a final rule, will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that the requirements of this proposal will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 12 CFR Part 23

National banks, Banking, Leasing, Lease financing transactions.

Authority and Issuance

For the reasons set out in the preamble, part 23 of title 12, chapter I, of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 23 is revised to read as follows:

PART 23—LEASING

Subpart A—General Provisions

Sec.
23.1 Authority, purpose, and scope.
23.2 Definitions.
23.3 Recovery of investment.
23.4 Net lease requirement.
23.5 Investment in personal property.
23.6 Requirement for separate records.
23.7 Application of lending limits; restrictions on transactions with affiliates.

Subpart B—CEBA Leases

23.8 General rule.
23.9 Lease term.
23.10 Transition rule.

Subpart C—Section 24(Seventh) Leases

23.11 General rule.
23.12 Estimated residual value.
23.13 Transition rule.

Authority: 12 U.S.C. 1; 12 U.S.C. 24(Seventh) and 24(Tenth); 12 U.S.C. 93a.

Subpart A—General Provisions

§ 23.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may engage in personal property lease financing transactions pursuant to 12 U.S.C. 24(Seventh) and 12 U.S.C. 24(Tenth).

(b) *Purpose.* The purpose of this part is to set forth standards for personal property lease financing transactions authorized for national banks.

(c) *Scope.* A national bank that enters into a lease under the authority of 12 U.S.C. 24(Seventh) must comply with subparts A and C of this part. A national bank that enters into a lease under the authority of 12 U.S.C. 24(Tenth) must comply with subparts A and B of this part.

§ 23.2 Definitions.

(a) *CEBA Lease* means a personal property lease entered into under the authority of 12 U.S.C. 24(Tenth).

(b) *Conforming lease* means:

(1) A CEBA Lease that conforms with the requirements of subparts A and B of this part; or

(2) A Section 24(Seventh) Lease that conforms with the requirements of subparts A and C of this part.

(c) *Full-payout lease* means a lease financing transaction in which any unguaranteed portion of the estimated residual value relied upon by the bank to yield the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, does not exceed 25 percent of the original cost of the property to the lessor.

(d) *Net lease* means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(1) Servicing, repair, or maintenance of the leased property during the lease term;

(2) Purchasing parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon the lessee's request in accordance with any applicable requirements for maximum estimated residual value;

(3) Loan of replacement or substitute property while the leased property is being serviced;

(4) Purchasing insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or

(5) Renewal of any license or registration for the property unless renewal by the bank is necessary to protect its interest as owner or financier of the property.

(e) *Off-lease property* means personal property that reverts to a national bank's possession or control upon the expiration of a lease or upon the default of the lessee.

(f) *Section 24(Seventh) Lease* means a personal property lease entered into under the authority of 12 U.S.C. 24(Seventh).

§ 23.3 Recovery of investment.

A national bank that enters into a lease financing transaction must reasonably expect to realize the return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from:

(1) Rentals;

(2) Estimated tax benefits; and

(3) The estimated residual value of the property at the expiration of the term of the lease.

§ 23.4 Net lease requirement.

(a) *General rule.* A national bank may engage in a lease financing transaction and activities incidental to the transaction only if the lease qualifies as a net lease.

(b) *Exceptions*—(1) *Change in conditions.* If, in good faith, a national bank believes that there has been a change in conditions that threatens its financial position by increasing its exposure to loss, then the bank may:

(i) As the owner and lessor under a net lease, take reasonable and appropriate action (including the actions specified in § 23.2(d)) to salvage or protect the value of the property or its interests arising under the lease;

(ii) As the assignee of a lessor's interest in a lease, become the owner and lessor of the leased property pursuant to its contractual rights, or take any reasonable and appropriate action (including the actions specified in § 23.2(d)) to salvage or protect the value of the property or its interests arising under the lease.

(2) *Provisions to protect the bank's interests.* A national bank may include any provisions in a lease, or make any additional agreements, to protect its financial position or investment in the event of a change in conditions that would increase its exposure to loss.

(3) *Arranging for services by a third party.* A national bank may arrange for any of the services enumerated in § 23.2(d) to be provided to a lessee by a third party at the expense of the lessee.

§ 23.5 Investment in personal property.

(a) *Requirement for written agreement.* A national bank may acquire specific personal property to be leased only after the bank has entered into either:

(1) A legally binding written agreement that indemnifies the bank against loss in connection with its acquisition of the property; or

(2) A legally binding written commitment to enter into a conforming lease.

(b) *Two-year holding period.* At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a national bank shall either liquidate the property or re-lease it under a conforming lease as soon as practicable. In any event, liquidation or re-lease shall occur not later than two years from the date of the expiration of the lease or the date of the lessee's default. Property that the bank retains in anticipation of re-leasing must be revalued at the lower of current fair market value or book value before the bank enters into any subsequent lease.

(c) *Bridge or interim leases.* During the two-year holding period allowed by paragraph (b) of this section, a bank may enter into a short-term bridge or interim lease pending the sale of off-lease property or the re-lease of the property under a long-term conforming lease. A short-term bridge or interim lease must be a net lease, but it need not comply with any other requirement of subpart B or C of this part.

§ 23.6 Requirement for separate records.

If a national bank enters into both CEBA Leases and Section 24(Seventh) Leases, the bank's records must distinguish the CEBA Leases from the Section 24(Seventh) Leases.

§ 23.7 Application of lending limits; restrictions on transactions with affiliates.

A national bank's lease financing transactions are subject to the lending limits prescribed by 12 U.S.C. 84 or, if the lessee is an affiliate of the bank (as defined by 12 U.S.C. 371c), to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1. The OCC may also determine that other limits or restrictions apply.

Subpart B—CEBA Leases

§ 23.8 General rule.

Pursuant to 12 U.S.C. 24(Tenth), a national bank may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture for lease financing transactions, or may become the owner and lessor of tangible personal property by purchasing the property from another lessor in connection with the bank's purchase of the related lease, provided that: the lease is a conforming lease; and the aggregate book value of all tangible personal property held for lease under the authority of 12 U.S.C. 24(Tenth) does not exceed 10 percent of the bank's consolidated assets.

§ 23.9 Lease term.

(a) *Initial term.* A CEBA Lease must have an initial term of not less than 90 days.

(b) *Exception.* The 90-day term requirement prescribed by paragraph (a) of this section does not apply to the acquisition of property subject to an existing lease with a remaining maturity of less than 90 days, provided that, at its inception the lease was a conforming lease.

§ 23.10 Transition rule.

(a) *General rule.* CEBA Leases entered into prior to July 22, 1991, may continue to be administered in accordance with the lease financing terms agreed to by the bank/lessor and the lessee. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.7, however, a bank that enters into a new extension of credit to a customer, including a lease, shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a CEBA Lease that was entered into prior to July 22, 1991, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the CEBA Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith and demonstrates by appropriate documentation that renewal of the lease is necessary to avoid financial loss and to recover its investment in and its cost of financing the property.

Subpart C—Section 24(Seventh) Leases

§ 23.11 General rule.

Pursuant to 12 U.S.C. 24(Seventh), a national bank may become the legal or beneficial owner and lessor of, or otherwise acquire, personal property; or may become the owner and lessor of personal property by purchasing the property from another lessor in connection with the bank's purchase of the related lease, provided that: the lease is a net, full-payout lease representing a noncancelable obligation of the lessee (notwithstanding the possible early termination of that lease); and the lease is a conforming lease.

§ 23.12 Estimated residual value.

(a) *Recovery of investment and costs.* A national bank's estimates of the residual value of the property and the portion of the estimated residual value that the bank relies upon to satisfy the requirements of a full-payout lease, as defined in § 23.2(c), must be reasonable in light of the nature of the leased property and all circumstances relevant to the transaction. The bank's realization of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, must depend primarily on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual value of the leased item.

(b) *Estimated residual value subject to guarantee.* The amount of any estimated residual value guaranteed by the manufacturer, the lessee, or a third party may exceed 25 percent of the original cost of the property if the bank determines and demonstrates by appropriate documentation that the guarantor has the resources to meet the guarantee and the guarantor is not an affiliate of the bank, as defined by 12 U.S.C. 371c.

(c) *Leases to government entities.* Calculations of estimated residual value on leases of personal property to Federal, State, or local government entities may be based on future transactions or renewals that the bank reasonably anticipates will occur.

§ 23.13 Transition rule.

(a) *Exclusion.* Subpart A and this subpart shall not apply to any § 24(Seventh) Leases executed prior to June 12, 1979. For purposes of applying the lending limits and the restrictions on transactions with affiliates described in § 23.7, however, a bank that enters into a new extension of credit to a customer, including a lease shall include all outstanding leases regardless of the date on which they were made.

(b) *Renewal of non-conforming leases.* A national bank may renew a Section 24(Seventh) Lease that was entered into prior to June 12, 1979, and that is not a conforming lease only if the following conditions are satisfied:

(1) The bank entered into the Section 24(Seventh) Lease in good faith;

(2) The expiring lease contains a binding agreement requiring that the bank renew the lease at the lessee's option, and the bank cannot reasonably avoid its commitment to do so; and

(3) The bank determines in good faith and demonstrates by appropriate documentation that renewal of the lease is necessary to avoid financial loss and to recover its investment in and its cost of financing the property.

Dated: August 14, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–21983 Filed 9–5–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 895 and 898

[Docket No. 94N–0078]

Medical Devices; Proposed Performance Standards for Electrode Lead Wires and Proposed Banning of Unprotected Electrode Lead Wires; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 20, 1995, the comment period on a proposed rule that published in the **Federal Register** of June 21, 1995 (60 FR 32406). The document proposed to establish a performance standard for electrode lead wires, and to make unprotected electrode lead wires a banned device upon the effective date of the standard. FDA is taking this action in response to two requests for an extension of the comment period.

DATES: Written comments by October 20, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 145.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 21, 1995 (60 FR 32406), FDA issued a proposed rule to establish a performance standard for electrode lead wires, and to make unprotected electrode lead wires a banned device upon the effective date of the standard.

FDA has received two requests from trade associations for a 90-day extension of the comment period. The reasons given for the requests are that the proposed rule has raised potential implications beyond those previously anticipated, and additional time is needed for the consideration of these issues and the preparation of meaningful comments.

The agency agrees in part with the requests, however, it believes that due to the public health significance of this issue, an extension for the entire length of time requested is not appropriate. The agency is extending the comment period for 45 days, to October 20, 1995.

Interested persons may, on or before October 20, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–22104 Filed 8–31–95; 4:29 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 95–7–6789b; FRL–5280–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which control oxides of nitrogen (NO_x) from industrial, commercial, and institutional boilers, steam generators, and process heaters. The intended effect of proposing approval of these rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by October 6, 1995.

ADDRESSES: Written comments on this action should be addressed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, and Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. Both of these rules were submitted to EPA on July 13, 1994 by the California Air Resources Board. For further information, please see the information provided in the direct final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 8, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–21878 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–W

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40 CFR Part 52

[SD6–1–6947b and SD5–1–6191b; FRL–5279–4]

Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing approval of revisions to the South Dakota State Implementation Plan (SIP) submitted by the State of South Dakota on November 12, 1993 and March 7, 1995. The submittals included regulatory revisions to the State's definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide (SO_2) rules, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements. In the final rules section of this **Federal Register**, the EPA is acting on the State's SIP submittals in a direct final rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed action must be received in writing by October 6, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and South Dakota Department of Environment and Natural Resources, Division of Environmental Regulation, Joe Foss Building, Pierre, South Dakota 57501.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules Section of this **Federal Register**.

Dated: August 10, 1995.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 95–21880 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–P–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 95–117; FCC 95–285]

Satellite Application and Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has proposed rules and policies to streamline application and licensing requirements for satellite space and earth stations under the commission's rules regarding satellite communications. Among other things, this document proposes to waive the construction permit requirement for satellite space stations and modify the license term for temporary fixed earth stations and the implementation period for Very Small Aperture Terminal (''VSAT'') earth stations. The item also proposes amendments concerning minor modifications for earth stations, inclined orbit operations of space stations, and application and licensing forms. Comments are requested on all aspects of the proposals.

DATES: Comments must be submitted on or before October 4, 1995; reply comments must be submitted on or before October 25, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paula Ford, International Bureau, Satellite Policy Branch, (202) 739–0733; Frank Peace, International Bureau, Satellite Engineering Branch, (202) 739–0513; Kathleen Campbell, International Bureau, Satellite Policy Branch, (202) 739–0729.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 95–117; FCC 95–285, adopted July 13, 1995 and released August 11, 1995. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC and also may be purchased from the Commissions's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The following collection of information contained in the *Notice* has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Dorothy Conway at (202) 418–0217 or access our fax on demand system at 202–418–0177 from the handset on your fax machine and using the document retrieval number 6000000. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain (202) 395–3561, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. Specifically, the Commission requests that parties provide comments on: (1) The necessity of the proposed collection of information for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collection of information; (3) enhancing the quality, utility, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information on parties responding. Comments must be filed with the Office of Management and Budget within sixty days of publication of this summary in the **Federal Register**. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, Room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contract Judy Boley, (202) 418–0210.

Title: In the Matter of Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures.

Action: Proposed new and revised collection.

Affected Public/Respondents: Businesses or other for profit, including small businesses.

Frequency of Response: On occasion, annually.

REPORTING REQUIREMENTS

Proposed sections	No. of respondents	Hours per response	Total annual reporting hours
Space Stations: 25.113, 25.114, 25.140, 25.210, 25.280, 25.300	125	9.5	1,187.5
Earth Stations: 25.115, 25.118, 25.134, 25.277, 25.300	500	2.5	1,250
Proposed FCC Form 312 (used by both space and earth stations)	300	4	1,200
Information for Adjacent Satellite Interference Analysis Database	50	24	*1,200

*Represents the hours for the periodic reporting of information. We propose to collect the information whenever there is a new processing round. The 1,200 figure represents reporting hours for the year in which information is collected.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in granting various authorizations and determining the technical, legal, and financial qualifications of a satellite applicant or licensee.

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rulemaking

In light of the evolving satellite technology, the Commission commenced a review of its operations in order to eliminate outdated regulations and unnecessary burdens that impede the introduction of satellite services to the public and the efficient processing of satellite applications and licenses. As a result of this review, the Commission created the International Bureau. Soon after its creation, the new International Bureau held a roundtable discussion in February with representatives of industry and members of the public to solicit suggestions on ways to improve satellite application and licensing policies and procedures. Many of the recommendations made during that roundtable discussion have been incorporated in this Notice of Proposed Rulemaking.

The proposals amend or eliminate existing requirements, and codify in Part 25 of the Commission's rules, various technical and procedural policies and guidelines that have not yet been specifically codified. Among other things, the *Notice* proposes to waive the construction permit requirement for satellite space stations; increase the license term, from one year to ten years, for temporary fixed earth stations operating in the C-band; eliminate the four year implementation period for VSATs allowing VSAT licensees to construct their network over the course

of their ten year license term; eliminate the annual reporting requirement for VSATs; simplify the earth and space station application process by revising and consolidating FCC Forms 430, 493, 702, and 704; eliminate redundant reporting requirements for earth and space stations; allow earth station operators to make minor technical modifications to their stations without prior authorization from the Commission; and allow satellites to operate in inclined orbits without prior authorization from the Commission.

Given the large outlay of capital and long-term planning necessary to establish satellite systems, it is necessary to ensure that potential applicants and service providers are not hampered by unnecessary and sometimes redundant regulations. The proposed amendments recognize the need of the satellite industry to operate in an environment defined by growth, innovation, efficiency, and competition. Comments are requested on all aspects of these proposals. Specific proposals and recommendations are requested for any additional streamlining rule changes.

Ordering Clauses

Accordingly, *It is Ordered* that pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ (4)(i) and 303, NOTICE IS HEREBY GIVEN of our intent to adopt the rule revisions set forth below and the proposed form set forth below.

It is Further Ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory, Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq* (1981).

Administrative Matters

This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, ex parte or otherwise, are permitted unless specifically exempted. 47 CFR 1.1203.

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 4, 1995 and reply comments on or before October 25, 1995. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202) 739–0733.

Initial Regulatory Flexibility Act Statement

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 25 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Sections 101–404, 76 Stat. 419–427; 47 U.S.C. 701–744, Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.

2. Section 25.113 is amended by revising paragraphs (a) and (d) to read as follows:

§ 25.113 Construction permits.

(a) Except as provided in paragraph (b) of this section or in § 25.131, construction permits must be obtained for all fixed or temporary fixed earth stations governed by this part. Simultaneous application for a construction permit and station license may be made for all earth station facilities governed by this part.

* * * * *

(d) A launch authorization must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization may be included in an application for space station license. A launch authorizaiton and station license may also be requested at any time for a space station constructed as an on-ground spare satellite. However, an application for authority to launch and operate an on-ground spare domestic satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

3. Section 25.114 is revised to read as follows:

§ 25.114 Applications for space station authorizations.

(a) A comprehensive proposal shall be submitted for each proposed space station in narrative form with attached exhibits as described in paragraph (c) of this section. If an applicant is proposing more than one space station, information common to all space stations may be submitted in a consolidated system proposal.

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation, although the applicant may propose altrnatives that increase flexibility in accommodating the satellite in orbit. Each application must also contain the formal waiver required by Section 304 of the Communications Act, 47 U.S.C. 304.

The technical information for a proposed satellite system need not be filed on any prescribed form but should be complete in all pertinent details. The format of the applications should conform to the specifications of § 1.49 of this chapter.

(c) The following information shall be contained in each application:

(1) Name, address, and telephone number of the applicant.

(2) Name, address, and telephone number of the person(s), including counsel, to whom inquiries or correspondence should be directed.

(3) Type of authorization requested (*e.g.*, launch authority, station license, modification of authorization).

(4) General description of overall system facilities, operations and services.

(5) Radio frequencies and polarization plan (including beacon, telemetry, and telecommand functions), center frequency and polarization of transponders (both receiving and transmitting frequencies), emission designators and allocated bandwidth of emission, final amplifier output power (identify any net losses between output of final amplifier and input of antenna and specify the maximum EIRP for each antenna beam), identification of which antenna beams are connected or switchable to each transponder and TT&C function, receiving system noise temperature, the relationship between satellite receive antenna gain pattern and gain-to-temperature ratio and saturation flux density for each antenna beam (may be indicated on antenna gain plot), the gain of each transponder channel (between output of receiving antenna and input of transmitting antenna) including any adjustable gain step capabilities, and predicted receiver and transmitter channel filter response characteristics.

(6)(i) For satellites in geostationary-satellite orbit, orbital location, or locations if alternatives are proposed, requested for the satellite, the factors that support such an orbital assignment, the range of orbital locations from which adequate service can be provided and the basis for determining that range of orbital locations, and a detailed explanation of all factors that would limit the orbital arc over which the satellite could adequately serve its expected users.

(ii) For satellites in non-geostationary-satellite orbits, the number of space stations and applicable information relating to the number of orbital planes, the inclination of the orbital plane(s), the orbital period, the apogee, the perigee, the argument(s) of perigee, active service arc(s), and right ascension of the ascending node(s).

(iii) For 1.6/2.4 GHz Mobile-Satellite Service space stations, the feeder link frequencies requested for the satellite, together with the demonstration required by § 25.203 (j) and (k).

(7) Predicted space station antenna gain contour(s) for each transmit and each receive antenna beam and nominal orbital location requested. These contour(s) should be plotted on an area map at 2 dB intervals down to 10 dB below the peak value of the parameter and at 5 dB intervals between 10 dB and 10 dB below the peak values, with the peak value and sense for polarization clearly specified on each plotted contour.

(8) A description of the types of services to be provided, and the areas to be served, including a description of the transmission characteristics and performance objectives for each type of proposed service, details of the link noise budget, typical or baseline earth station parameters, modulation parameters, an overall link performance analysis (including an analysis of the effects of each contributing noise and interference source).

(9) For satellites in geostationary-satellite orbit, accuracy with which the orbital inclination, the antenna axis attitude, and longitudinal drift will be maintained.

(10) Calculation of power flux density levels within each coverage area and of the energy dispersal, if any, needed for compliance with § 25.208.

(11) Arrangement for tracking, telemetry, and control.

(12) Physical characteristics of the space station including weight and dimensions of spacecraft, detailed mass (on ground and in-orbit) and power (beginning and end of life) budgets, and estimated operational lifetime and reliability of the space station and the basis for that estimate.

(13) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications for domestic fixed-satellite systems and mobile-satellite systems shall provide the financial information required by § 25.140 (b) through (e), § 25.142(a)(4), or § 25.143(b)(3), as appropriate. Applications for international satellite systems authorized pursuant to *Establishing of Satellite Systems Providing International Communications*, 101 FCC 2d 1046 (1985), *recon.*, 61 RR 2d 649 (1986), *further recon.*, 1 FCC Rcd 439 (1986) (available at the Commission's Library in Washington, DC), shall provide the information required by that decision.

(14) Qualifications of applicant. FCC Form 312, Main Form. If FCC Form 312, Main Form, is already on file, indicate date, radio service and file number of most recent filing.

(15) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether noncommon carrier transactions are proposed. If noncommon carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a noncommon carrier basis.

(16) Dates by which construction will be commenced and completed, launch date, and estimated date of placement into service.

(17) Public interest considerations in support of grant.

(18) Applications for authorizations for domestic fixed-satellite space stations shall also include the information specified in § 25.140.

(19) Applications for international fixed-satellite authorizations shall also provide all information necessary to comply with the policies and procedures set forth in Establishing of Satellite Systems Providing International Communications, 101 FCC 2d 1046 (1985) (available at the Commission's Library in Washington, DC), as modified by Permissible Services of U.S. license International Communications Satellite Systems, Order, FCC 92–95 released April 8, 1992 (available through the Commission's Public Reference Room in Washington, DC).

(20) Applications for authorizations in the Radiodetermination Satellite Service shall also include the information specified in § 25.141.

(21) Applications for authorizations in the Mobile Satellite Service in the 1545–1559/1646.5–1660.5 MHz frequency bands shall also provide all information necessary to comply with the policies and procedures set forth in *Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service*, 2 FCC Rcd 485 (1987) (available at the Commission's Library in Washington, DC).

(22) Applications to license multiple space station systems in the non-voice, non-geostationary mobile-satellite service under blanket operating authority shall also provide all information specified in § 25.142.

(23) Applications for authorizations in the 1.6/2.4 GHz Mobile-Satellite Service shall also provide all information specified in § 25.143.

(d) Applicants requesting authority to construct and/or launch a system comprised of technically identical, non-geostationary satellite orbit mobile-satellite service space stations may file a single ''blanket'' application containing the information specified in paragraph (c) of this section for each representative space station.

4. Section 25.115 is amended by revising paragraphs (a), (b), and (c)(1), (c)(2) and (d) to read as follows:

§ 25.115 Application for earth station authorizations.

(a) Transmitting earth stations. Except as provided under § 25.113(b), Commission authorization must be obtained for authority to construct and/or operate a transmitting earth station. Applications shall be filed on FCC Form 312, Main Form and Schedule C, and include the information specified in § 25.130.

(b) Receive-only earth stations. Applications to license or register receive only earth stations shall be filed on FCC Form 312, Main Form and Schedule C, and conform to the provisions of § 25.131.

(c) * * *

(1) An FCC Form 312, Main Form and Schedule B, for each large (5 meters or larger) hub station operating with the network,

(2) An FCC Form 312, Main Form and Schedule B, for each representative type of small antenna (less than 5 meters).

* * * * *

(d) User transceivers in the non-voice, non-geostationary mobile-satellite service need not be individually licensed. Service vendors may file blanket applications for transceivers units using FCC Form 312, Main Form and Schedule C, and specifying the number of units to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.135.

5. Section 25.117 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 25.117 Modification of station license.

(a) Except as provided for in § 25.118 (Modifications not requiring prior authorization), no modification of a radio station governed by this part which affects the parameters or terms and conditions of the station authorization shall be made except upon application to and grant of such application by the Commission. * * *

* * * * *

6. Section 25.118 through 25.120 are redesignated as §§ 25.119 through 25.121, respectively.

7. A new § 25.118 is added to read as follows:

§ 25.118 Modifications not requiring prior authorization.

(a) Equipment in an authorized earth station may be replaced without prior authorization or notification if the replacement equipment is electrically identical to the replaced equipment.

(b) A licensee providing service on a private carrier basis may change its operations to common carrier status without obtaining prior Commission authorization by notifying the Commission by letter within 30 days after the completed change to common carrier status.

(c) Earth station licensees may make facility changes without obtaining prior Commission authorization, by notifying the Commission by letter within 30 days after the modification is completed, if frequency coordination procedures, as necessary, are complied with in accordance with § 25.251, and the modification does not involve:

(1) An increase in EIRP or EIRP density;

(2) An increase in transmitter power;

(3) A change in coordinates for stations operating in C–Band;

(4) A change in coordinates of 10 seconds or greater for stations operating in Kuband;

(5) A change or addition to antenna facilities.

8. The newly designated § 25.119 is amended by revising the first sentences of paragraph (c) and (d) and the last sentence of paragraph (f) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

* * * * *

(c) Assignment of license. FCC Form 312, Main Form and Schedule A, shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. * * *

(d) Transfer of control of corporation holding license. FCC Form 312, Main Form and Schedule A, shall be submitted in order to transfer voluntarily or involuntarily (*de jure or de facto*) control of a corporation holding any licenses. * * *

* * * * *

(f) * * * Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.

9. The newly designated § 25.120 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 25.120 Application for special temporary authorization.

(a) * * * A copy of the request for special temporary authority also shall be forwarded to the Commission's Columbia Operations Center in Columbia, Maryland.

* * * * *

10. The newly designated § 25.121 is amended by revising paragraph (a) to read as follows:

§ 25.121 License term and renewals.

(a) License term. Licenses for facilities governed by this part will be issued for a period of 10 years.

* * * * *

11. Section 25.130 is amended by revising paragraph (a) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

(a) Application for a new or modified transmitting earth station facility shall be submitted on FCC Form 312, Main Form and Schedule C, accompanied by any required exhibits.

* * * * *

12. Section 25.131 is amended by revising paragraphs (a), (d), and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

(a) Except as provided in paragraphs (b) and (j) of this section, applications for a license for a receive-only earth station shall be submitted on FCC Form 312, Main Form and Schedule C, accompanied by any required exhibits.

* * * * *

(d) Applications for registration shall be filed on FCC Form 312, Main Form and Schedule C, accompanied by the coordination exhibit required by 25.203, and any other required exhibits. Any application that is deficient or incomplete in any respect shall be immediately returned to the applicant without processing.

* * * * *

(j) Receive-only earth stations operating with (1) INTELSAT space stations, (2) international space stations, or (3) U.S. domestic and non-U.S. space stations for reception of services from other countries, shall file an FCC Form 312, Main Form and Schedule C, requesting a license for such station. Receive-only earth stations used to receive INTELNET I services from INTELSAT space stations need not file for licenses. *See* Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global

Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86–214 (released May 19, 1986) (available through the Commission's Reference Center in Washington, D.C.).

13. Section 25.134 is amended by revising the first sentences of paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 25.134 Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.

(a) All applications for digital VSAT networks with maximum outbound downlink EIRP densities of +6.0 dBW/4 kHz per carrier and earth station antennas with maximum input power densities of −14 dBW/4 kHz and maximum hub EIRPs of 78.3 dBW will be processed routinely. * * *

(b) Each applicant for digital and/or analog VSAT network authorization proposing to use transmitted satellite carrier EIRP densities in excess of +6.0 dBW/4 kHz per carrier and +13.0 dBW/4 kHz, respectively, and/or maximum antenna input power densities of −14.0 dBW/4 kHz dBW and −8.0 dBW/4 kHz, respectively, shall conduct an engineering analysis using the Sharp, Adjacent Satellite Interference Analysis (ASIA) program. * * *

* * * * *

(d) An application for VSAT authorization shall be filed on FCC Form 312. Main Form and Schedule B. A VSAT licensee applying to renew its license must include on FCC Form 405, the number of constructed VSAT units in its network.

14. Section 25.140 is revised to read as follows:

§ 25.140 Qualifications of domestic fixed-satellite space stations.

(a) Each applicant for a space station authorization in the domestic fixed-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is legally, financially, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization.

(b) Each applicant must provide the following information:

(1) The information specified in § 25.114.

(2) An interference analysis to demonstrate the compatibility of its proposed system 2 degrees from any authorized space station. An applicant should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See, e.g., appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, Docket No. 81–704, FCC No. 83–184 (released August 16, 1983) (available through the Commission's Reference Center in Washington, D.C.))

(3) The applicant's current financial ability to meet the:

(i) Estimated costs of proposed construction and/or launch, and any other initial expenses for the space station(s); and

(ii) Estimated operating expenses for one year after launch of the proposed space station(s).

(c) Each application for authority to construct and/or launch a space station shall demonstrate the applicant's current financial ability to meet the costs specified in paragraph (b)(3) of this section by submitting the following financial information verified by affidavit:

(1) A balance sheet current for the latest fiscal year and documentation of any financial commitments reflected in the balance sheet (such as, for example, loan agreements and service contracts) together with an exihibit demonstrating that the applicant has current assets and operating income sufficient to satisfy the requirements of paragraph (c) of this section. If the applicant is owned by more than one corporate parent, it must submit evidence of a commitment to the proposed satellite program by management of the corporate parent upon whom it is relying for financial resources;

(2) If the submissions of paragraph (c)(1) of this section do not satisfy paragraph (b)(3) of this section, the applicant shall submit additional information as listed in paragraphs (c)(2) (i) through (iv) to satisfy paragraph (b)(3) of this section.

(i) The terms of any fully negotiated loan or other form of credit arrangement intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), the amount committed, letters of commitment, detailed terms of the transaction, including the details of any contingencies, and a statement that the applicant complies with paragraph (d) of this section.

(ii) The terms of any fully negotiated sale or placement of any equity or other form of ownership interest, including the sale, or long-term lease for the lifetime of the satellite, of proposed satellite transponder capacity in the level of detail as specified in paragraph (c)(2)(i) of this section.

(iii) The terms of any grant or other external funding commitment intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities, including such information as the identity of the grantor(s), the amount committed, letters of commitment, and detailed terms of the transaction, including the details of any contingencies;

(iv) Any financing arrangements contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing, will not satisfy the requirements of paragraph (b)(3) of this section.

(3)Whatever other information or details the Commission may require with regard to a specific application or applicant;

(d) Any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under any default provision of the agreement.

(e) An applicant found to be qualified pursuant to paragraph (a) of this section may be initially assigned up to two orbital locations in each pair of frequency bands proposed. Authorizations to construct ground spares are at the applicant's risk that launch authorization will not be granted by the Commission.

(f) Each applicant found to be qualified pursuant to paragraph (a) of this section may be assigned no more than one additional orbital location beyond its current authorizations in each frequency band in which it is authorized to operate, provided that its in-orbit satellites are essentially filled and that it has no more than two unused orbital locations for previously authorized but unlaunched satellites in that band.

(g) In the event that one or more applications satisfying the requirements of this section are ready for grant, any orbital location occupied by a satellite that is determined to be a part of a system that is not essentially filled may be cancelled and colocation of in-orbit satellites may be required. The Commission may take this action if, in so doing, it would allow the grant of pending applications that satisfy the requirements of this section. If a cancellation is made, the licensee will be afforded a period of 30 days to notify

the Commission which of its assigned locations should be cancelled.

15. Section 25.141 is amended by revising paragraph (c) to read as follows:

§ 25.141 Licensing provisions for the radiodetermination satellite service.

* * * * *

(c) User transceivers. Individual user transceivers will not be licensed. Service vendors may file blanket applications for transceiver units using FCC Form 312, Main Form and Schedule C, and specifying the number of units to be covered by the blanket license. Each application must demonstrate that transceiver operations will not cause interference to other users of the spectrum.

* * * * *

16. Section 25.142 is amended by revising paragraph (c) introductory text to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

* * * * *

(c) Reporting requirements. All operators of non-voice, non-geostationary mobile-satellite service systems shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland containing the following information:

* * * * *

17. Section 25.143 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service.

* * * * *

(e) * * *

(1) All operators of 1.6/2.4 GHz mobile-satellite systems shall, on June 30 of each year, file with the International Bureau and the Commission's Columbia Operations Center, Columbia, Maryland a report containing the following information:

* * * * *

18. Section 25.155 is amended by revising paragraph (b) to read as follows:

§ 25.155 Mutually exclusive applications.

* * * * *

(b) A space station application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another application; and

(2) The application is received by the Commission in a condition acceptable for filing by the ''cut-off'' date specified in a public notice.

19. Section 25.210 is amended by revising paragraphs (j) introductory text and (j)(3), to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(j) All operators of space stations shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland containing the following information.

* * * * *

(3) A detailed description of the utilization made of each transponder on each of the in-orbit satellites. That description should identify the total capacity or the percentage of time each transponder is actually used for transmission, and the amount of unused system capacity in the transponder.

* * * * *

20. Section 25.211 is amended by adding paragraph (d), to read as follows:

§ 25.211 Video Transmissions in the Domestic Fixed-Satellite Service.

* * * * *

(d) In the 6 GHz band, an earth station with an equivalent diameter of 9 meters or smaller may be routinely licensed for transmission of full transponder services if the maximum power into the antenna does not exceed 450 watts (26.5 dBW). In the 14 GHz band, an earth station with an equivalent diameter of 5 meters or smaller may be routinely licensed for transmission of full transponder services if the maximum power into the antenna does not exceed 500 watts (27 dBW).

21. Section 25.212 is amended by adding paragraphs (c) and (d), to read as follows:

§ 25.212 Narrowband transmissions in the Fixed-Satellite Service.

* * * * *

(c) In the 14 GHz band, and earth station with an equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband analog services with bandwidths up to 200 kHz if the maximum power densities into the antenna do not exceed −8 dBW/4 kHz and the maximum transmitted satellite carrier power densities do not exceed 13 dBW/4 kHz.

(d) In the 6 GHz band, an earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed for transmission of SCPC services if the maximum power densities into the antenna do not exceed +0.5 dBW/4 kHz for analog SCPC carriers with bandwidths up to 200 kHz, and do not exceed −2.7 dBW/4 kHz for digital SCPC carriers.

22. Section 25.251 is revised to read as follows:

§ 25.251 Special requirements for coordination.

(a) The administrative aspects of the coordination process are set forth in §§ 21.100(d) and 21.706 (c) and (d) of this chapter in the case of coordination of terrestrial stations with earth stations, and in § 25.203 in the case of coordination of earth stations with terrestrial stations.

(b) The technical aspects of coordination are based on Appendix 28 of the International telecommunications Union Radio Regulations and certain recommendations of the ITU Radiocommunication Sector (''ITU–R'') which may be obtained through the International Telecommunication Union, General Secretariat—Sales Section, Places des Nations, CH–1211 Geneva 20, Switzerland or by phone 011–41–22–730–6141 or fax 011–41–22–730–5194. Applicants and operators will find it helpful to be aware of the latest revisions of these documents.

§§ 25.252 through 25.256 [Removed and reserved]

23. Sections 25.252 through 25.256 are removed and reserved.

24. Section 25.272 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.272 General inter-system coordination procedures.

* * * * *

(b) Each space station licensee shall maintain on file with the Commission and with its Columbia Operations Center in Columbia, Maryland a current listing of the names, titles, addresses and telephone numbers of the points of contact for resolution of interference problems. * * *

* * * * *

25. Section 25.274 is amended by revising the first sentence of paragraph (f) to read as follows:

§ 25.274 Procedures to be followed in the event of harmful interference.

* * * * *

(f) At any point, the system control center operator may contact the Commission's Columbia Operations Center in Columbia, Maryland to assist in resolving the matter. * * *

* * * * *

26. Section 25.277 is amended by revising paragraph (c) introductory text to read as follows:

§ 25.277 Temporary fixed earth station operations.

* * * * *

(c) The licensee of an earth station which is authorized to conduct temporary fixed operations in bands shared co-equally with terrestrial fixed stations shall provide the following information to the Director of the Columbia Operations Center at P.O. Box 250, Columbia, Maryland 21045 (phone number 301–725–3474 and fax number 301–206–2896) and to the licensees of all terrestrial facilities lying within the coordination contour of the proposed temporary fixed earth station site before beginning transmissions:

* * * * *

27. A new § 25.280 is added to read as follows:

§ 25.280 Inclined orbit operations.

Satellite operators may commence operation in incline orbit mode without obtaining prior Commission authorization provided that the Commission is notified by letter within 30 days after commencement. The notification shall include:

(a) The date of commencement of included orbit operation;

(b) The initial inclination;

(3) The rate of change in inclination per year; and

(4) The expected end-of-life of the satellite accounting for inclined orbit operation.

28. Section 25.308 is redesignated as § 25.281.

29. Subpart E is removed and reserved.

[FR Doc. 95–22168 Filed 9–5–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 52

Federal Acquisition Regulation; Use and Charges Clause Class Deviation

AGENCY: Department of Defense (DoD).

ACTION: Notice of proposed class deviation.

SUMMARY: The Department of Defense (DoD) is proposing a class deviation from the Federal Acquisition Regulation (FAR) that simplifies the method of determining rental charges for government property. The proposed class deviation will allow defense contractors to propose rental charges for the commercial use of government property and real property while revisions to the FAR are being drafted.

DATES: Comments on the proposed class deviation should be submitted in writing at the address shown below on or before November 6, 1995 to be considered in the formulation of the final class deviation.

ADDRESSES: Interested parties should submit written comments to: Ms. Angelena Moy, MPI, Room 3E144, Pentagon, Washington, DC 20301–3000. FAX (703) 695–7596.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, telephone (703) 695–1099.

SUPPLEMENTARY INFORMATION:

A. Background

On September 16, 1994 (59 FR 47583) the Director of Defense Procurement announced an initiative to rewrite FAR Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and the Government. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of public meetings in the **Federal Register**. Interested parties were invited to provide written suggestions or comments in the notice of public hearing dated September 16, 1994 (59 FR 47583). Twenty-two commentors provided approximately 500 comments, including a recommendation that simplifying the procedures for computing rental charges for government property would reduce administrative burdens and provide cost savings.

In order to expedite implementation of simplified government property rental procedures, DoD is proposing a class deviation from current FAR methods of determining rental charges for commercial use of government property. The proposed class deviation was included in discussions during the public hearings that have been held on the rewrite of FAR Part 45. DoD proposes to deviate from the clause at FAR 52.245–9 as follows:

Part 52—Solicitation Provisions and Contract Clauses

52.245–9 Use and Charges

• Deviation authorizes DoD to use the following clause in lieu of the clause at 52.245–9. This clause requires contractors, for real property and associated fixtures, to obtain certified property appraisals that compute a monthly, daily, or hourly rental rate for comparable commercial property. Rental charges would be determined by multiplying the rental time by an appraisal rental rate expressed as a rate per hour. For other government property, rental charges will be the smaller of two percent of the property's acquisition cost multiplied by the ratio of rental time to time available for use, or by the method described for real property and associated fixtures.

Use and Charges (APR 1984) (Deviation)

(a) *Deviations.*

As used in this clause—

Acquisition cost means the acquisition cost recorded in the contractor's property control system or, in the absense of such record, the value attributed by the Government to a government property item for purposes of determining a reasonable rental charge.

Government property means property owned, licensed, or leased by the Government.

Real property means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or equipment.

Rental period means the calendar period during which government property is made available for commercial purposes.

Rental time means the number of hours, to the nearest whole hour, rented property is actually used for commercial purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental.

Time available for use means the number of hours, to the nearest whole hour, in the rental period.

(b) *General.* (1) Rental requests must be submitted to the administrative Contracting Officer, identify the property desired, propose a rental period, and calculate an estimated rental charge.

(2) The Contractor shall not use government property for commercial purposes until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property may be used only on a non-interference basis.

(3) Notwithstanding any other provision of this contract, the Contractor is responsible for any loss, theft, or destruction of, or damage to, government property during its use for commercial purposes.

(c) *Estimated rental charge.* The estimated rental charge submitted with the Contractor's rental request shall be computed by substituting the Contractor's best estimate of the time the property might be used for commercial purposes for rental time in the formulae described in paragraph (d) of this clause.

(d) *Final rental charge*—(1) *Real property and associated fixtures*—(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed or certified appraiser that computes a monthly, daily, or hourly rental rate for comparable commercial property no more than one year prior to the date the property is desired for commercial use and submit the appraisal to the administrative Contracting Officer at least 30 days prior to that date. Except as provided in paragraph (d)(1)(iv) of this clause, the administrative Contracting Officer shall use

the appraisal rental rate to determine an equitable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) The Contractor may request consideration of an alternate basis for computing the rental charge if it considers a time based rental unreasonable or impractical.

(iv) When the administrative Contracting Officer has reason to believe the appraisal rental rate is not reasonable, he or she shall promptly notify the Contractor and provide his or her rationale. The parties may agree on an alternate means for computing a reasonable rental charge.

(2) *Other government property.* The final rental charge shall be the smaller of—

(i) Two percent (2%) of the property's acquisition cost multiplied by the ratio of rental time to time available for use where time shall be expressed in increments not less than one hour; or,

(ii) A rental charge based upon the appraisal method described in paragraph (d)(1) of this clause subject to the constraints of that paragraph.

(e) *Rental payments.* (1) Rent is due at the time and place specified by the Contracting Officer. If a time is not specified, the rental is due 60 days following completion of the rental period. The Contractor shall calculate the rental due, and furnish records or other supporting data in sufficient detail to permit the administrative Contracting Officer to verify the rental time.

(2) Interest will be charged if payment is not made by the specified payment date or, in the absence of a specified date, the sixty-first day following completion of the rental period. Interest will accrue at the ''Renegotiation Board Interest Rate'' (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) At any time during the rental period, the Government may revoke commercial use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition, or both.

(f) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of government property or any other failure to perform this contract according to its terms.

(End of clause)

List of Subjects in 48 CFR Part 52

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–22001 Filed 9–5–95; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 60, No. 172
Wednesday, September 6, 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 COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act) 44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: U.S. Industry Reporting Requirements for Compliance with the Chemical Weapons Treaty.

Agency Form Number(s): None assigned.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 15,620 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: Varies but ranges between 2.5 and 9 hours depending on the requirement.

Needs and Uses: The Chemical Weapons Convention is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons. Under this treaty, each participating country will be required to make initial and annual declarations on facilities producing, processing, consuming, importing or exporting specified toxic chemicals and precursors. This collection will not go into effect until the treaty is ratified.

Affected Public: Businesses or other for–profit organizations, Federal Government, State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Bureau of Export Administration (BXA).

Title: Quarterly Report on Exports of Parts to Service Equipment Shipped Against a Validated Export License.

Agency Form Number: None.

OMB Approval Number: 0694–0003.

Type of Request: Extension of a currently approved collection.

Burden: 5 hours.

Number of Respondents: 2.

Avg Hours Per Response: 30 minutes (4 reports for each respondent).

Needs and Uses: This reporting requirement allows exporters to export parts to service U.S. equipment to proscribed countries provided that the equipment was previously exported from the U.S. under a validated license. Exporters are required to submit quarterly reports providing basic information on shipments. BXA uses this information to make sure that there are no excessive shipments of spare parts.

Affected Public: Businesses or other for–profit organizations.

Frequency: Quarterly.

*Respondent's Obligation:*Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Ocean Service (NOS) Customer Needs Survey.

Agency Form Number: None assigned.

OMB Approval Number: None

Type of Request: New Collection.

Burden: 25 hours.

Number of Respondents: 50.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This survey is designed to ascertain customer needs for National Ocean Service products and services. The information will be used as a basis for modifying or supplementing the organization's current product and service offerings.

Affected Public: Individuals, Businesses or other for–profit organizations, Not–for–profit institutions, Federal Government, State, Local or Tribal Government.

Frequency: One–time survey.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application for Fisheries Obligation Guarantee.

Agency Form Number: NOAA 88–1.

OMB Approval Number: 0648–0012.

Type of Request: Extension of a currently approved collection.

Burden: 10,400 hours.

Number of respondents: 1,300.

Avg Hours Per Response: 8 hours.

Needs and Uses: An application form is needed from commercial fishermen who wish to obtain guaranteed financing under the Fisheries Obligation Guarantee Program. The information is used to determine eligibility and monitor program participation.

Affected Public: Individuals, Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration.

Title: Marine Recreational Fishery Statistics Survey.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0052.

Type of Request: Extension of a currently approved collection.

Burden: 23,118 hours.

Number of Respondents: 571,233.

Avg Hours Per Response: Varies but averages between 1 and 7 minutes depending on the requirement.

Needs and Uses: This survey conducts random telephone interviews of residents of coastal county households to obtain data on marine recreational fishing effort and it conducts random field interviews of anglers returning from fishing trips. The data obtained are used to calculate bimonthly estimates of marine recreational fishing participation, effort and catch by species. The effort and catch estimates are used in the development, implementation and monitoring of fishery management programs by the National Marine Fisheries Service, regional fishery management councils, interstate marine fishery commissions and state fishery agencies.

Affected Public: Individuals, Businesses or other–for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishermen's Contingency Fund.

Agency Form Number: NOAA 88–164, 88–166.

OMB Approval Number: 0648–0082.

Type of Request: Extension of a currently approved collection.

Burden: 13,650 hours.

Number of Respondents: 1,065.

Avg Hours Per Response: Ranges between 5 minutes and approximately 13 hours depending on the requirement.

Needs and Uses: Title IV of the Outer Continental Shelf Lands Act Amendments established the Fishermen's Contingency Fund to compensate commercial fishermen for property or economic loss caused by oil and gas obstructions on the U.S. Outer Continental Shelf. An application and a report are needed from commercial fishermen to apply for compensation. The information is used in making a decision on the claimants's eligibility for compensation and to determine the amount of payment.

Affected Public: Individuals, Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fishing Vessel and Gear Damage Compensation Fund.

Agency Form Number: 88–178.

OMB Approval Number: 0648–0094.

Type of Request: Extension of a currently approved collection.

Burden: 8.000 hours.

Number of Respondents: 400.

Avg Hours Per Response: 20 hours.

Needs and Uses: An application form is needed from commercial fishermen who wish to file a claim under Section 10 of the Fishermen's Protective Act. The purpose of the fund is to compensate fishermen for fishing vessel or fishing gear damage or loss caused by foreign or domestic vessels.

Affected Public: Individuals, Businesses or other for–profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: August 25, 1995

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22024 Filed 9–5–95; 8:45 am]

BILLING CODE 3510–CW–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Field Representative Exit Questionnaire.

Form Number(s): BC–1294.

Agency Approval Number: 0607–0404.

Type of Request: Extension of a currently approved collection.

Burden: 13 hours.

Number of Respondents: 160.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In a continuous effort to devise policy and practice aimed at reducing turnover among field representatives (FR)s–our field interviewing staff–the Census Bureau needs to collect data on the reasons FRs leave the Bureau. The exit questionnaire helps the Census Bureau identify specific reasons for the turnovers. Approximately every quarter, a sample of one–half of all FRs voluntarily resigning within the period will be contacted by telephone to complete a questionnaire. Interviewers hired to conduct the census enumeration or related tests are not included in the sample. Based on the survey results the Census Bureau can develop both general and specific plans to reduce turnover.

Affected Public: Individuals or households.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10202 New Executive Office Building,Washington, DC 20503.

Dated: August 31, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22072 Filed 9–5–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of State Government Pass–through Expenditures.

Form Number(s): CF–1.

Agency Approval Number: 0607–0505.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 795 hours.

Number of Respondents: 1,060.

Avg Hours Per Response: 45 minutes.

Needs and Uses: The Census Bureau plans to reinstate this survey to again collect data from all state governments on how they allocate (pass–through) Federal formula grant funds to recipients at the county level, and how pass–through allocations change from year to year. We plan to collect this data annually from state governments over the next three years. Data collected will be used in estimating these pass–through expenditures in future years in the Consolidated Federal Funds Report which the Census Bureau provides annually to Congress. Current estimating procedures are based on data last collected for fiscal year 1986 and are outdated.

Affected Public: State, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, Room 10202 New Executive Office Building, Washington, DC 20503.

Dated: August 31, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–22071 Filed 9–5–95; 8:45 am]

BILLING CODE 3510–07–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment of Import Limits and Amendment of a Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

August 30, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits and amending a restraint period.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on June 23, 1995 (60 FR 32656) announces a limit for cotton and man-made fiber underwear in Categories 352/652 for the period March 28, 1995 through March 27, 1996. In an exchange of notes dated July 26, 1995 and August 23, 1995, the Governments of the United States and the Republic of Turkey agreed, pursuant to Article 6 of the Uruguay Round Agreements Act and the Uruguay Round Agreement of Textiles and Clothing (ATC), to establish a limit for textile products in Categories 352/652 for a three-year term—March 28, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 27, 1998. Also, the two governments agreed to increase the 1995 base sublimit for Categories 338–S/339–S/638–S/639–S.

The 1995 limits for Categories 335, 338/339/638/639, 338–S/339–S/638–S/639–S, 350 and 351/651 are being adjusted, variously, for special shift and carryforward.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current limit for Categories 352/652 to begin on March 28, 1995 and extend through December 31, 1995 at an increased level and to adjust the current limits for Categories 335, 338/339/638/639, 338–S/339–S/638–S/639–S, 350 and 351/651.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17338, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 16, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 352/652, produced or manufactured in Turkey and exported during the twelve-month period which began on March 28, 1995 and extends through March 27, 1996.

This directive also amends, but does not cancel, the directive issued to you on March 30, 1995 concerning imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 7, 1995, you are directed to amend the restraint period for Categories 352/652 to end on December 31, 1995 at a level of 1,681,644 dozen [1] and to adjust the limits for the following categories for the period January 1, 1995 through December 31, 1995, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [a]
Limits not in group	
335	265,523 dozen.
338/339/638/639	4,960,608 dozen of which not more than 3,562,811 dozen shall be in Categories 338–S/339–S/638–S/639–S [b].
350	524,320 dozen.
351/651	770,144 dozen.

[a] 1 The limits have not been adjusted to account for any imports exported after December 31, 1994.

[b] 1 Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22023 Filed 9–5–95; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after March 27, 1995.

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange as a Contract Market in Mexico 30 Stock Index Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in Mexico 30 stock index futures and option contracts. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation

140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME contract markets in Mexico 30 stock index futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: According to the CME, the Mexico 30 stock index is designed to be representative of the Mexican stock market, and is an adjusted capitalization-weighted index of 30 large and liquid Mexican stocks traded on the Bolsa Mexicana de Valores. The capitalizations of component stocks are adjusted to keep their individual index weights equal to or smaller than 25%. The computation of the index will be the responsibility of the Bridge company. The CME and the Chicago Board Options Exchange will maintain the index jointly.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the Exchange in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 30, 1995.

John Mielke,

Acting Director.

[FR Doc. 95–21971 Filed 9–5–95; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection Proposal

AGENCY: Corporation for National and Community Service (CNS).

ACTION: Information Collection Request submitted to the Federal Office of Management and Budget for Review.

SUMMARY: This notice provides information about an information collection proposal by the Corporation for National Service, AmeriCorps Recruitment Office, currently under review by the Office of Management and Budget (OMB).

DATES: OMB and CNS will consider comments on the proposed collection of information and recordkeeping requirements received within 20 days from the date of publication. Copies of the proposed forms and supporting documents may be obtained by contacting the Corporation for National Service.

ADDRESSES: Send comments to both:

Bruce J. Cohen, Director, AmeriCorps Recruitment, 1201 New York Ave., NW., Washington, DC 20525

and

Debra Bond, Desk Officer for CNS, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bruce Cohen, (202) 606–5000.

SUPPLEMENTARY INFORMATION:

Office of CNS Issuing Proposal: AmeriCorps Recruitment.

Title of Form: AmeriCorps Referral Form.

Need and Use: The AmeriCorps Referral form is used by the AmeriCorps Recruitment Office to meet requirements mandated by federal law (National and Community Service Act of 1993). The information collected via the form assists with AmeriCorps Member recruitment and placement for program management, planning, and required recordkeeping.

Type of Request: Revision of currently approved collection.

Respondent's Obligation to Reply: Voluntary.

Frequency of Data Collection: On occasion.

Estimated Number of Responses: 50,000 (annually).

Average Burden Hours per Response: 0.05 Hours (3 minutes).

Estimated Annual Reporting or Disclosure Burden: 2,500 hours.

Regulatory Authority: 42 U.S.C. 12592 (Pub. L. 103–82).

Dated: August 31, 1995.

Bruce J. Cohen,

Director, AmeriCorps Recruitment.

[FR Doc. 95–22059 Filed 9–5–95; 8:45 am]

BILLING CODE 6050–28–M

Information Collection Proposal

AGENCY: The Corporation for National and Community Service (CNS).

ACTION: Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review.

SUMMARY: This notice provides information about an information proposal by CNS, currently under review by OMB.

DATES: OMB and CNS will consider comments on the proposed collection of information and record keeping requirements received within 10 days from the date of publication. Copies of the proposed forms and supporting documents may be obtained by contacting CNS.

ADDRESSES: Send comments to both:

Chuck Helfer, Study Director, CNS, 1201 New York Ave., NW., Washington, DC 20525

and

Debra Bond, Desk Officer, OMB, 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Chuck Helfer, (202) 606–5000, extension 248.

SUPPLEMENTARY INFORMATION:

Office of the Corporation for National and Community Service Issuing Notice: Office of Evaluation.

Titles of Forms: RSVP Project Director Survey, RSVP Station Supervisor Survey; RSVP Volunteer Survey.

Need and Use: The Domestic Volunteer Service Act (as amended) (Pub. L. 93–13) requires the Corporation for National and Community Service to evaluate its programs every three years. This information is needed for

program management, program planning, and required record keeping.

Type of Request: Submission of a new collection.

Respondents Obligation to Reply: Voluntary.

Frequency of Data Collection: Annual.

Estimated Number of Responses: 1,900 Responses.

Average Burden Hours per Response: 0.58 Hours.

Estimated Annual Reporting or Disclosure Burden: 1,100 Hours.

Regulatory Authority: 42 U.S.C. 5056(a).

Dated: August 30, 1995.

Anne Ostberg,

Acting Director, Office of the Vice President.

[FR Doc. 95–22060 Filed 9–5–95; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–462), announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date: October 12–13, 1995.

Time: 0800–1630.

Place: U.S. Army Center for Health Promotion and Preventive Medicine (Provisional), Edgewood Area, Aberdeen Proving Ground, Maryland.

Proposed Agenda: 12–13 October 1995—Service preventive medicine reports and issues in infectious disease, vaccines, and behavioral risk factors.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Acting Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

FOR FURTHER INFORMATION CONTACT: Colonel Francis L. O'Donnell, USA, MC, Acting Executive Secretary, Armed Forces Epidemiological Board, (703) 681–8012/3.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–21979 Filed 9–5–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: September 28, 1995.

Time of Meeting: 0930–1230.

Place: Ft. Detrick-Frederick, MD.

Agenda: The Army Science Board (ASB) Personnel and Medical Panel will meet for initial discussions on the design and staffing required to support the medical research, development, test and evaluation (RDT&E) programs of the proposed Army and Navy consolidated laboratory management organization currently proposed to be called the Armed Forced Medical Research and Development Agency (AFMRDA). This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–21975 Filed 9–5–95; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: September 27, 1995.

Time of Meeting: 0800–1700.

Place: Alexandria, VA.

Agenda: The Army Science Board (ASB) Independent Assessment Panel on ''Lead-based Paint'' will meet to review information provided during earlier briefings and site visits regarding the Army Program for the management and abatement of lead-based paint. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 95–21977 Filed 9–5–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM96–1–91–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, ANR Storage Company (ANR Storage) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Seventh Revised Sheet No. 1(a), with a proposed effective date of October 1, 1995.

ANR Storage states that Seventh Revised Sheet No. 1(a) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1995.

ANR Storage states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21985 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–91–000]

ANR Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, ANR Storage Company (ANR Storage) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1,

Third Revised Sheet No. 5, with a proposed effective date of October 1, 1995.

ANR Storage states that Third Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by ANR Storage will be effective October 1, 1995.

ANR Storage states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21986 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–112–000]

Blue Lake Gas Storage Co.; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, Blue Lake Gas Storage Company (Blue Lake) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 5, with a proposed effective date of October 1, 1995.

Blue Lake states that Third Revised Sheet No. 5 reflects the new ACA rate to be charged per the Annual Charge Adjustment Clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Blue Lake will be effective October 1, 1995.

Blue Lake states that copies of the filing were served upon the company's jurisdictional customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21987 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–031 and RP95–422–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Tariff Filing

August 30, 1995.

Take notice that on August 25, 1995, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing proposed changes in its FERC Gas Tariff, to become effective October 1, 1995, as more fully described in its Description of Prospective Tariff Sheets contained in its filing. The tariff sheets submitted are as follows:

Second Revised Volume No. 1

Second Revised Sheet No. 4
First Revised Sheet No. 4A
First Revised Sheet No. 5
Second Revised Sheet No. 6

Original Volume No. 2

Seventeenth Revised Sheet No. 151
Fourteenth Revised Sheet No. 223
Fourteenth Revised Sheet No. 245
Eighth Revised Sheet No. 269
Fourteenth Revised Sheet No. 294
Ninth Revised Sheet No. 603
Sixth Revised Sheet No. 604

Great Lakes states that the above tariff sheets are filed to reinstate systemwide rolled-in rates on its system, in compliance with the Commission's July 26, 1995, Order on Remand, in which it reversed its prior incremental rate decisions.

Any person desiring to be heard or to protest the above referenced tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 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 in the Public Reference Room.

Also in compliance with the Order on Remand, Great Lakes tendered for filing pro forma tariff sheets reflecting systemwide rolled-in rates on its system for the period November 1, 1991 through September 30, 1995, during which incremental rates were required to be charged by the Commission's Opinion Nos. 367 and 368, which the Commission has now reversed. The following is a listing of the pro forma tariff sheets and the dates they are to become effective:

Second Revised Volume No. 1

Pro Forma Sheet No. 4—November 1, 1994; November 1, 1993
Pro Forma Sheet No. 4A—November 1, 1994
Pro Forma Sheet No. 5—November 1, 1993

First Revised Volume No. 1

Pro Forma Sheet No. 4—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 57(i)—April 1, 1993; November 1, 1991

Original Volume No. 2

Pro Forma Sheet No. 53—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 77—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 78—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 151—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 223—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 245—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 269—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 294—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 603—November 1, 1993; April 1, 1993; November 1, 1991

Pro Forma Sheet No. 604—November 1, 1993; April 1, 1993; November 1, 1991
Pro Forma Sheet No. 865—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 866—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 905—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 906—April 1, 1993; November 1, 1991
Pro Forma Sheet No. 1008—April 1, 1993; November 1, 1991

Original Volume No. 3

Pro Forma Sheet No. 2—October 1, 1993; April 1, 1993; January 1, 1993; October 1, 1992; January 1, 1992; November 1, 1991
Pro Forma Sheet No. 3—October 1, 1993; April 1, 1993; January 1, 1993; October 1, 1992; May 1, 1992; January 1, 1992; November 1, 1991

In addition, Great Lakes included its Refund and Surcharge Plan, and supporting schedules, in its filing.

Any person desiring to be heard or to protest the above referenced pro forma tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Great Lakes states that copies of the filing were served upon all parties to these proceedings, each of Great Lakes customers, and the Public Service Commissions of the States of Michigan, Minnesota and Wisconsin.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22050 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–65–000]

Jupiter Energy Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1995.

Take notice that on August 23, 1995, Jupiter Energy Corporation (Jupiter Energy) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1995:

Ninth Revised Sheet No. 4A
Ninth Revised Sheet No. 5A
Ninth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff reflect revision, pursuant to Section 154.38(d)(6) of the Commission's Regulations, of Jupiter Energy's Annual Charge Adjustment (''ACA'') surcharge. The new surcharge rate is 0.23¢ Mcf.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 7, 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 Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–21988 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–421–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1995.

Take notice that on August 24, 1995, Koch Gateway Pipeline Company (Koch Gateway), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1995:

Sixth Revised Sheet No. 20
Sixth Revised Sheet No. 21
Sixth Revised Sheet No. 22
Sixth Revised Sheet No. 24
Second Revised Sheet No. 3904
First Revised Sheet No. 3905
Original Sheet No. 3906

Koch Gateway states that this filing is submitted as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission.

Koch Gateway states that on August 4, 1995, it filed an application for the Commission's special permission to withdraw the filing in Docket No. RP95–295–000 which would have permitted the recovery of Koch Gateway's Account No. 191 costs through a direct bill mechanism.

Koch Gateway states that the above tariff sheets are being submitted in order to permit recovery of pre-July 31, 1991 costs in its Account No. 191 through prospective surcharges on transportation service under Rate Schedules FTS, FTS–SCO, NNS, NNS–SCO and ITS. Koch Gateway proposes that ninety percent of the stranded Account No. 191 costs be allocated to firm service with the remaining ten percent being allocated to interruptible transportation service.

Koch Gateway also states that copies of its filing are being served upon Koch Gateway customers, state commissions, all intervenors in RP95–295–000 and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 7, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21989 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–714–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

August 30, 1995.

Take notice that on August 28, 1995, NorAm Gas Transmission Company (Applicant), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP95–714–000 for approval under §§ 157.205 and 157.212 of the Commission's Regulations to construct and operate, delivery points for Arkla, a division of NorAm Energy Corp. (Arkla), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities for deliveries of natural gas to Arkla, to serve its new domestic and commercial customers: (a) One 1-inch delivery tap and first cut regulatory on Applicant's Line T to serve Metropolitan Life Insurance Company in Philips County, Arkansas; (b) one 1-inch delivery tap and first-cut regulator on Applicant's Line T to serve Ray Fuller Farms in Monroe County, Arkansas. The estimated annual volumes through these facilities are 2,550 MMBtu annually and 48 MMBtu on a peak day. The cost of construction is $4,598.00, which will be reimbursed by Arkla.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21990 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–185–006]

Northern Natural Gas Company; Notice of Petition To Place Tariff Sheets Into Effect

August 30, 1995.

Take notice that on August 25, 1995, Northern Natural Gas Company (Northern) filed a motion to place the following tariff sheet into effect on September 1, 1995:

Substitute Twenty-First Revised Sheet No. 53

Northern states that the filing moves into effect as of September 1, 1995, the gathering rate previously accepted and suspended by the Commission's March 30, 1995, suspension order.

Northern further states that copies of the motion have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before September 7, 1995. Protests will be considered by the Commission in determining the appropriate proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21991 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–41–000]

Paiute Pipeline Company; Notice of Change in Annual Charge Adjustment

August 30, 1995.

Take notice that on August 24, 1995, Paiute Pipeline Company (Paiute) tendered for filing and acceptance the following tariff sheet to be a part of its FERC Gas Tariff:

Second Revised Volume No. 1–A

Second Revised Sheet No. 10

Paiute states that the purpose of said filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1995 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective on October 1, 1995.

Paiute states that copies of this filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 7, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21992 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–111–000]

Steuben Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Third Revised Sheet No. 1(A), with a proposed effective date of October 1, 1995.

Steuben states that Third Revised Sheet No. 1(A) reflects the new ACA rate to be charged per the Annual Charge Adjustment clause provisions established by the Commission in Order No. 472, issued on May 29, 1987. The new ACA rate to be charged by Steuben will be effective October 1, 1995.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 7, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21993 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–699–000]

Trailblazer Pipeline Company; Notice of Request Under Blanket Authorization

August 30, 1995.

Take notice that on August 21, 1995, Trailblazer Pipeline Company (Trailblazer), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–699–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new natural gas delivery point under Trailblazer's blanket certificate issued in Docket No. CP82–

497–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trailblazer proposes to construct and operate a new delivery point located in Gage County, Nebraska for Farmland Industries, Inc. (Farmland). Trailblazer states that it would deliver, on an interruptible basis, up to 30,000 Mcf of gas per day to Farmland for use as feedstock. Trailblazer estimates that the new facilities, consisting of a 4-inch sidetap, a 6-inch meter and approximately 3,500 feet of 6-inch pipeline, would cost $222,000. Trailblazer asserts that it has sufficient capacity to provide the proposed services without detriment or disadvantage to its peak day and annual delivery capacity.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21994 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–119–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff Annual Charges Adjustment Clause Provisions

August 30, 1995.

Take notice that on August 25, 1995, Young Gas Storage Company, Ltd. (Young) submitted for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 5, with a proposed effective date of October 1, 1995.

Young states that the tariff sheets reflect a decrease of $0.0001 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0023 per Mcf based on Young's 1995 ACA billing.

Young requested that the new $0.0023 cent per Mcf ACA charge be effective October 1, 1995.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before September 7, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21997 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–236–005]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 30, 1995.

Take notice that on August 24, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing, under protest, certain revised tariff sheets to First and Second Revised Volume Nos. 1 and Original Volume Nos. 1–A, 1–B and 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's ''Order Affirming in part and Reversing in Part Initial Decision'' issued July 25, 1995 in Docket Nos. RP9 2–236–000, et al. as more fully described in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 7, 1995. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21995 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–76–000]

Wyoming Interstate Company, Ltd.; Notice of Filing

August 30, 1995.

Take notice that on August 25, 1995, Wyoming Interstate Company, Ltd. (WIC) submitted for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 5, and to become part of its FERC Gas Tariff, Second Revised Volume No. 2, Third Revised Sheet No. 4 and Fourth Revised Sheet No. 5 to become effective October 1, 1995.

WIC states that the tariff sheets reflect a decrease of $0.0001 per Mcf in the ACA adjustment charge, resulting in a new ACA rate of $0.0023 per Mcf based on WIC's 1995 ACA billing.

WIC requested that the new $0.0023 cent per Mcf ACA charge be effective October 1, 1995.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 7, 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 in the Pubic Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21996 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG95–87–000, et al.]

Entergy Power Marketing Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 28, 1995.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Marketing Corporation

[Docket No. EG95–87–000]

Take notice that on August 23, 1995, Entergy Power Marketing Corporation (EPMC), 900 S. Shackleford Road, Suite 210, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

EPMC is a Delaware corporation that will be engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

EPMC intends to own, control or hold with the power to vote at least 5% of the voting securities of Entergy Power Development Corporation (EPDC). The Commission previously has determined that EPDC is an EWG. EPDC owns (i) 100% of Entergy Richmond Power Corporation (Entergy Richmond) and (ii) interests in a number of foreign EWGs. Entergy Richmond is an EWG and owns and operates an eligible facility consisting of a 250 MW electric generating facility that is located in Richmond, Virginia.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Rig Gas Inc.

[Docket No. ER95–480–002]

Take notice that on August 24, 1995, Rig Gas Inc. (Rig) filed certain information as required by the Commission's March 16, 1995, letter order in Docket No. ER95–480–000. Copies of Rig's informational filing are on file with the Commission and are available for public inspection.

3. Southwestern Electric Power Company

[Docket No. ER95–1301–000]

Take notice that on August 24, 1995, Southwestern Electric Power Company (SWEPCO), provided additional information in this docket.

SWEPCO served copies of the filing on all parties to the proceeding and the Public Utility Commission of Texas. Copies are also available for inspection at SWEPCO's offices in Shreveport, Louisiana.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER95–1360–000]

Take notice that on August 23, 1995, New England Power Company filed an amendment clarifying its earlier submission in this docket.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER95–1489–000]

Take notice that on August 23, 1995, Southern California Edison Company (Edison), tendered for filing supplements to its initial filing in the above docket. The supplements amend the rate to be effective June 1, 1995 for the Edison-Riverside Washington Water Power Firm Transmission Service Agreement between Edison and the City of Riverside, correct the losses stated for the Edison-IID Firm Transmission Service Agreement between Edison and Imperial Irrigation District, and correct a typographical error in the losses shown for the Edison-AEPCO Firm Transmission Service Agreement between Edison and the Arizona Electric Power Cooperative.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Illinova Power Marketing, Inc.

[Docket No. ER95–1577–000]

Take notice that on August 17, 1995, Illinova Power Marketing, Inc. (IPMI) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving IPMI's application for membership in the WSPP. IPMI requests it be permitted to become a member of the WSPP. In order to receive the benefits of pool membership, IPMI requests waiver of the Commission's prior notice requirement to allow its WSPP membership to become effective August 15, 1995, but in no event later than 60 days from this filing.

A copy of the filing was served on WSPP.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER95–1596–000]

Take notice that on August 21, 1995, the American Electric Power Service Corporation (AEPSC), tendered for filing, as an Initial Rate Schedule, a Power Sales Tariff.

The Power Sales Tariff and the associated service schedule provides for the sale of operating capacity and energy that the AEP Companies are willing to make available, from AEP System resources on a firm or non-firm basis. AEPSC requests an effective date of September 1, 1995.

A copy of the filing was served upon the Eligible Entities listed in Appendix II to the filing and the state regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER95–1597–000]

Take notice that on August 21, 1995, New England Power Company (NEP), tendered for filing an Agreement with Pepperell Power Associates Limited Partnership (Pepperell) regarding the disconnection of the interconnection of Pepperell's 40 megawatt cogeneration facility with NEP's transmission system.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Utilities Company

[Docket No. ER95–1599–000]

Take notice that on August 21, 1995, Kentucky Utilities Company tendered for filing an executed Service Agreement for Power Services with CNG Power Services Corporation.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Houston Lighting & Power Company

[Docket No. ER95–1605–000]

Take notice that on August 21, 1995, Houston Lighting & Power Company (HL&P) tendered for filing three executed transmission service agreements (TSA) and LG&E Power Marketing, Inc. (LG&E) for Economy Energy Transmission Service under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The three TSAs

provide for the transmission of economy energy supplied, respectively, by South Texas Electric Cooperative, Inc. (STEC), Air Liquide and The Dow Chemical Company (Dow), and scheduled to and over the East HVDC Interconnection. HL&P has requested effective dates of August 15, 1995 for the TSA covering energy supplied by STEC, August 16, 1995 for the TSA covering energy supplied by Air Liquide, and August 18, 1995 for the TSA covering energy supplied by Dow.

Copies of the filing were served on LG&E and the Public Utility Commission of Texas.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER95–1606–000]

Take notice that on August 22, 1995, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement for acceptance by the Federal Energy Regulatory Commission (Commission) between RG&E and GPU Service Corporation. The terms and conditions of service under this Agreement are made pursuant to RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279. RG&E also has requested waiver of the 60-day notice provisions pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Union Electric Company

[Docket No. ER95–1607–000]

Take notice that on August 22, 1995, Union Electric Company (UE), tendered for filing a Transmission Service Agreement dated August 23, 1995 between LG&E Power Marketing Inc. (LPMI) and UE. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for transactions from UE to LPMI.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER95–1610–000]

Take notice that on August 23, 1995, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial rate schedule to provide fully interruptible transmission service to North American Energy Conservation, Inc., for delivery of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER95–1611–000]

Take notice that on August 23, 1995, Central Illinois Public Service Company (CIPS) submitted a Service Agreement, dated September 1, 1995, establishing Stand Energy Corporation as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of September 1, 1995, for the service agreement and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Stand Energy Corporation and the Illinois Commerce Commission.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Central Power and Light Company

[Docket No. ER95–1612–000]

Take notice that on August 23, 1995, Central Power and Light Company (CPL) filed a one-time rate decrease to the Public Utilities Board of the City of Brownsville, Texas, Kimble Electric Cooperative, Inc., Magic Valley Electric Cooperative, Inc., Madina Electric Cooperative, Inc., Robstown Utilities of the City of Robstown, Texas, and South Texas Electric Cooperative, Inc.

CPL requests an effective date of August 24, 1995, for the tariff sheets implementing the one-time rate decrease and, accordingly, CPL seeks waiver of the Commission's notice requirements. CPL served copies of the filing on each of the affected customers, Rio Grande Electric Cooperative, Inc. and the Public Utility Commission of Texas.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER95–1613–000]

Take notice that on August 23, 1995, Tampa Electric Company (Tampa Electric) tendered for filing three agreements with the Orlando Utilities Commission (OUC): (1) A Transmission Facilities Purchase and Sale Agreement; (2) an Agreement to Coordinate Construction of Interconnecting Facilities; and (3) an Operating Agreement With Respect to Interconnection.

Tampa Electric proposes that the agreements be made effective as of August 23, 1995, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served on OUC and the Florida Public Service Commission.

Comment date: September 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Acme POSDEF Partners, L.P.

[Docket No. QF85–311–003]

On August 14, 1995, Acme POSDEF Partners, L.P. (Applicant) submitted for filing an amendment to its filing in this docket.

The amendment provides additional information pertaining to the ownership of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: September 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–21984 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1614–000, et al.]

Vantus Energy Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 30, 1995.

Take notice that the following filings have been made with the Commission:

1. Vantus Energy Corporation

[Docket No. ER95–1614–000]

Take notice that on August 23, 1995, Vantus Energy Corporation (Vantus),

tendered for filing an application for waivers and blanket approvals under regulations of the Commission and for an order accepting its Electric Rate Schedule FERC No. 1. Vantus is a wholly-owned, indirect subsidiary of Pacific Gas and Electric Company.

Vantus intends to engage in electric capacity and energy transactions as a marketer. In these transactions Vantus intends to charge market rates as mutually agreed to by Vantus and the purchaser. All other terms of the transaction would also be determined by negotiation between the parties. All sales and purchases will be arms-length transactions.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Power Marketing Corporation

[Docket No. ER95–1615–000]

Take notice that on August 23, 1995, Entergy Power Marketing Corporation filed Rate Schedule No. 1, which would permit it to make sales of capacity and energy at market-based rates, as more fully described in the filing.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Coastal Electric Services Company

[Docket No. ER95–1616–000]

Take notice that on August 23, 1995, Coastal Electric Services Company (CESC), tendered for filing its request that the Commission recognize CESC as a member of the Western Systems Power Pool (WSPP), amend the WSPP Agreement to include CESC, and, pursuant to 18 CFR 35.3 and 35.11, waive notice requirements for good cause shown. CESC requests an effective date of one day after filing for the proposed amendment.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Koch Power Services, Inc.

[Docket No. ER95–1617–000]

Take notice that on August 24, 1995, Koch Power Services, Inc. (KPSI), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, a letter requesting FERC approval of KPSI's membership within the Western Systems Power Pool (WSPP), a copy of a letter dated August 17, 1995, indicating that the WSPP Executive Committee approved KPSI's WSPP membership application and an executed copy of the signatory page to the WSPP Agreement.

A copy of the filing was served to the WSPP Executive Committee Chairman and General Counsel.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Georgia Power Company

[Docket No. ER95–1618–000]

Take notice that on August 24, 1995, Georgia Power Company (Georgia Power), submitted for filing revised tariff sheets to Rate Schedules ''C'' and ''D'' to its Partial Requirements Tariff. The purpose of this filing is to amend energy rates contained in the foregoing tariff to reflect the energy-related costs incurred by Georgia Power to ensure compliance with the Phase I sulfur dioxide emissions limitations of the Clean Air Act Amendment of 1990.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER95–1619–000]

Take notice that on August 24, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission three Service Agreements with Heartland Energy Services, Inc. (Heartland) dated August 3, 1995, Enron Power Marketing, Inc. (Enron) dated August 14, 1995, and InterCoast Power Marketing Company (InterCoast) dated August 14, 1995, entered into pursuant to Section 4.0 of MidAmerican's Non-Firm Point-to-Point Transmission Service Tariff which was accepted for filing by the Commission in Docket No. ER95–188–000.

MidAmerican requests an effective date of August 3, 1995, for the Agreement with Heartland, August 14, 1995 for the Agreement with Enron, and August 14, 1995, for the Agreement with InterCoast, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Heartland, Enron, InterCoast, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. MidAmerican Energy Company

[Docket No. ER95–1620–000]

Take notice that on August 24, 1995, MidAmerican Energy Company (MidAmerican) filed with the Commission three Umbrella Service Agreements with Heartland Energy Services, Inc. (Heartland) dated August 3, 1995, Enron Power Marketing, Inc. (Enron) dated August 14, 1995 and InterCoast Power Marketing Company (InterCoast) dated August 14, 1995, entered into pursuant to Section 5.2 of MidAmerican's Firm Point-to-Point Transmission Service Tariff which was accepted for filing by the Commission in Docket No. ER95–188–000.

MidAmerican requests an effective date of August 3, 1995 for the Agreement with Heartland, August 14, 1995 for the Agreement with Enron, and August 14, 1995 for the Agreement with InterCoast, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Heartland, Enron, InterCoast, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER95–1621–000]

Take notice that on August 24, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Transmission Service Agreements with Energy Resource Marketing, Inc. (ERM) and Coastal Electric Services Company (Coastal) under, PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedule TS–5.

Copies of this filing were supplied to ERM, Coastal, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: September 14, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22051 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2431–008 Michigan and Wisconsin]

Wisconsin Electric Power Company; Notice of Availability of Final Environmental Assessment

August 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the existing Brule Hydroelectric Project located on the Brule River in Iron County, Michigan and Florence County, Wisconsin, near Crystal Falls, Wisconsin, and has prepared a final Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

On June 29, 1994, a draft EA was issued and distributed to all parties, and comments were requested on the draft EA to be filed within 45 days. All comments have been considered in this final EA.

Copies of the final EA are available for review in the Public Reference Branch, Room 3104 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22003 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2522–002, et al.]

Hydroelectric Applications [Wisconsin Public Service Corporation, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* 2522–002.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Johnson Falls Project.

f. *Location:* On the Peshtigo River (river mile 60) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Johnson Falls Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 130.5 acres with a maximum depth of 40 feet, and a volume of 2500 acre-feet at elevation 814.0 feet NGVD; (2) two earth embankments with a 2-foot-thick concrete core wall and a combined length of 188 feet; (3) an unregulated spillway section consisting of a concrete gravity overflow dam with crest length of 9 feet and crest elevation 814.45; (4) a concrete gated spillway section 117-feet-long with (a) conventional ogee overflow segment at elevation 802.40; and (b) six 12-foot-high by 14-foot-wide radial gates; (5) a nonoverflow concrete gravity dam with a vertical upstream face and crest elevation of 818.0 feet; (6) three 4-foot-square sluice gates, located in the nonoverflow dam; (7) a 66.5-foot-wide power intake with six gates; and (8) a powerhouse consisting of (a) a 34-foot-wide by 66.5-foot-long by 42-foot-high concrete, steel, and brick structure, (b) two identical 3-phase 60-cycle, Allis-Chalmers vertical shaft generators rated at 1,760 kW, directly connected to (c) two Allis-Chalmers vertical shaft 2,500-horsepower turbines operating at 150 rpm.

The existing license requires the Wisconsin Public Service Corporation (WPSC) to operating in a peaking mode and provide a minimum release of 29 cubic feet per second (cfs). The applicant may elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC proposes to: (1) Operate in a peaking mode but increase the minimum flow from 29 cfs to 150 cfs year long; (2) place all of the shoreline on this reservoir, from the high water mark back 400 feet, in an old growth classification as well as the five miles of river shoreline downstream from the project; (3) work with the fishery resource agencies to attempt to establish or enhance a population of both brown trout and brook trout (4) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

2a. *Type of Application:* New Major License.

b. *Project No.:* 2525–004.

c. *Date filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Caldron Falls Project.

f. *Location:* On the Peshtigo River (river mile 70) in Marinette County, Wisconsin.

g. *Filed pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Caldron Falls Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 1,180 acres, a maximum depth of 40 feet and a volume of 11,570 acre-feet at elevation 982.0 feet NGVD; (2) two earth embankments with a 2-foot-

thick concrete core wall and a combined length of 1,250 feet; (3) an unregulated spillway section consisting of a concrete gravity overflow dam 121 feet long; (4) a concrete gated spillway section 110 feet long with (a) conventional ogee overflow segment, and (b) six 12-foot-high by 14 foot-wide radial gates; (5) a nonoverflow concrete gravity dam with crest at elevation 986 and vertical upstream face; (6) two 4-foot-square sluice gates, located in the nonoverflow dam; (7) a 7-foot-wide gated concrete trash sluice, located adjacent to the power intake; (8) a 52-foot-wide power intake with four 10.3-foot-high by 10.5-foot-wide gates; (9) one 10-foot diameter penstock 210 feet long; (10) one 10-foot diameter penstock 220 feet long; and (11) a powerhouse consisting of (a) a 29-foot-wide by 76-foot-long by 35-foot-high steel and brick structure, and (b) two identical 3 phase, 60 cycle Allis-Chalmers vertical umbrella type generators rated at 3,200 kW directly connected to (c) two Allis-Chalmers type FV 4,650 horsepower vertical turbines operating at 225 rpm.

The existing license requires Wisconsin Public Service Corporation (WPSC) to operate in a peaking mode and provide a minimum release of 23 cubic feet per second (cfs). The applicant may also elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC currently proposes to: (1) Continue operating in a peaking mode; (2) increase the minimum release flow from 23 cfs to 50 cfs from June through March; (3) increase the minimum release flow to 350 cfs from April through May; and (4) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

3a. *Type of Application:* New Major License.

b. *Project No.:* 2546–001.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Sandstone Rapids Project.

f. *Location:* On the Peshtigo River (river mile 50) in Marinette County, Wisconsin.

g. *Filed pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Sandstone Rapids Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 150 acres with a maximum depth of 39 feet, and a volume of 1,400 acre-feet at elevation 724.1 feet NGVD; (2) two earth embankments with a 2-foot-thick concrete core wall and a combined length of 420 feet and crest elevation of 729.50; (3) an unregulated spillway section consisting of a concrete gravity overflow dam with a crest length of 26 feet at elevation 724.1; (4) a concrete gated spillway section with (a) conventional ogee overflow crest at elevation 712.1; and (b) six 12-foot-high by 14-feet-wide radial gates; (5) an 85.5-foot-long nonoverflow dam concrete gravity structure with a vertical upstream face and crest elevation 729.50; (6) two 4-foot-square sluice gates, located in the nonoverflow dam; (7) a power intake with four gates; and (8) a powerhouse consisting of (a) 41-foot-wide by 85.6-foot-long by 42-foot-high concrete and brick structure; (b) two identical 3-phase 60-cycle, Allis-Chalmers vertical shaft generators rated at 1,920 kW directly connected to (c) two Allis-Chalmers vertical shaft 2,500-horsepower turbines operating at 150 rpm.

The existing license requires the Wisconsin Public Service Corporation (WPSC) to operate in a peaking mode and provide a minimum release of 31 cubic feet per second (cfs). The applicant may elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC currently proposes to: (1) Operate in a peaking mode but increase the minimum flow from 31 cfs to a minimum flow of 200 cfs; (2) establish an old growth/no cut area from the river shoreline back to the top of the slope of the land that is oriented to the river; and (3) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

4a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2560–001.

c. *Date Filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Potato Rapids Project.

f. *Location:* On the Peshtigo River (river mile 15) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Potato Rapids Project is a run-of-river project that consists of the following: (1) A reservoir with a surface area of 350 acres with a maximum depth of 20 feet, and a volume at elevation 621.5 feet of 3,100 acre-feet; (2) Three earth dikes with a combined length of 4,134 feet and a crest elevation of 625 feet; (3) a concrete gated spillway section with (a) 225-foot-long conventional concrete gravity section, (b) three 15-foot-high by 26-foot-wide radial gates, and (c) four 6.5-foot-high and 20-foot-wide radial gates; (4) a 217-foot-long nonoverflow concrete gravity

dam with a vertical upstream face and crest elevation of 623.7; (5) a 8-foot-wide trash sluiceway, located adjacent to the powerhouse; (6) a 56-foot-wide power intake with three gates; and (7) a powerhouse consisting of (a) a 34-foot-wide by 56-foot-long by 31-foot-high concrete powerhouse; (b) one 3-phase, 60-cycle Allis-Chalmers umbrella type generator rated at 500 kW, directly connected to (c) one Leffel vertical shaft 780-horsepower turbine operating at 128.5 rpm, and (d) two 3-phase, 60-cycle General Electric umbrella type generators rated at 440 kW, directly connected to (e) two S Morgan Smith vertical shaft 676-horsepower turbines operating at 128.5 rpm.

The existing license requires the Wisconsin Public Service Corporation (WPSC) to operate in a run-of-river mode maintaining a target reservoir level of 621.25 (NGVDS) ± 0.25 feet.

WPSC currently proposes to: (1) Continue operating in a run of river mode with no changes to the flow; and (2) monitor recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

5a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2581–002.

c. *Date filed:* December 19, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC).

e. *Name of Project:* Peshtigo Project.

f. *Location:* On the Peshtigo River (river mile 12) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed Peshtigo Project is a run-of-river project that consists of the following: (1) A reservoir with a surface area of 460 acres with a maximum depth of 15 feet and a volume of 4,600 acre-feet at elevation 603.0 feet NGVD; (2) a concrete spillway which consists of (a) an ungated section with 61 foot-long crest at elevation 603.0, and (b) a gated section with crest at elevation 591 that includes six 12-foot-high by 14-foot-wide radial gates; (3) a 96-foot-long nonoverflow concrete gravity dam with a vertical upstream face and crest at elevation 605.75; (4) a 96-foot-wide power intake with eight gates; and (5) a powerhouse consisting of (a) 41-foot-wide by 96.5-foot-long by 28-foot-high concrete powerhouse, (b) one 3-phase, 60-cycle General Electric vertical shaft generator rated at 224 Kw directly connected to (c) a 410-horsepower turbine operating at 109 rpm, and (d) one 3-phase, 60-cycle General Electric vertical shaft generator rated at 360 Kw, directly connected to (e) a Francis type Z, 560-horsepower turbine operating at 100 rpm.

WPSC currently proposes: (1) to operate in a run-of-river mode with no changes to the flow; and (2) monitor recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

6a. *Type of Application:* New Major License.

b. *Project No.:* 2595–005.

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Wisconsin Public Service Corporation (WPSC)

e. *Name of Project:* High Falls Project.

f. *Location:* On the Peshtigo River (river mile 62) in Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r)

h. *Applicant Contact:* Mr. Edward Newman, Director of Environmental Services, Power Supply and Engineering, Wisconsin Public Service Corp., P.O. Box 19002, Green Bay, Wisconsin 54307, (414) 433–1294.

i. *FERC Contact:* James Haimes at (202) 219–2780.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The constructed High Falls Project is a peaking project that consists of the following: (1) A reservoir with a surface area of 1,670 acres with a maximum depth of 54 feet, and a volume of 15,810 acre-feet at elevation 897.0 feet NGVD; (2) two earth embankments with a 2-foot-thick-concrete core wall and a combined length of 4,025 feet; (3) an unregulated spillway section consisting of a concrete gravity overflow dam 128 feet long with crest at elevation 897.0; (4) a concrete gated spillway section 105 feet long with (a) a conventional ogee overflow segment, and (b) six 12-foot-high by 14-foot-wide radial gates; (5) a nonoverflow concrete gravity dam with a vertical upstream face and crest at elevation 902.0; (6) two non-operating 4-foot-square sluice gates, located in the nonoverflow dam; (7) a 125-foot-wide power intake with eight gates; (8) five 8-foot-diameter, 60-foot-long steel penstocks; (9) two 3-foot-diameter, 60-foot-long steel penstocks; and (10) a powerhouse consisting of (a) an 83-foot-wide by 136-foot-long by 36-foot-high structural steel and brick structure, and (b) five identical 3-phase, 60-cycle Allis-Chalmers horizontal shaft generators rated at 1,400 Kw directly connected to (c) five Allis-Chalmers horizontal shaft 1,900 horsepower turbines operating at 360 rpm.

The existing license requires Wisconsin Public Service Corporation (WPSC) to operate in a peaking mode and provide a minimum release of 25 cubic feet per second (cfs). The applicant may elect to operate the Project in a run-of-river mode when daily flows are projected to be less than 200 cfs for an extended period of time.

WPSC currently proposes to: (1) Continue operating in a peaking mode, but with no defined or set minimum release flow (instead, WPSC proposes to operate the project in coordination with upstream and downstream projects to maintain target reservoir water levels); and (2) monitor the recreational pressure demands every 5 years.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation's office at 700 North Adams Street, Green Bay, Wisconsin 54307–9002, (414) 433–1294.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (October 13, 1995 for all projects). All reply comments must be filed with the Commission within 105 days from the date of this notice (November 27, 1995 for all projects).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: August 30, 1995, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22049 Filed 9–5–95; 8:45 am]

BILLING CODE 6717–01–P

Office of Fossil Energy

[FE Docket No. 95–56–NG]

Brymore Energy Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Brymore Energy Inc. authorization to import and export up to a combined total of 200 Bcf of natural gas from and to Canada over a two-year term beginning the date of first import or export delivery after August 13, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–22053 Filed 9–5–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–55–NG]

Canada Imperial Oil Limited; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canada Imperial Oil Limited blanket authorization to import and export a combined total of up to 146 Bcf of natural gas from and to Canada. This authorization is for a period of two years beginning on the date of the initial import or export, whichever occurs first, after October 31, 1995.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 16, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–22052 Filed 9–5–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5292–5]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the Santa Barbara Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that a reduction in expenditures of non-Federal funds for the Santa Barbara Air Pollution Control District (SBAPCD) in Goleta, California is a result of a non-selective reduction in expenditures. This determination,

when final, will permit the SBAPCD to keep the financial assistance awarded to it for FY–94 by EPA under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by October 6, 1995.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Laurie Amaro, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Laurie Amaro, Air Grants Section (A–2–3), Air and Toxics Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1247.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance to the SBAPCD, whose jurisdiction includes Santa Barbara County in California, to aid in the operation of its air pollution control programs. In FY–94, EPA awarded the SBAPCD $459,086, which represented approximately 10% of the SBAPCD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year.'' EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, ''after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–94 section 105 application, which EPA reviewed in early 1994, the SBAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $4,221,583. This MOE would have been sufficient to meet the MOE requirements of the CAA. In January of 1995, however, the SBAPCD submitted to EPA documentation which shows that its actual FY–94 MOE was $3,450,870. This amount represents a shortfall of $736,219 from the MOE of $4,187,089 for the preceding fiscal year (FY–93). In order for the SBAPCD to be eligible to keep its FY–94 grant, EPA must make a determination under section 105(c)(2).

In FY–94, the SBAPCD was an operating department within the County of Santa Barbara under the direction of the County Board of Supervisors. The Board of Supervisors, during the fiscal years of 91/92, 92/93 and 93/94, issued policies directing county-wide budget cuts. These budget cuts were necessary as a result of declining economic conditions which caused the business community to curtail operations, resulting in a decline of county revenues from sources such as permit fees and taxes. The SBAPCD submitted documentation to EPA which shows that over the last three years county-wide budget cuts became severe enough in 93/94 that SBAPCD instituted a number of cost cutting measures including: eliminating a position, freezing all hiring, and instituting new programs to reduce costs such as permit streamlining and computer-assisted permit processing.

The SBAPCD's MOE reductions resulted from a loss of county revenues, including permit fees, due to circumstances beyond its control. The budget cuts instituted by the Board of Supervisors, affected all county agencies equally. EPA proposes to determine that the SBAPCD's lower FY–94 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SBAPCD to keep the funds received from EPA for FY–94.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by October 6, 1995 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by October 6, 1995. If no written request for a hearing is received, EPA will proceed to a final determination.

Dated: August 18, 1995.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 95–22058 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5292–8]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing its Fall meeting of the Ozone Transport Commission to be held on September 28, 1995.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on September 28, 1995 from 10:00 a.m. to 4:00 p.m.

PLACE: The meeting will be held at: The Inn at Essex, 70 Essex Way, Essex Junction, VT 05452.

FOR FURTHER INFORMATION CONTACT: EPA: Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3383.

THE STATE CONTACT: Host Agency: Dick Valentinetti, Vermont Department of Environmental Conservation, 103 South Main Street, Building 3 South, Waterbury, VT 05671–0402, (802) 241–3840.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will

meet on September 28, 1995. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office, (202) 508–3840 on Wednesday, September 20, 1995. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, consider the development of market-based programs in the region, and to discuss stationary and mobile source portions of ozone State Implementation Plans.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 95–22057 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–34081; FRL 4972–4]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and opening of public comment period.

SUMMARY: This notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the pesticide chemicals cases Chloro-*m*-xylenol, Dowicil CTAC, Fosamine Ammonium, Piperalin, Polybutene, Terbuthylazine, and (*Z*)-9-tricosene. It also begins a 60–day public comment period of these documents. The REDs are the Agency's summary documents of its scientific assessments of the human health and environmental data bases for these pesticide chemicals. They also include the Agency's regulatory conclusions regarding the future registration of uses and products containing these chemicals as active ingredients.

DATES: Written comments on these decisions must be submitted by October 6, 1995.

ADDRESSES: Three copies of comments identified with the docket number ''OPP–34081'' and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, 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, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall 2 (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–34081''. 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 submissions can be found in ''SUPPLEMENTARY INFORMATION'' of this document.

Information submitted as a comment in response to this Notice 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 docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI 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: Technical questions on the above listed RED documents should be directed to the appropriate Chemical Review Managers:

Chemical Name	Case No.	Chemical Review Manager	Telephone No.	E-mail Address
Chloro-*m*-xylenol	3045	Yvonne Brown	(703) 308–8073	Brown.yvonne@epamail.epa.gov
Dowicil CTAC	3069	Ron Kendall	(703) 308–8068	Kendall.ron@epamail.epa.gov
Fosamine Ammonium	2355	Kathy Davis	(703) 308–8156	Davis.kathy@epamail.epa.gov
Piperalin	3114	Barbara Briscoe	(703) 308–8177	Briscoe.barbara@epamail.epa.gov
Polybutene	4076	Mark Wilhite	(703) 308–8586	Wilhite.mark@epamail.epa.gov
Terbuthylazine	2645	Virginia Dietrich	(703) 308–8157	Dietrich.virginia@epamail.epa.gov
(*z*)-9-Tricosene	4112	Tom Myers	(703) 308–8074	Myers.tom@epamail.epa.gov

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticide chemical cases listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate older pesticides, those initially registered prior to November 1, 1984, to make sure they meet current scientific and regulatory standards. If necessary, modifications to use patterns and application methods may be required to reduce risks to appropriate levels. All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally - mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not

affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at 703–308–7224, and also can be reached on the Internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

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.

List of Subjects

Environmental protection.

Dated: August 29, 1995.

Richard D. Schmitt,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–22055 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–64028; FRL 4972–6]

Notice of Receipt of Voluntary Cancellation Request of Registration of VAPAM-B Foaming Fumigant Containing the Active Ingredient Metam-Sodium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces EPA's receipt of a request from Zeneca Ag Products to cancel the registration for VAPAM-B Foaming Fumigant (EPA Registration Number 10182–185).

DATES: Written comments must be submitted on or before October 6, 1995.

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–64028]. 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 submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Wilhelmena Livingston, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA. (703) 308–8025; e-mail: livingston wilhelmena@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Notice announces the receipt of a request from Zeneca Ag Products to cancel its registration of VAPAM-B Foaming Fumigant.

I. Background

Pursuant to section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Administrator may seek cancellation of a product if a pesticide or its labeling or other material required to be submitted for registration does not comply with the provisions of this act. The Agency issued a letter to Zeneca Ag Products (Zeneca) on March 15, 1995, notifying the registrant that a Confidential Statement of Formula (CSF) was not on file with the Agency for VAPAM-B Foaming Fumigant, a product that contains metam-sodium. The letter indicated that an up-to-date CSF or a request for voluntary cancellation must be received by the Agency within 30 days of receipt of the March 15, 1995 letter.

II. Request for Voluntary Cancellation

On March 28, 1995, Zeneca Ag Products submitted a letter to EPA requesting voluntary cancellation of the registration for VAPAM-B Foaming Fumigant (EPA registration number 10182–185), pursuant to FIFRA section 6(f)(1). Zeneca indicated in the letter that the subject product has not been manufactured or distributed in many years, therefore, Zeneca requests voluntary cancellation of the registration for VAPAM-B Foaming Fumigant. EPA intends to approve the proposed voluntary cancellation unless Zeneca withdraws or amends its request before the end of the comment period.

III. Procedures for Withdrawal of Request

If Zeneca chooses to withdraw its request for cancellation, it must submit such withdrawal in writing to Wilhelmena Livingston, Special Review Branch, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, postmarked on or before October 6, 1995. This written withdrawal of the request for cancellation must include a current CSF for the product, and a commitment to pay any reregistration or registration maintenance fees due, as well as to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Existing Stocks

Under the authority of FIFRA section 6(a)(1), EPA will establish certain limitations on the distribution and use of exiting stocks of VAPAM-B Foaming Fumigant subject to any final cancellation notice. EPA defines the term ''existing stock'' to mean any quantity of VAPAM-B Foaming Fumigant in the United States on the effective date of the cancellation of a registration granted by the Agency. Such existing stocks include VAPAM-B Foaming Fumigant that have been formulated, packaged, and labeled and are being held for shipment or release or have been shipped or released into commerce.

Consistent with the Agency's established policy for determinations concerning existing stocks (56 FR 29362), the Agency will permit Zeneca to sell and distribute existing stocks of this product for up to 1 year after the effective date of this cancellation. Any sale or distribution of the product by Zeneca after that 1 year period will be a violation of federal law. Any existing stocks remaining in the possession of all other persons after 1 year may continue to be sold, distributed, and used until such existing stocks are exhausted.

V. Comments

Persons interested in commenting on the proposed cancellation are invited to submit their written comments on or before October 6, 1995 to the address given above.

VI. Public Docket

A record has been established for this notice under docket number ''[OPP–64028]'' (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 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.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: August 22, 1995.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 95–21944 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59348; FRL–4975–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–95–10. The test marketing conditions are described below.

DATES: This notice becomes effective August 28, 1995. Written comments will be received until September 21, 1995.

ADDRESSES: Written comments, identified by the docket number [OPPTS–59348] and the specific TME number should be sent to: TSCA Non-Confidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, D.C. 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@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 [OPPTS–59348]. 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 submissions can be found under ''SUPPLEMENTARY INFORMATION''.

FOR FURTHER INFORMATION CONTACT: Shirley Howard, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447H, 401 M St. SW., Washington, D.C. 20460, (202) 260–3780.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–95–10. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and within the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Advance notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–95–10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–95–10

Date of Receipt: July 18, 1995. The extended comment period will close September 21, 1995.

Applicant: Riechhold Chemicals, Inc.

Chemical: (G) Polyurethane Adhesives.

Use: (G) Laminate Adhesive and Veneer Adhesive.

Production Volume: 90,900 kg/yr.

Number of Customers: Confidential.

Test Marketing Period: 12 months, Commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the

test marketing activities will not present any unreasonable risk of injury to human health or the environment.

A record has been established for this notice under docket number [OPPTS–59348] (including comments and data submitted electronically as described above). A public version of this record, including printed, pager versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA nonconfidential information center (NCIC), Rm. NEB–607, 401 M St., SW., Washington, D.C. 20460.

Electronic comments can be sent directly to EPA at:

ncic@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.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: August 28, 1995.

Mary E. Cushmac,

Acting Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 95–22056 Filed 9–5–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Correction to Report No. 2094; Petition for Reconsideration of Actions in Rulemaking Proceedings

August 31, 1995.

Report No. 2094, released August 24, 1995 published at 60 FR 4480, August 29, 1995 inadvertently omitted the below petition for reconsideration. Therefore this petition is hereby added.

Subject: Replacement of Part 80 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services. (PR Docket No. 92–235)

Number of Petitions Filed: 22.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

FR Doc. 95–22032 Filed 9–5–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

CNB Bancshares of Victoria, 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 September 29, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. CNB Bancshares of Victoria, Inc., Victoria, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bancorp of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Citizens National Bank, Victoria, Texas.

In connection with this application, Citizens Bancorp of Delaware, Inc., Wilmington, Delaware, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Victoria, Texas.

2. Magnolia Partnership Investments, Ltd, Beaumont, Texas; to become a bank holding company by acquiring 44.3 percent of the voting shares of First of Groves Corporation, Groves, Texas, and thereby indirectly acquire First Bank & Trust Company, Groves, Texas, and First National Bank, Silsbee, Texas.

Board of Governors of the Federal Reserve System, August 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–21999 Filed 9–5–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Application to Engage in Nonbanking Activities

Norwest Corporation, Minneapolis, Minnesota, and its wholly owned subsidiary Norwest Financial Services, Inc., Des Moines, Iowa (NFS) (together, Applicants), have given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through NFS's wholly owned subsidiaries, Orlandi Valuta, Los Angeles, California, and Orlandi Valuta Nacional, Boulder City, Nevada (together, Companies), in the activity of transmitting money for customers within the United States, including Puerto Rico, the U.S. Virgin Islands, and Guam (domestic money transmission).

Orlandi currently engages solely in the activity of transmitting money to a foreign country (Mexico) on behalf of customers. The activity is conducted through Orlandi's office locations and Orlandi's network of outside representatives. Companies will use this network following the acquisition and, subject to licensing and other regulatory requirements, intend to expand the network to include Applicants' consumer finance offices. A ''hotline'' telephone will be located at the office of the outside representative. This telephone will be connected directly to Companies' office and the customer will speak directly with an employee of Companies. The customer will provide the information regarding the recipient and the dollar amount to be transferred. The outside representative will collect the money from the customer and deposit the funds in a designated account at a local bank chosen by the outside representative. These funds will be held *in trust* for the benefit of the remitting customer and will not be

commingled with any other funds of Companies or the outside representative. Companies will collect the funds deposited in the outside representative's account by means of an ACH transaction or similar transaction. Companies will deposit an amount equal to the transmitted funds in an account at a bank at a location near the disbursement site. The local disbursement site will notify the recipient that the funds are available to be picked up. When the recipient comes to the disbursement site, a check drawn on the local bank will be issued to the recipient with funds immediately available for the recipient to cash or deposit the check.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits 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.

The Board has not previously approved money transmission activiteswithun the United States. The Board has previously approved, by order, however, the activity of transmitting money for customers to a foreign county. *See Philippine Commercial International Bank*, Federal Reserve Bulletin 270 (1991); *Berger Bank A/S*, 76 Federal Reserve Bulletin 457 (1990); *Skandinaviska Enskilda Banken*, 69 Federal Reserve Bulletin 42 (1983); *European-American Bancorp, European-American Bancorp*, 63 Federal Reserve Bulletin 595 (1977). In this regard, on August 28, 1995, the Board approved the notice by Applicants to acquire Orlandi and thereby engage in the activity of transmitting money for customers to Mexico. Applicants believe that the proposed activities meet the *National Courier* standard because the activity of domestic money transmission is identical to the previously approved activity of transmitting money for customers to a foreign country, except that the recipient will be located in the United States.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 4, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Minneapolis.

Board of Governors of the Federal Reserve System, August 30, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–22000 Filed 9–5–95; 8:45 am]

BILLING CODE 6210–01–F

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting concerning the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will meet in open session to discuss various clinical issues related to Gulf War veterans' illnesses. Captain Marguerite Knox, Clinical Assistant Professor in the College of Nursing, University of South Carolina, will chair this panel meeting of the committee.

DATES: September 18, 1995, 9:00 a.m.–5:00 p.m.

TENTATIVE AGENDA:

Monday, September 18, 1995

9:00 a.m. Panel convenes to hear presentations on the VA and DoD clinical care systems

12:30 p.m. Lunch

2:00 p.m. Panel reconvenes to take public comment

5:00 p.m. Panel adjourns

A final agenda will be available at the meeting.

PLACE: The Radisson Plaza Hotel, 101 South Tyron Street, Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, D.C. 20005, telephone 202–761–0066, fax: 202–761–0310.

PUBLIC PARTICIPATION: Members of the public who wish to present oral statements during the panel meeting should contact the Advisory Committee at the address or telephone number listed above at least five business days prior to the meeting. This panel has a particular interest in hearing about the experiences of veterans of the Persian Gulf War with the DoD and VA clinical systems. Reasonable provisions will be made to include presentations on the agenda, and requests from individuals who have not yet had an opportunity to address the Advisory Committee will take priority. The panel Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so at any time.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The committee reports to the President through the Secretary of Defense, Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members are individuals with expertise relevant to the functions of the committee, and are appointed by the President from non-Federal sectors.

Dated: September 1, 1995.

L.M. Bynum,

Designated Federal Officer.

[FR Doc. 95–22176 Filed 9–5–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.911]

Grants to Indian Tribal Organizations for Supportive and Nutritional Services for Older Indians

AGENCY: Administration on Aging (AoA), OS, HHS.

ACTION: Announcement of availability of funds and opportunity to apply under the Older Americans Act, Title VI, Grants for Native Americans, Part A–Indian Program.

SUMMARY: The Administration on Aging will accept applications for funding in Fiscal Year 1996 under the Older Americans Act, title VI, Grants for Native Americans, part A–Indian Program, from all current title VI, part A grantees, current grantees who wish to leave a consortium and apply as a new grantee, and eligible federally recognized Indian tribal organizations that are not now participating in title VI. Successful applications from new grantees will be funded if funds permit.

DATES: December 5, 1995.

ADDRESSES: See Appendix A.

FOR FURTHER INFORMATION CONTACT: M. Yvonne Jackson, Ph.D., Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4257, 330 Independence Avenue, SW, Washington, DC 20201, telephone (202) 619–2713.

SUPPLEMENTARY INFORMATION:

1. Background and Program Purpose

The Administration on Aging (AoA) is responsible for administering title VI, part A of the Older Americans Act, which provides for grants to Indian tribal organizations representing federally recognized Tribes for the provision of nutritional and supportive services to Indian elders.

The 1978 Amendments to the Older Americans Act created title VI, Grants for Indian Tribal Organizations. The purpose of this title is to promote the delivery of supportive and nutritional services for Indian elders that are comparable to services provided under title III of the Older American Act. (Title III of the Older Americans Act, entitled ''Grants for State and Community Programs on Aging'' is the nationwide program of supportive and nutritional services which serves persons over age 60 of all ethnic groups.)

In the Older Americans Act Amendments of 1987, the name of title VI was changed to Grants for Native Americans, and part B—Native Hawaiian Programs—was added.

Nutritional services and information and assistance services are required by the Act. Nutritional services include congregate meals and home-delivered meals. Supportive services include information and assistance, transportation, chore services, and other supportive services which contribute to the welfare of older Native Americans.

2. Eligibility of an Indian Tribal Organization or Indian Tribe To Receive a Grant

To be eligible to receive a grant, a tribal organization or Indian tribe must meet the application requirements contained in sections 612(a) and 612(b) of the Act, which are: ''(1) the tribal organization represents at least 50 individuals who are 60 years of age or older; and (2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services.'' For purposes of title VI, part A, the terms ''Indian tribe'' and ''tribal organization'' have the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

This announcement concerns all federally recognized Indian tribal organizations, those currently participating in title VI, part A individually or as members of a consortium and those that are not currently participating in title VI, part A.

3. Available Funds

Distribution of funds among tribal organizations is subject to the availability of appropriations to carry out title VI, part A. As stated in section 614A(b) of the Act the amount of the grant made under this part to a tribal organization for fiscal year 1992 and for each subsequent fiscal year shall be not less than the amount of the grant made under this part to the tribal organization for fiscal year 1991 as stated under section 614A(a) of the Act. If the funds appropriated to carry out this part in a fiscal year subsequent to fiscal year 1991 exceed the funds appropriated to carry out this part in fiscal year 1991, then the amount of the grant (if any) made under this part to a tribal organization for the subsequent fiscal year shall be: (1) Increased by such amount as the Assistant Secretary considers to be appropriate, in addition to the amount of any increase required by subsection (a), so that the grant equals or more closely approaches the amount of the grant made under this part to the tribal organization for fiscal year 1980; or (2) an amount the Assistant Secretary considers to be sufficient if the tribal organization did not receive a grant under this part for either fiscal year 1980 or fiscal year 1991.

Applications from current grantees who are a part of a consortium and wish to leave the consortium will be treated as new grant applications. Successful new grant applications for both current grantees who are leaving a consortium and tribal organizations who are not current grantees will be funded pending availability of additional funds.

Information on typical grant levels in Fiscal Year 1994 is given below as a guide to POSSIBLE funding levels for Tribes representing the following documented numbers of Indian elders over age 60:

Population range (No. of older Indians age 60 years and over, represented by the tribal organization)	Amounts of awards in FY 1994
50 to 100	$49,000
101 to 200	56,000
201 to 300	64,500
301 to 400	73,000
401 to 500	81,600
501 to 1500	95,000
1501+	125,000

4. Application Process

Applicants should submit applications, describing their proposed plans for nutritional and supportive services for older Indians for *project period April 1, 1996–March 31,1999*, as described in section 5 below, ''Content of the Application.''

A three year project period was chosen in order to reduce the paperwork burden on the grantees. It is the intent of this agency to conduct on site monitoring at least once during the three year project period.

The Program Performance and Financial Status reports, due on a semi-annual basis, will be reviewed for compliance with the program regulations. Failure to submit the required reports during the project period may result in loss of future funds and possibly termination of the grant within the project period.

Thirty days prior to the end of each budget period within the three year project period grantees shall notify AoA

as to their desire to continue as a grantee. Failure to submit this documentation within the required timeframe may result in loss of grant funding. At the beginning of each budget period within the three year project period grantees will be notified of the funding level for the subsequent year.

One original application, signed by the principal official of the Tribe, and two copies of the complete application including all attachments must be submitted to the Administration on Aging, Grants Management Division, Margaret Tolson, Director, 330 Independence Avenue, SW., Washington, DC 20201. Incomplete applications will not be considered for funding.

5. Content of the Application

The application must meet the criteria in sections 614(a) and (b) of the Act, and title 45 of the Code of Federal Regulations, § 1326.19. The application may be presented in any format selected by the tribal organization. Contact the AoA Regional Office in your geographic area if you have questions concerning the content of the application. The application must include the following information:

A. Objectives and Need for Assistance

This section must include objectives, expressed in measurable terms, which are related to the current supportive and nutrition service needs of the elders to be represented by the Tribal Organization. This section must also include a discussion of how the needs were evaluated.

B. Results or Benefits Expected

The application should describe the results or benefits expected from each service proposed.

C. Approach

(1) Description and Method of Delivery of Each Service

(a) Nutrition. Nutrition services are required. There should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the estimated number of persons to be served. The nutrition services provided, either directly or by way of a grant or contract, must be substantially in compliance with the provisions of part C, title III, which include:

1. Provide at least one hot or other appropriate meal a day, 5 or more days a week in a congregate setting, and any additional meals which the recipient of a grant may elect to provide. A ''meal'', as used in section 307(a)(13), 308(b)(7), 311(a)(4), 331(1), 336, 338(a)(1), and 339, 339A of the Act and § 1321.17, § 1321.59 and § 1321.64, is a planned event in a day at which a variety of prepared foods are provided to an individual. These foods shall comply with the U.S. Dietary Guidelines for Americans published by the Secretary of the Department of Health and the Secretary of the Department of Agriculture and provide the nutrients specified in the current, daily Recommend Dietary Allowances, as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences as specified in Section 339(2) unless the meal is a special meal provided to meet the health, religious, or ethnic considerations of eligible individuals. Snacks, partial meals, and second helpings are not considered meals.

2. Provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental food (with a satisfactory storage life) meal per day, 5 or more days a week, and any additional meals which the recipient of a grant may elect to provide. The above definition of a meal also applies here. Thus, neither individual grocery items nor food vouchers may not be used in lieu of home delivered meals.

If no title VI, part A funds are to be used for nutrition services, the application must state how such services are provided in other ways, and how they are financed.

(b) Information and Assistance. Information and assistance services are required. They must be available for older Indians living in the title VI part A service area and there should be a description of what information and assistance services will be provided and how they will be provided. The estimated number of individuals to be served should be stated. If no title VI, part A funds are to be used for information and assistance services, the application must state how such services are provided in other ways, and how they are financed.

(C) Other Supportive Services. The application must describe any other supportive services to be provided wholly or partly by title VI, part A funds. The description should include what supportive services will be provided and how they will be provided. The approximate number of persons to be served by each service should be stated.

Legal assistance and ombudsman services may be provided, but are not required. However, if provided, they should be reported as ''Supportive Services.''

If a tribal organization elects to provide legal services, it must substantially comply with the requirements in title 45 of the Code of Federal Regulations § 1321.71, and all legal assistance providers must comply fully with the requirements in § 1321.71(d) through § 1321.71(k).

Transportation of persons to nutrition sites or other places is to be considered as a ''Supportive Service.''

(D) Coordination with title III. The application should provide a description of how title VI and title III resources are to be coordinated within the title VI service area, including information and assistance service.

(2) Evaluation Criteria

The application must discuss the criteria to be used to evaluate the results and successes of the program, based on the objective indicated in Item A above. It will also explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in Item B above are being achieved.

D. Geographic Location

The application must include both a narrative description of the title VI, part A service area, and a map with the service area identified. The area to be served by title VI, part A must have clear geographic boundaries. If the geographic area overlaps with another current title VI, part A grantee or new applicant then coordination of services without duplication must be developed between the two applicants and clearly outlined in the application. This agreement must be signed by the principal official of both tribal organizations. A ''Consortium Agreement'' is included in the attachments of this **Federal Register** announcement. There is no prohibition, however, on its overlapping with areas served by title III.

E. Additional Information

(1) Older Indians in the Title VI, Part A Service Area

The law requires that a tribal organization must represent at least 50 persons aged 60 years or over in order to be eligible for title VI funding. Therefore, the number of persons aged 60 or over living in the proposed title VI service area must be stated in the application. The tribal organization may use Bureau of Statistics population figures, or may develop its own population statistics, but they must be certified from the Bureau of Indian Affairs in order to establish eligibility. The amount of the grant is based on this

number of Indians or Alaskan Natives aged 60 years or over in the proposed service area. Thus, the application should include only the number of Indians and Alaskan Natives aged 60 years or over in the proposed service area and not the total population census of all tribal members, age 60 and above, if not all the tribal members live in the proposed service area. If there is overlap between two or more title VI, part A applicants, as stated under ''Geographic Location'', the eligible elders can only be counted once and included in one application. The applicants are responsible for determining how the eligible elders will be counted. The same elder may not be counted by both applicants. This must be stated clearly in the application and signed by the principal official of the tribal organization.

As a separate matter, the regulations allow a Tribe to define, based on its own criteria, who the Tribe will consider to be an ''older Indian'' for purposes of eligibility to receive title VI services. If a Tribe selects a different definition of ''older Indian'' for service delivery, the application must state the age selected, and the number of Indians under age 60 eligible to be served. If more than one Tribe is included in the application, this information must be stated separately for each Tribe. All Tribes in a consortium must use the same age for ''older Indian.''

(2) Resolution

The tribal organization representing a federally recognized Tribe must submit an original copy of the Tribal council resolution authorizing participation in title VI, part A. If the tribal organization represents a consortium of more than one Tribe, a resolution is required from each participating Tribe, specifically authorizing representation by the tribal organization for the purpose of title VI, part A of the Older Americans Act.

(3) Program Assurances

Title VI, part A Program Assurances must be included in the application. The title VI, part A Program Assurances are those provisions identified in section 614(a) of the Older Americans Act, and in title 45 of the Code of Federal Regulations § 1326.19(d), issued August 31, 1988 (see Appendix B). The tribal organization must state that it agrees to abide by all the provisions for the entire project period being applied for April 1, 1993–March 31, 1996.

Copies of the title III and title VI current law and regulations, and of part 92, may be obtained from the Regional Program Director for the Administration on Aging. (See appendix A)

(4) Certification Forms

Certifications are required of the applicant regarding (a) lobbying; (b) debarment, suspension, and other responsibility matters; and (c) drug-free workplace requirements. Please note that a duly authorized representative of the applicant organization must attest to the applicant's compliance with these certifications.

(5) Identifying Information

Applications must identify both the principal official of the tribal organization, and the proposed title VI program director: Name, Title, Address including Zip Code, Telephone Number, and, if available, the FAX Number. The tribal organization's EIN (Employer Identification Number) must also be included.

If the applicant tribal organization is a consortium, the applicant must list the federally recognized tribes which are included. A copy of each tribal resolution must be enclosed.

6. Closing Date for Application

To be eligible for consideration, applications must be received or postmarked on or before December 5, 1995. (Applicants are cautioned to request a legibly dated U.S. Postal service postmark, or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

7. Action on Applications

Awards will be made by the Assistant Secretary on Aging Funding decisions will be announced as soon as possible.

Catalog of Federal Domestic Assistance Program #93.655 Grants to Indian Tribes and Native Hawaiians. This Program Announcement is not subject to E.O. 12372.

Dated: July 7, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

Appendix A

Regional Offices

Region 1 (CT, MA, ME, NH, RI, VT)

Thomas Hooker, Regional Administrator, John F. Kennedy Building, Room 2075, Boston, Massachusetts 02203, (617)565–1158, FAX (617)565–4511

Region II (NY, NJ, PR, VI)

Judith Rackmill, Regional Administrator, 26 Federal Plaza, Room 38–102, New York, New York 10278, (212)264–2976, FAX (212)264–0114

Region III (DC, MD, VA, DE, PA, WV)

Paul E. Ertel, Jr., Regional Administrator, 3535 Market Street, P.O. Box 13716–Stop 23, Philadelphia, Pennsylvania 19101, (215)596–6891, FAX (215)596–0614

Region IV (AL, FL, MS, SC, TN, NC, KY, GA)

Frank Nicholson, Regional Administrator, 101 Marietta Tower, Suite 1702, Atlanta, Georgia 30323, (404)331–5900, FAX (404)331–2017

Region V (IL, IN, MI, MN, OH, WI)

Marion Mengert, Acting Regional Administrator, 105 West Adams Street, 10th Floor, Chicago, Illinois 60603, (312)353–3141, FAX (312)886–8533

Region VI (AR, LA, OK, NM, TX)

John Diaz, Regional Administrator, 1200 Main Tower Building, Room 1000, Dallas, Texas 75202, (214)767–2971, FAX (214)767–2951

Region VII (IA, KS, MO, NE)

Larry Brewster, Regional Administrator, 1150 Grand Avenue, suite 600, Kansas City, Missouri 64106, (816)374–6015, FAX (816)374–6024

Region VIII (CO, MT, UT, WY, ND, SD)

Percy Devine, Regional Administrator, 1961 Stout Street, Room 308, Federal Office Building, Denver, Colorado 80294, (303)844–2951, FAX (303)844–2943

Region IX (CA, NV, AZ, HI, GU, TTPI, CNMI, AS)

Frank Cardenas, Regional Administrator, 50 United Nations Plaza, Room 480, San Francisco, California 94102, (415)556–6003, FAX (415)556–7393

Region X (AK, ID, OR, WA)

Chisato Kawabori, Regional Administrator, Blanchard Plaza, RX–33; Room 1202, 2201 Sixth Avenue, Seattle, Washington 98121, (206)615–2298, FAX (206)615–2305

Appendix B

Older Americans Act—Section 614(a)—No grant may be made under this part unless the eligible tribal organization submits an application to the Assistant Secretary which meets such criteria as the Assistant Secretary may by regulation prescribe. Each such application shall—

(1) Provide that the eligible tribal organization will evaluate the need for supportive and nutrition services among older Indians to be represented by the tribal organizations;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide that the tribal organization will make such reports in such form and containing such information, as the Assistant Secretary may reasonably require, and comply with such requirements as the Assistant Secretary may impose to assure the correctness of such reports;

(4) Provide for periodic evaluation of activities and projects carried out under the application;

(5) Establish objectives consistent with the purposes of this part toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) Provide for establishing and maintaining information and assistance

services to assure that older Indians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(7) Provide a preference for Indians aged 60 and older for full or part-time staff positions whenever feasible;

(8) Provide assistance that either directly or by way of grant or contact with appropriate entities nutrition services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III, except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this clause for supportive services;

(9) Contain assurance that the provision of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) Provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) Provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

45 CFR 1326.19 * * * The application shall provide that:

(d) Assurances as prescribed by the Assistant Secretary that:

(1) A tribal organization represents at least 50 individuals who have attained 60 years of age or older;

(2) A tribal organization shall comply with all applicable State and local license and safety requirements for the provision of those services;

(3) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization shall utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(4) Procedures to ensure that all services under this part are provided without use of any means tests;

(5) A tribal organization shall comply with all requirements set forth in § 1326.7 through § 1326.17; and

(6) The services provided under this part will be coordinated, where applicable, with services provided under title III of the Act.

Consortium Agreement

It is agreed by all participating Principal Officials that coordination of services, without duplication within a specified geographic area, has been developed between the two or more Tribal Organizations applying for this grant. The application and map of service area reflect this understanding.

_____

Signature and Date

_____

Title

_____

Tribal Organization

_____

Signature and Date

_____

Title

_____

Tribal Organization

_____

Signature and Date

_____

Title

_____

Tribal Organization

_____

Signature and Date

_____

Title

_____

Tribal Organization

(Additional pages for signatures may be added if needed.)

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act Of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studies.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

''Controlled substance'' means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

''Conviction'' means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

''Criminal drug statute'' means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

''Employee'' means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All ''direct charge'' employees; (ii) all ''indirect charge'' employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs, and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition

of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation or a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, of every grant officer or other designee on whose grant activity the convicted employee was working unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (Use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check _____ if there are workplaces on file that are not identified here.

Sections 76.630 (c) and (d)(2) and 76.635 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the, central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW., Washington, DC 20201.

Signature _____

Date _____

Title _____

Organization _____

DGMO Form #2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services'' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions'', provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participants shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''Certification Regarding Debarment, suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions'' without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Signature _____

Date _____

Title _____

Organization _____

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201–0001.

[FR Doc. 95–22054 Filed 9–5–95; 8:45 am]

BILLING CODE 4130–01–M

Food and Drug Administration

[Docket No. 95M–0240]

Wesley-Jessen; Premarket Approval of Wesley-Jessen® COE–405 Disinfection Tablet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Des Plaines, IL, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Wesley-Jessen® COE–405 Disinfection Tablet. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter on June 7, 1995, of the approval of the application.

DATES: Petitions for administrative review by October 6, 1995.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744.

SUPPLEMENTARY INFORMATION: On February 13, 1991, Wesley-Jessen, Des Plaines, IL 60018, submitted to CDRH an application for premarket approval of Wesley-Jessen® COE–405 Disinfection Tablet. When the Wesley-Jessen® COE–405 Disinfection Tablet is dissolved in a sterile contact lens saline solution, the solution is indicated for use in the chemical (not heat) disinfection of soft (hydrophilic) contact lenses.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On June 7, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 6, 1995, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 24, 1995.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 95–21973 Filed 9–5–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–133–PN]

Medicare Program; Data, Standards, and Methodology Used to Establish Fiscal Year 1996 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice describes the data, standards, and methodology that would be used to establish fiscal intermediary and carrier budgets for the Federal fiscal year (FY) 1996, that begins October 1, 1995. Fiscal intermediaries and carriers are public or private entities that participate in the administration of the Medicare program by performing claims processing and benefit payment functions. This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act, which require us to publish for public comment the data, standards, and methodology we intend to use to establish budgets for Medicare fiscal intermediaries and carriers.

In addition, we respond to the single public comment we received in response to our proposed notice of October 21, 1994, and we announce the data, standards, and methodology we proposed to use to establish the Medicare fiscal intermediary and carrier budgets for FY 1995, beginning October 1, 1994, as final.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 6, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–133–PN, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–133–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document,

in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Leslie Trazzi, (410) 786–7544

SUPPLEMENTAL INFORMATION:

I. Background

Preparation of Contractor Budgets—Under sections 1816(a) and 1842(a) of the Social Security Act (the Act), public or private organizations and agencies may participate in the administration of the Medicare program under agreements or contracts entered into with the Secretary. These Medicare contractors are known as fiscal intermediaries (section 1816(a) of the Act) and carriers (section 1842(a) of the Act). Fiscal intermediaries perform bill processing and benefit payment functions for Part A of the program (Hospital Insurance), and carriers perform claim processing and benefit payment functions for Part B of the program (Supplementary Medical Insurance). When bills are submitted by providers, and claims by beneficiaries, physicians, and suppliers of services, fiscal intermediaries and carriers are responsible for—

- Determining the eligibility status of a beneficiary;
- Determining whether the services on the submitted claims or bills are covered under Medicare and, if so, the correct payment amounts; and
- Making appropriate payments to the provider, beneficiary, physician, and/or other supplier of services.

Fiscal intermediary and carrier performance is monitored by us at the central office staff and regional office levels. In general, the central office staff address issues that affect policies on a national level, and the regional office staff address issues dealing with regional and local policies, as well as those of an operational nature. Continuous communication between us and the fiscal intermediaries and carriers is maintained through consultation workgroups that meet on a regular basis and are comprised of representatives from the central office, regional offices, and Medicare contractors.

HCFA's central office is responsible for developing a national contractor budget for Part A and Part B of the Medicare program. The budget is formulated over an 18-month period, beginning in March of the calendar year preceding the fiscal year to which it applies. The central office receives input from the contractor community, our regional offices, the Department of Health and Human Services, and the Office of Management and Budget (OMB) before the budget is submitted to the President for approval and forwarding to the Congress. Once the national contractor budget has been approved, we issue Budget and Performance Requirements (BPRs). BPRs specify the level of effort required for contractor functions and serve as the statement of work for contractor use in preparing their individual budgets for submission to us.

The regional offices review the budgets submitted by contractors during a budget level determination process that is based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress. Subsequently, we allocate funding within these constraints.

Requirements to Publish Contractor Budget Information—Sections 1816(c)(1) and 1842(c)(1)(A) of the Act require us to publish for public comment the data, standards, and methodology we intend to use to establish budgets for Medicare fiscal intermediaries and carriers at least 90 days before September 1. The statute further requires that we publish the final data, standards, and methodology no later than September 1. In the past, when preparing the Medicare contractor budget for each fiscal year, every attempt was made to publish the proposed and final notices as timely as possible. However, because of the time involved in developing the budget and the lengthy review and clearance process, we have been unable to publish both proposed and final notices before the beginning of the fiscal year. (See, for example, the notices for FYs 1993 and 1994 published in the **Federal Register** at 59 FR 13491 and 35933.) However, because of our continuous communications with contractors, we do not believe that the publication date of the **Federal Register** document has any negative effect on the fiscal intermediaries or carriers. The BPRs issued to all intermediaries and carriers discuss in detail the work, level of effort, and activities we expect them to perform in the coming fiscal year. Further, we provide a discussion and explanation of the bottom-line unit cost target established for each intermediary and carrier at the time the BPRs are issued.

Sections II and III of this notice contain proposed data, standards, and methodology we intend to use to establish budgets for Medicare fiscal intermediaries and carriers for FY 1996. If comments are received during the comment period, we will address those comments in a final notice and, if necessary, make revisions to the FY 1996 data, standards, and methodology. If no comments are received, the data, standards, and methodology proposed for FY 1996 will become final, effective October 1, 1995.

FY 1995 Budget Information—A proposed notice describing the data, standards, and methodology we proposed to use to establish contractor budgets for FY 1995 was published in the **Federal Register** (59 53187) on October 21, 1994. In response to our request for public comment in the proposed notice, we received one timely item of correspondence. Based on our review of the comment submitted, we are making no changes to the data, standards, and methodology we proposed to use. As noted earlier, it has been our practice to issue separate notices dealing with proposed and final budget data. Because no changes are being made to the proposed budget data included in the October 21 notice, we believe it appropriate to combine in this document the final notice announcing the contractor budget for FY 1995, and the proposed contractor budget elements for FY 1996. Therefore, through this notice, we announce that the data, standards, and methodology we proposed to use to establish the contractor budget for FY 1995 are final.

A discussion of the October 21, 1994, proposed notice and our response to the public comment received appears in section IV. of this document.

II. Overview of FY 1996 National Medicare Contractor Budget

A. Data, Standards, and Methodology

We submitted the FY 1996 national Medicare contractor budget proposal to the Congress in February 1995. The workload for the FY 1996 request is expressed in terms of work processed. For Part A, the FY 1996 estimated workload (140.6 million bills) is 8.8 percent more than the FY 1995 estimate. For Part B, the FY 1996 estimated workload (681.4 million claims) is a 3.9 percent increase over the FY 1995 estimate.

Our estimates involved the use of a regression model that uses the last 36 months of actual contractor workload data. For the FY 1996 projections, we used November 1994 data, which were the latest available to us at the time. We will continue to update the resulting projections monthly to ensure that the most timely data are available for budgeting purposes.

The FY 1996 unit costs for processing bills and claims were calculated based

on the FY 1995 level adjusted for savings achieved due to productivity, electronic media claims, and reduced funding for incremental workload. This calculation resulted in a new unit cost, which, when multiplied by the Part A or Part B workloads, determines the total amount required for bill or claim processing in FY 1996.

Feedback received from contractors and regional offices during the past several years has led us to believe that contractors can make major improvements in performance if given the authority to manage their budgets. The FY 1994 BPRs gave the regional offices the authority to set a budget and the contractors the authority to manage their budgets on a bottom-line basis. Once funding was issued, each contractor had the flexibility to optimally manage the budget consistent with the statement of work contained in the BPRs. Before FY 1993, contractors were not allowed to ''shift'' more than 5 percent of funds from one line item to another in their budget, as determined by the lesser of the two line items. That restriction was intended to allow us to maintain control over the national budget, but still give contractors some latitude with regard to reporting their costs. With the exception of the ''Payment Safeguards,'' ''Productivity Investments,'' and ''Other'' line items, contractors now have total flexibility in the use of funds. There is a 5 percent limitation on the amount of funds that may be shifted out of individual ''Payment Safeguards,'' with unlimited shifting into ''Payment Safeguards.'' Shifting into or out of ''Productivity Investments'' and ''Other'' line item funding, not governed by contract modifications, may not exceed 5 percent. Each ''Other'' line item is treated separately. The ''Productivity Investment'' line item is treated as a whole and not as separate projects. Funding that is governed by contract modifications may not be shifted to other functions or line items.

B. Medicare Contractor Functional Areas

The Medicare contractor budget consists of functional areas of responsibility that are performed by the fiscal intermediaries for Part A and the carriers for Part B. The eight functional areas of responsibility for fiscal intermediaries under Part A are—

- Bill Payment;
- Reconsideration and Hearing;
- Medicare Secondary Payer;
- Medical Review and Utilization Review;
- Provider Audit (Desk Review, Field Audit, and Provider Settlement);
- Provider Payment;
- Productivity Investments; and
- Benefits Integrity.

The nine functional areas of responsibility for carriers under Part B are—

- Claim Payment;
- Review and Hearing;
- Beneficiary or Physician Inquiry;
- Provider (physician/supplier) Education and Training;
- Medicare Review and Utilization Review;
- Medicare Secondary Payer;
- Participating Physicians;
- Productivity Investments; and
- Benefits Integrity.

The Hospital Insurance and Supplementary Medical Insurance Trust Funds and appropriations provide funding for these functions. Discussions concerning the data, standards, and methodology for these functional areas are in section III of this notice. In the following national budget summary, we combine the discussion of functional areas that are common to fiscal intermediaries and carriers. However, we list specific data for Part A or Part B under each heading. In developing the budget, we provide workload estimates for all functional areas that are predominantly workload driven. We do not provide workload estimates for those functional areas that are not predominantly workload driven or for an uncertain workload until final negotiations with the Medicare contractors are complete.

1. Bill and Claim Payment (Parts A and B)

We currently estimate the Part A processed workload to be 140.6 million bills in FY 1996. The Part B processed workload is currently projected at 681.4 million claims.

2. Reconsideration (Part A), Review (Part B), and Hearing (Parts A and B)

Beneficiaries, providers, physicians, and other suppliers are entitled by law to appeal, through reconsiderations, formal reviews, or hearings, as appropriate, the various payment determinations made by Medicare contractors. We project that Part B reviews and hearings workloads for FY 1996 will not exceed FY 1995 levels, while workload for Part A reconsiderations and hearings will have a moderate increase. We expect contractors to control and respond to requests for appeal and to control receipt of Administrative Law Judge hearing requests.

We continue to maintain efficiencies achieved in prior years through the use of shorter decision letters and the experimental use of the telephone to conduct reviews and reconsiderations.

3. Medicare Secondary Payer (Parts A and B)

The Medicare secondary payer function is the first of four initiatives (Medicare secondary payer, medical review and utilization review, benefits integrity, and provider audit) we developed as ''payment safeguards'' for the Medicare program. Our continuing Medicare secondary payer program is designed to identify situations in which other insurers are the primary payers, to pay all claims correctly the first time, and to recover Medicare dollars in instances in which mistaken conditional payments have occurred.

We aggressively pursue the identification of secondary payer situations through the collection and matching of beneficiary-specific health care data through the Internal Revenue Service/Social Security Administration/HCFA (IRS/SSA/HCFA) data match authorized by section 1862(b)(5) of the Act. The FY 1996 budget includes funding to process the workloads based on the IRS/SSA/HCFA data match project. We allocate the funds based on the number of report identification numbers we expect a contractor to process.

In addition to the IRS/SSA/HCFA data match, we continue to pursue other data matches with State Motor Vehicle Administrations, Workers' Compensation, Medicaid Agencies, and the Departments of Defense, Labor, and Veterans Affairs. Further, our use of the initial enrollment questionnaire is an important part of our commitment to capturing vital health care coverage data on beneficiaries and their spouses at the time of Medicare enrollment and before any claims are filed.

4. Medical Review and Utilization Review (Parts A and B)

In addition to processing and paying claims from providers of services and Medicare beneficiaries, contractors perform medical and utilization reviews of claims to determine whether services are covered under the program and are medically necessary. The distribution of Medicare contractor funding is based on each contractor's proportion of the workload and individual contractor medical review/utilization review projects.

Specifically, our contractors are required to work with the medical community to develop clear medical review policies and communicate those policies to the providers of services. Moreover, we also emphasize the need for systematic and ongoing analysis of

claims data to focus prepayment and postpayment medical review. To meet this requirement, intermediaries and carriers currently analyze local and national data to identify practice patterns, trends, and aberrancies that may reflect areas of potential abuse, inappropriate care, and overutilization. This data-driven approach allows us to target and direct our efforts to our greatest risk of inappropriate program payment.

Part A medical reviews by fiscal intermediaries focus on preventing inappropriate billing through provider education and on targeting reviews of providers who fail to change inappropriate behavior. Through analysis of national and local data, areas of abuse and overutilization are identified and payment is denied for services that are not covered under the Medicare program. Reviews are targeted where they will be most effective in protecting the program.

Part B medical reviews by carriers identify areas of abuse and overutilization and focus on preventing Medicare payment for medically unnecessary or noncovered services. Carriers use computerized methods of analyzing utilization, epidemiologic, and demographic data to detect trends in physician and other supplier activities and the delivery of health care. This is accomplished through prepayment and postpayment analysis of Medicare Part B claims.

In FY 1996, we will continue to support the medical review activities of the four Durable Medical Equipment Regional Carriers (DMERCs). The DMERCs will conduct prepayment and postpayment review of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) claims to identify areas of potential abuse and overutilization and prevent payment for noncovered items and services.

The DMERCs will identify aberrancies from an analysis of national and local databases. The DMERCs will initiate corrective action for overpayment recoupment, target supplier claims for services most frequently billed, and continue to revise regional medical review policies and screens for referral to the Office of the Inspector General (OIG). This targeting principle will assist in developing regional medical review policies to address identified problem areas or trends in new technologies. In addition to educating suppliers, DMERCs need to educate the referring/ordering physicians responsible for prescribing DMEPOS items and include them in the medical policy development process.

5. Provider Audit (Part A only)

The audit of provider cost reports is our primary instrument to help ensure the integrity of Part A Medicare payments. Funding priorities are directed toward the use of limited desk reviews where low cost/low utilization providers are involved and toward the use of onsite focused reviews to expand the overall examination of high cost/high payment issues. Program savings remain relatively flat, while the FY 1996 funding level remains constant.

In FY 1996, budget estimates allow for a relatively consistent level of reviews and audits for all types of providers, although an increasing number of providers require both desk review and settlement. Full desk reviews and field audits are directed toward high cost/high utilization providers and past poor performers. Contractors will retain a knowledgeable audit staff and provide training in accordance with government auditing standards.

Contractors will also respond to provider appeals by conducting intermediary hearings and by filing position papers and attending hearings at the Provider Reimbursement Review Board (PRRB). Contractors will also reopen and revise prior period settlements based on provider requests, as well as PRRB and HCFA directives and resolve problems identified on provider cost reports.

6. Provider Payment (Part A only)

In FY 1996, Medicare contractors will provide payment services to approximately 31,500 health care providers. These payment services include establishing and adjusting interim rates, recouping provider overpayments, and providing consultative services to providers for maintaining and adjusting their accounting systems to ensure accurate data for preparing Part A bills and cost reports.

We will distribute funds in proportion to workload by provider type.

7. Productivity Investments (Parts A and B)

We refer to the costs of implementing legislation and new initiatives that are designed to improve the effectiveness of Medicare program administration as productivity investments. Productivity investments generally provide start-up funds for new or revised contractor activities. Once these projects are operational, their funding becomes part of the contractor's ongoing costs. The criteria for selecting productivity investments vary. For example, the statute or regulations require some productivity investments. We also fund projects that will improve administrative cost efficiency, such as administrative simplification.

There is no single distribution methodology for the allocation of productivity investment funds. After we determine the national cost of a productivity investment, we distribute funds among the contractors. These funds are based on the contractors' cost estimates or through formulas that we derive based on project specifications. Other productivity investment initiatives require equal effort by all contractors regardless of size and, therefore, funds are distributed equally among contractors. Finally, some productivity investments, such as administrative simplification and the Medicare Transaction System, are given only to contractors that are involved in the specific projects.

8. Beneficiary or Physician Inquiry (Part B only)

The Medicare contractors are the direct link between beneficiaries, providers, physicians and other suppliers, and the Medicare program. It is the responsibility of HCFA and the contractors to provide the most effective and efficient service to beneficiaries, providers, physicians, and other suppliers, and to continue to expand their awareness and understanding of the Medicare program.

We are currently revising all benefit notices into a single, easy to read summary format. Carriers will begin using the new notice format in FY 1996. Beneficiary and provider feedback is used to modify the format, as necessary, to ensure maximum beneficiary comprehension. We and our contractors will conduct extensive outreach to ensure a smooth transition to the new format.

Our Carrier Customer Service Plan initiative is expanded to include—

- Tone/clarity self-assessment;
- Initiatives to improve service to blind, deaf, and disabled beneficiaries;
- An automated inquiries analysis program;
- Improvements to the internal review process;
- Partnerships with local beneficiary counseling and assistance organizations;
- The expansion of beneficiary advisory committees; and
- Initiatives designed to improve service to Spanish speaking individuals.

Also, carriers use Audio Response Units as the initial contact for providers, and a beneficiary Audio Response Unit script is offered to all carriers. In FY 1996, carriers will expand the use of Audio Response Units. The Audio

Response Units will provide improved service, accuracy, and consistency through the use of expanded standardized scripts and equipment enhancements.

In FY 1996, carriers will receive an estimated 40.1 million inquiries by telephone, in writing, or through direct contact, an increase of 1 percent over the current FY 1995 projection of 39.6 million inquiries.

9. Participating Physicians/Suppliers (Part B only)

Participating physicians and suppliers are those who agree to accept assignment on all Medicare claims in return for certain incentives or benefits. All physicians are given an opportunity to enroll or disenroll in the program annually.

Carriers must perform several activities including: (1) Conducting annual participation enrollment; (2) Distributing the Medicare Participating Physician/Supplier Directories; (3) Upgrading and maintaining direct electronic media claim lines for participants; and (4) Monitoring and enforcing the program requirements for participants and nonparticipants, which includes the comprehensive limiting charge compliance program.

10. Physician/Supplier Education and Training (Part B only)

Increasing numbers of physicians, nonphysician practitioners, and other suppliers who furnish health care services rely on information gained through communications with carriers about Medicare program provisions. To respond to this need, we have fostered interaction between suppliers of health care services and carriers to promote efficient, economic claims activities. For example, these activities include: (1) Communicating with suppliers of health care services; (2) Educating suppliers to eliminate the submission of erroneous or underdocumented claims; (3) Distributing newsletters to all suppliers of services detailing changes in coverage, payment, or billing policy; and (4) Educating carrier staff members, on a regularly scheduled basis, to ensure compliance with legislative and policy changes affecting the coding and submission of claims.

11. Benefits Integrity (Parts A and B)

We will continue to deter and detect Medicare fraud and abuse activities through concerted efforts with the OIG, the Federal Bureau of Investigation, Medicaid Fraud Control Units, the Department of Justice, and other HCFA partners. As in FY 1995, we will continue to improve the quality of referrals to the OIG by increasing our fraud detection capabilities through expanded data analysis and improvements in fraud detection by the carriers and intermediaries.

In addition, the National Claims History Database continues to be available to focus postpayment review on practitioners and suppliers that appear to be billing fraudulently or that are misrepresenting to Medicare the services or items they are furnishing.

In FY 1996, Medicare carriers will focus their detection activities on medical laboratory, radiology, anesthesia, physician services, and ambulance claims. Also, in FY 1996, Medicare carriers will upgrade their fraud detection capabilities by making better use of available databases and expanded relationships with other fraud detection organizations.

12. Printing Claim Forms (Parts A and B)

Although this activity is not among the nine Part A and eight Part B contractor functional areas, it is a part of the national Medicare contractor budget. In the interest of maintaining standard formats and quality of Medicare entitlement and report forms, we supply beneficiary enrollment and provider cost reporting forms. The use of these forms is essential for beneficiary notification and for effective and efficient contractor operations. We will print 50 million copies of these forms for FY 1996.

C. Contractor Unit Cost Calculations

A key step in the contractor budget process is the development of contractor unit costs for processing Part A bills and Part B claims. These bottom-line unit costs encompass all budget line items except ''Provider Audit,'' ''Provider Reimbursement,'' ''Productivity Investments,'' and, ''Other.''

As first implemented in FY 1992, the complexity index was designed to improve efficiency and reduce contractor-by-contractor cost inequities and was based on the application of the Industrial Engineering study commissioned by us. The Industrial Engineering study provided us with an actual weighted unit cost for each claim type; that is, inpatient or outpatient, and method of submission of a bill or a claim. After adjustment for changes in program emphasis, these unit costs were applied to each contractor's individual workload mix to develop a weighted unit cost that reflects the complexity of its workload mix. We published an explanation of the complexity index in a **Federal Register** notice published on January 2, 1992 (57 FR 57). After adjusting for various savings and increases associated with initiatives, we then arrayed the contractors' unit costs and identified the high cost contractors.

We believe that the use of the complexity index has enabled us to successfully achieve the goals of improving efficiency in contractor operations and reducing contractor-by-contractor cost inequities. Since we have achieved these goals, and believe that costs can be controlled, we will base each contractor's FY 1996 unit cost on the FY 1995 level, adjusted for inflation and for savings achieved as a result of increased productivity, and on reduced funding for incremental workload.

D. Overall Budget Considerations

We note that limitations on the FY 1996 budget could require across-the-board cost cutting measures. In that case, each regional office will determine the amount of budget reduction for its contractors.

III. FY 1996 National Medicare Contractor Budget: Data, Standards, and Methodology

Since the submission of the President's FY 1996 Medicare contractor budget request to the Congress in February 1995, we have developed and issued BPRs to the contractors. These requirements outline the statement of work and level of effort that fiscal intermediaries and carriers are expected to perform during the upcoming fiscal year in each of the functional areas for which they are responsible.

Our schedule is that draft BPRs are released to the regional offices in April, and the final BPRs are released in June 1995. At the time of release, each fiscal intermediary and carrier is given the individual requirements to be used in preparing their FY 1996 budget request. The regional offices will send any additional information that is pertinent to the fiscal intermediaries and carriers within their region. Fiscal intermediaries and carriers must submit their budget requests to us no later than 6 weeks after the issuance of the BPRs.

After the fiscal intermediaries and carriers review the BPRs, they prepare their budget requests. The central office and regional office staff review the fiscal intermediary and carrier budget requests as they are submitted. The regional office staff negotiates a final and mutually-acceptable budget, within the limits of the funding available to us, with each fiscal intermediary and carrier. The central office prepares a financial operating plan for each regional office that provides total regional funding authority for each

functional area. The regional offices, in turn, prepare a Notice of Budget Approval for each fiscal intermediary and carrier that provides a full year budget plan subject to quarterly cash draw limitations.

A. Standards

The basic statement of work, along with new and special activities that fiscal intermediaries and carriers are expected to perform, is described in the BPR package. Fiscal intermediaries and carriers are expected to perform the work as described in the BPR package and in accordance with the standards included in the Contractor Performance Evaluation for FY 1996. For consideration in developing their initial budget requests, a copy of the draft Contractor Performance Evaluation standards will be sent to contractors. Final FY 1996 Contractor Performance Evaluation standards will be published in the **Federal Register**.

B. Data

The following data contain various workload volumes, functional costs, and manpower information that are used in developing the individual fiscal intermediary and carrier budgets for FY 1996:

- Forms HCFA–1523/1524 (a multipurpose form that serves as the Budget Request, Notice of Budget Approval, and Interim Expenditure Report).
- Forms HCFA–1523A/1524A (Schedule of Productivity Investments and Other).
- Forms HCFA–1523B/1524B (Schedule of Credits, Electronic Data Processing, and Overhead).
- Forms HCFA–1523C/1524C (Schedule of Appeals).
- Forms HCFA–1523D/1524D (Schedule of Medicare Secondary Payer Costs).
- Forms HCFA–1523E/1524E (Schedule of Medical Review Costs).
- Forms HCFA–1523G/1524G (Schedule of Fraud and Abuse).
- Form HCFA–1525A/1525A (Contractor Audit Settlement Report).
- Schedules A, B, & C.
- Provider Payment Profile.
- Schedule of Providers Serviced.
- Medicare Secondary Payer Savings Report.
- Medical Review/Utilization Review Savings Report.
- Form HCFA–2580 (Cost Classification Report).
- Forms HCFA–1565/1566 (Carrier Performance Report/Intermediary Monthly Workload Report).
- OMB's economic assumptions of 3.2 Percent.
- Savings from prior productivity investments.
- New legislation costs.
- Regional Office recommendations.
- Contract provisions.

C. Methodology

The Medicare contractor budget is organized around the previously listed functional areas that are performed by the fiscal intermediaries for Part A and the carriers for Part B. In 1992, we developed a bottom-line unit cost for each individual contractor. The following narrative describes the methodology used to calculate individual line-item costs. This methodology will be considered as general reference for contractors as they develop their FY 1996 budgets and also provides additional explanation in determining how certain costs and savings were determined. The regional offices will negotiate with the fiscal intermediaries and carriers to resolve any differences within the limits of the funding available to us.

1. Bill and Claim Payment

A statistical forecasting model determines the individual fiscal intermediary and carrier workload levels for FY 1996. Using the same data, we are also projecting the number of bills or claims a fiscal intermediary and carrier may expect to have pending at the end of FY 1995. We will then combine the FY 1996 receipt estimate with the anticipated end of FY 1995 pending level, and subtract the estimated FY 1996 pending for each fiscal intermediary and carrier to establish a processed workload; that is, Estimated FY 1996 receipts + Estimated end of FY 1995 pending − Estimated end of FY 1996 pending = Estimated FY 1996 Processed Workload.

In order to price individual contractor bill and claim workload, we develop a unit cost that is the cost of processing a single bill or claim. The individual fiscal intermediary and carrier unit costs for FY 1996 are calculated from the unit costs in the FY 1995 Notice of Budget Approvals. Savings achieved from operating efficiencies also are part of the formula employed in computing FY 1996 target unit costs.

2. Reconsiderations (Part A), Reviews (Part B), and Hearings (Parts A and B)

We will allocate funding based on the dollar amount spent (line 2 of Forms HCFA–1523/1524) in the prior years, adjusted for inflation and changes in volume. Specifically, we will adjust the previous year's costs for reconsiderations and hearings by the estimated percentage change in workload.

We estimate the individual fiscal intermediary and carrier budget allocations for reconsiderations, reviews, and hearings by multiplying forecast workloads by the adjusted unit costs.

3. Beneficiary and Provider Inquiries (Part B only)

To establish a budgeted amount for beneficiary and provider inquiries, we increase the prior year's cost by the projected workload change. We also consider special conditions unique to specific carriers in negotiating the budget. We will use the data to develop a budgeted cost for beneficiary and provider inquiries by multiplying forecasted processed volume by the unit cost.

4. Provider Payment (Part A only)

In determining individual fiscal intermediary budgets for reimbursement activities, we took into consideration the FY 1995 budgeted figures, the projected funding for FY 1996, and the projected workload based on the workload reported on the Schedule of Providers Serviced. The Schedule of Providers Serviced is a listing of all the facilities serviced by the fiscal intermediary. The Schedule of Providers Serviced is submitted with each initial budget request so that a part of the analysis is the comparison of the composition of the provider community serviced by the fiscal intermediary and any change reported between fiscal years.

5. Provider Audit (Part A only)

For FY 1996, the provider audit function is divided into three major activities: field audits, desk reviews, and settlements. The Contractor Auditing and Settlement Report (Form HCFA–1525/1525A) provides a breakout of audit activities and costs by type of provider and documents the savings incurred as a result of audit activity. Using this as a base, we develop the desk review costs by projecting the number of providers serviced by the unit cost per desk review (developed for the latest Contractor Auditing and Settlement Report for FY 1994) to determine the cost of handling the FY 1996 workload at the FY 1994 unit cost. We base the settlement costs on the workload projected in the fiscal intermediary's budget request, multiplied by the unit cost for settlements found in the most recent Contractor Auditing and Settlement Report for FY 1994.

The first priority of all audit efforts is the completion of any special activities required by legislation. The second priority is that all cost reports be reviewed and, to the extent possible, settled.

6. Medicare Secondary Payer

We will review the estimated workload data, reported backlog data, and any other items, for example, proposed Medicare secondary payer systems enhancements, to determine Medicare secondary payer funding allocations. Each contractor's case mix will be analyzed to adjust for specialized workloads such as home health claims or durable medical equipment (DME). In FY 1996, we will allocate the budget based on the above considerations, adjustments created by shifts in the DME workload from all carriers to the four specialty carriers, and other shifts in workload that may require adjustments.

7. Medical Review/Utilization Review

The individual fiscal intermediary and carrier medical review/utilization review budgets for FY 1996 will be calculated in three segments: (1) Prepayment medical review; (2) Postpayment medical review activities; and (3) Data analysis and screen development. The BPR describes the activities and workload requirements that the fiscal intermediaries and carriers are expected to meet. As part of the BPRs, we will ask the fiscal intermediaries and carriers to estimate the level of funding that will be necessary to meet such requirements. We will allocate prepayment and postpayment medical review funding to contractors based upon the workload that a fiscal intermediary or carrier projects for FY 1996.

8. Participating Physicians/Suppliers (Part B only)

In determining the individual carrier funding levels for the participating physician/supplier program for FY 1996, we considered the following factors:

- The number of physicians/suppliers in the carrier's service area.
- The carrier's current participation rate.
- The carrier's recent performance in increasing its participation rate.
- The statement of work to be performed as outlined in the BPRs.
- FY 1995 cost experience.

Since participating physicians/suppliers are eligible for toll-free telephone lines for electronic billing, allowance will be made for these expenses. Carriers with lower participation rates will receive greater funding for the limiting charge violation monitoring. We have discontinued carrier monitoring of the elective surgery disclosure requirement. We now require carriers to investigate beneficiary complaints on a case-by-case basis.

We allocate carrier monitoring funds based on the national percentage of nonparticipating physicians/suppliers. All carriers will receive the same funding amount for reporting participation statistics.

9. Productivity Investments

We refer to the costs of implementing legislation and new initiatives that are designed to improve the effectiveness of Medicare program administration as productivity investments. Several allocation methodologies will be employed in calculating the productivity investment budgets for individual fiscal intermediaries and carriers. For those projects involving only single contractors or small groups of contractors, we will allocate funds based upon the specifications of the particular project. For those projects involving all fiscal intermediaries or carriers, if the costs are driven by bill or claim volume, we will distribute the funding based upon our workload projections for each contractor. Finally, for those projects involving all fiscal intermediaries or carriers that require equal effort, regardless of the contractor's size, we derive a standard allocation to be given to all contractors.

10. Physician/Supplier Education and Training (Part B only)

Distribution of funds made available to HCFA for physician/supplier education and training is based upon the ratio of physicians and suppliers in each carrier's service area to the national total of physicians and suppliers.

11. Benefits Integrity

In allocating the FY 1996 benefits integrity budget to individual fiscal intermediaries and carriers, we will consider the following:

- The prior year's effectiveness in initiating fraud referrals to the OIG.
- Initiating overpayment recoveries when appropriate.
- Prioritizing workload to concentrate on high dollar and multi-state fraud.
- The extracted workload and cost data from the Schedule of Fraud and Abuse (Forms HCFA–1523G/1524G).
- The Medicare Fraud Unit Workload Report.
- The fraud unit's level of sophistication to determine benefits integrity funding allocations.
- The completion of any special activity required by legislation which will be an overriding priority.
- The networking costs, which will be determined by the personnel cost to support the Medicare Fraud and Abuse Information Coordinator, travel costs, and the other expenses needed to conduct networking for the area assigned.

IV. Data, Standards, and Methodology Used to Establish the Medicare Contractor Budgets for FY 1995

The October 21, 1994, notice described the budget development process in general and gave an overview of how we intended to use the contractor budget data, standards, and methodology to establish the FY 1995 budgets.

Based on our review of the comments submitted, we are making no changes to the proposed data, standards, and methodology as published on October 21, 1994. Therefore, we announce provisions of the proposed notice as final.

Provisions of the Proposed Notice

We indicated in the proposed notice that the contractor budget would be structured to coincide with the eight functional areas of responsibilities performed by fiscal intermediaries for Part A and nine functional areas of responsibilities performed by carriers for Part B of the Medicare program. We proposed that final funding for the contractor functions would be allocated in accordance with the current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress. While the contractors were preparing their budget requests, we developed preliminary budget allocations for the 17 functional areas that were based on historical patterns, workload growth, inflation assumptions, statistical forecasting reports, and any other available information.

A key step in the contractor's budget process is the development of contractor unit costs for processing Part A bills and Part A claims. As in FY 1994, the FY 1995 budget process used a bottom line unit cost approach. All budget line items except Provider Audit, Productivity Investments, Other, and in FY 1995, Provider Payment, are part of the bottom line unit cost calculation. In FY 1995, the complexity index was not used as it was in prior years. We believe that the use of the complexity index

over the last 3 fiscal years has enabled us to successfully achieve the goals of improving efficiency in contractor operations and reducing contractor-by-contractor cost inequities. Since we have achieved these goals, and believe that costs can be controlled, we based each contractor's unit cost on their FY 1994 level, adjusted for savings achieved due to increased productivity, electronic media claims, and reduced funding for incremental workload. Because of reduced funding in FY 1995 inflation was not given.

The Medicare secondary payer function is the first of four initiatives we developed as ''Payment Safeguards'' for the Medicare program. The focus of the Medicare secondary payer initiative is to ensure that the Medicare program pays for covered care only to the extent required after payment by the primary insurer. We proposed that the standard for determining the amount of Medicare secondary payer funding a contractor would receive in FY 1995 would be based on workload volumes, required systems changes, and any special projects that may be assigned to contractors.

Based on actuarial analysis, we developed specific savings goals for each contractor. The goals were developed on estimates of savings to be achieved by contractors for the Medicare secondary payer categories of working aged, disabled, workers' compensation, end-stage renal disease, and liability or no-fault insurance. After assigning goals to contractors, funds were allocated based on the various Medicare secondary payer activities a contractor must perform such as processing prepayment claims, postpayment claims, inquiries, outreach, and hospital reviews.

We proposed that in FY 1995, the Initial Enrollment Questionnaire would be operational. The Initial Enrollment Questionnaire eliminates the need for first claim development on approximately 85 percent of new enrollees. This initiative improves service to beneficiaries on a national basis by providing detailed information on the Medicare secondary payer program at the time a beneficiary enrolls in Medicare.

We proposed to include funding to process the workloads based on the IRS/SSA/HCFA data match project. The funds would be allocated on the basis of the number of report identification numbers a contractor will process. We would review the estimated workload data, reported backlog data, and proposed Medicare secondary payer systems enhancements to determine Medicare secondary payer funding allocations. Each contractor's case mix would be analyzed to adjust for specialized workloads such as home health claims or DME.

In FY 1995, we proposed the budget be allocated based on adjustments created by shifts in the DME workload from all carriers to the four specialty carriers and by other shifts in workload that may require adjustments. The regional offices would negotiate with the fiscal intermediaries and carriers to resolve any differences between our allocations and their requests within the limits of the funding available to us.

Analysis of and Response to Public Comment

In response to our request for public comment in the October 21, 1994 notice, we received one timely item of correspondence from a health insurance company. Several issues that were raised by the commenter are outside the scope of the proposed notice and are not addressed in this notice. The proposed notices are intended to address only the data, standards, and methodology to be used to establish budgets for fiscal intermediaries and carriers for a particular fiscal year. Specific instructions on how to implement and monitor certain initiatives (for example, beneficiary inquiries, participating physician and benefits integrity) are presented through program memoranda, manual instructions, BPR, and other means.

Comment: The commenter was concerned that the proposed notice was published after the beginning of FY 1995. The commenter believed that untimely publication of the proposed notice denied interested parties the opportunity to comment before implementation of the budget.

Response: In the preparation of the Medicare contractor budget each fiscal year, we attempt to publish the proposed and final notices timely. However, because of the time involved in reviewing data and developing the budget and the lengthy review and clearance process, we were not able to publish the proposed and final notices before the beginning of the 1995 fiscal year. We regret that we were unable to publish the proposed notice timely, but we do not believe that our actions substantively penalized or prejudiced the fiscal intermediaries or carriers. The BPRs issued to all intermediaries and carriers discuss in detail the work, level of effort, and activities we expect them to perform in the coming fiscal year. Further, we provide a discussion and explanation of the bottom-line unit cost target established for each intermediary and carrier at the time the BPRs are issued. The intermediaries and carriers have ample time to identify and resolve any problems before they finalize their budget requests for the fiscal year.

Comment: The commenter indicated that the use of the complexity index in prior years provided a methodologically flawed basis for calculating the contractor unit costs in FY 1995.

Response: We do not agree. As stated in the proposed notice, we believe that the complexity index is useful in helping to control contractor costs by providing funding on the basis of workload complexity. The use of the complexity index over the last 3 fiscal years has enabled us to successfully achieve the goals of improving efficiency in contractor operations and reducing contractor-by-contractor cost inequities. Since we have achieved the above goals, we believe it is reasonable for FY 1995 contractor unit costs to be based on each contractor's FY 1994 level.

Comment: The commenter expressed concern about the process used to develop specific Medicare secondary payer savings goals for each contractor for FY 1995 as well as how funding was determined for each contractor for Medicare secondary payer activities. The commenter believed that Medicare secondary payer funds are allocated after assigning Medicare secondary payer savings goals.

Response: The President's budget estimate that was published in February 1994 covers the entire Medicare contractor budget. Although the budget estimate mentions Medicare secondary payer savings, it does not define specific savings per contractor. Further, we have not assigned savings goals to intermediaries and carriers since FY 1993. Therefore, Medicare secondary payer funds are not allocated after assigning Medicare secondary payer savings goals to contractors.

The factors that affect Medicare secondary payer funding for individual contractors are: the national Medicare secondary payer budget; the priority of the Medicare secondary payer activities; individual contractor Medicare secondary payer budget requests and workload estimates (a contractor's estimated Medicare secondary payer workload and budget request is compared to its previous workload and expenditures for Medicare secondary payer activities); an analysis of a contractor's Medicare secondary payer budget request and that of similar contractors with similar workloads (intermediaries and carriers are compared separately); the ability of a contractor to justify and document its request for additional funding, or for

funding we believe is out of its peer grouping; and negotiations between the regional offices and the individual contractors.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date specified in the **DATES** section of this notice, and we will respond to the comments in a subsequent published notice. To the extent that we receive comments during the comment period, we will address those comments in a final notice and, if necessary, make revisions to the proposed data, standards, and methodology for FY 1996. If no comments are received, we will simply adopt the proposed data, standards, and methodology for FY 1996 as final, effective October 1, 1995.

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

Authority: Sections 1816(c)(1) and 1842(c)(1) of the Social Security Act (42 U.S.C. 1395h(c)(1) and 1395u(c)(1)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: August 16, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–22029 Filed 9–5–95; 8:45 am]

BILLING CODE 4120–01–P

Office of Inspector General

Program Exclusions: July 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, State	Effective date
PROGRAM-RELATED CONVICTIONS	
AHMAD, MIRZA N, DEWITT, NY	08/16/95
BAKER, DALE, DAYTON, OH	08/14/95
BEGG, CYNTHIA L, ALBANY, NY	08/16/95
BEGG, CAROL J, KINDERHOOK, NY	08/16/95
BELL, DOROTHY S, BRYAN, TX	08/14/95
BOLAN, BERT WAYNE, EL RENO, OK	08/03/95
BORREGO, ORESTES T, MIAMI, FL	08/14/95
BRIZ, PAZ, PIEDMONT, CA	08/03/95
CAMBRIA MEDICAL ASSOCIATES, PHILADELPHIA, PA	08/14/95
CASE, DAVID A, EUGENE, OR	07/18/95
CHAN, JUAN M, FREMONT, CA	08/03/95
CLARK, MAUREEN E, PHILADELPHIA, PA	08/14/95
CLARK'S FAMILY PHARMACY, PHILADELPHIA, PA	08/14/95
CLINE, DARRELL E, AUBURN, WA	08/03/95
FONSECA, MARIO, MIAMI LAKES, FL	08/14/95
GRECO, ISABEL, SANTE FE, NM	08/10/95
HAMILTON, ROSS, BRONX, NY	08/16/95
HARR, ROBERT L, FORT WORTH, TX	08/10/95
HERNANDEZ, MARILYN SUE, OKLAHOMA CITY, OK	08/10/95
HERZOG, BRUCE, ROSLYN, NY	08/16/95
HOLSTON AMBULANCE SERVICE, INC, LAKE CHARLES, LA	08/03/95
HOWARD, ROBERT L, ROSSVILLE, GA	08/14/95
HUFF, MARY ANN, GRAND PRAIRIE, TX	08/10/95
JOHN R WHITE DRUGS, INC, FAYETTEVILLE, NC	08/14/95
JOHNSON, DEBRA A, GALVESTON, TX	08/10/95
KANSAGRA, RAY, MARLTON, NJ	08/16/95
KIMBRO, WILLIAM D, SLAUGHTER, LA	08/10/95
KURTZ, JOSEPH A, PHILADELPHIA, PA	08/14/95
M.A.S. TRANSIT, INC, COLUMBIA, LA	08/10/95
MANGA, GREGORY M, YORK, PA	08/14/95
MANIK, GOLAM, FLORAL PARK, NY	08/16/95
MATHIS, JIMMY RONALD, PARKER, TX	08/10/95
MERKOW, LEONARD, PITTSBURGH, PA	08/14/95
PILARCZYK, DONNA, PAINESVILLE, OH	08/14/95
RAO, MOHAN KONAKONDRA, LONGVIEW, TX	08/10/95
SANDERS, DEBORAH, LITTLE ROCK, AR	08/03/95
SLON, TIMOTHY, AMHERST, NY	08/16/95
VAOESEA, SIAKI L, SEATTLE, WA	08/03/95
VILLARD, JOSEPH JR, ALEXANDRIA, LA	08/03/95
WALTER, DONALD M III, PALM BEACH, FL	08/14/95
WALTER, LUCILLE H, WINCHESTER, VA	08/14/95
WALTER, FRANCINE P, PALM BEACH, FL	08/14/95
PATIENT ABUSE/NEGLECT CONVICTIONS	
BORDELON, BRADLEY JAMES, MOREAUVILLE, LA	08/10/95
BROWN, MICHELLE, ADAMS, NY	08/16/95
BROWN, CYNTHIA M, PLAQUEMINE, LA	08/10/95
CARAVAGLIO, JOSEPH F, TRUMANSBURG, NY	08/16/95
CAVINESS, GEORGE E, RAMSEUR, NC	08/14/95
COPELAND, MARY LOIS, MAYFLOWER, AR	08/03/95
DAVIS, KEVIN EARL, GRANBURY, TX	08/10/95
DEAN, CHARLOTTE REBECCA, NATCHITOCHES, LA	08/10/95
FORSYTHE, RONALD J, HOT SPRINGS, AR	08/10/95
GRIFFIS, CHARLES LAMAR, OKLAHOMA CITY, OK	08/10/95
HASAN, LEA, STATEN ISLAND, NY	08/16/95
JACKSON, JASON L, COLUMBIA, LA	08/03/95
KNIGHT, CARLA JEAN, TALLULAH, LA	08/10/95
OLSEN, CHERYL ANN, OCEAN SPRINGS, MS	08/10/95
PARHAM, REGINA L, FORDYCE, AR	08/10/95
PEGUES, CLIFTON CURTIS, DUNN, NC	08/14/95
PHILLIPS, QUINITA AMELIA, LAFAYETTE, LA	08/10/95
PITCHER, DONALD, BAKERSFIELD, MO	08/03/95
SIMMONS, LARRY, NEW BERN, NC	08/14/95
SIMMONS, MICHAEL LEON, NEW BERN, NC	08/14/95
THOMAS, BERNICE, SPRING LAKE, NC	08/14/95
UZZLE, CARLTON BERNARD, GOLDSBORO, NC	08/14/95

Subject, city, State	Effective date
WEATHERS, JAMES EDWARD, GULFPORT, MS	08/10/95
WITHERS, URSULA M, PHILADELPHIA, MS	08/10/95
YANICK, JEAN, LYNN, MA	08/16/95
CONVICTION FOR HEALTH CARE FRAUD	
GOLDSMITH, PAUL EDWARD JR, WAGGAMAN, LA	08/10/95
JONES, PAMELA W, GRETNA, LA	08/03/95
LIPSIE, SHARON R, BUCKLEY, WA	08/03/95
LORIO, TERRI L, HARVEY, LA	08/03/95
MCTEAR, CAROLYN, NEW ORLEANS, LA	08/03/95
NUNNERY, TAMERA J, FAYETTEVILLE, NC	08/14/95
PORTER, ANGERRIAN J, GRETNA, LA	08/10/95
SINGLETON, ROSALIND, MARRERO, LA	08/03/95
TOWNSEND, BETH ANGELA, BOONE, NC	08/14/95
VU, DAM, BEAVERTON, OR	08/03/95
CONTROLLED SUBSTANCE CONVICTIONS	
BROCK, CHARLES F, CHARLEVOIX, MI	08/14/95
JOHNSON, KEITHLEY E, LAPEER, MI	08/14/95
LAURICELLA, ELAINE M, SAN BRUNO, CA	08/03/95
MILLER, STUART M, FPC ELGIN AFB, FL	08/14/95
NOCK, THOMAS RUFUS, FORT DIX, NJ	08/14/95
NOVICK, SALLY A, COTTAGE GROVE, MN	08/14/95
PAUL, JAY M, JAMISON, PA	08/14/95
LICENSE REVOCATION/SUSPENSION/SURRENDER	
BARR, EDDIE F, STOCKTON, CA	08/03/95
BILLINGTON, LUANNE LEE, WESLACO, TX	08/03/95
BOURLAND, REGINA A, GARLAND, TX	08/10/95
BRADFIELD, LLOYD E, BACKUS, MN	08/14/95
BURKE-DUDLEY, MARY E, MILFORD, MA	08/16/95
CALDWELL, PATRICIA, ALBUQUERQUE, NM	08/10/95
CERILLI, PAULA, BRAINTREE, MA	08/16/95
CHAPA, TAMMY JO, ALAMAGORDO, NM	08/10/95
CHAVEZ, SHANNON V, LOMPOC, CA	08/03/95
COGEN, MICHAEL, LAFAYETTE, CA	08/03/95
DELONG, DENISE A, LOS FRESNOS, TX	08/10/95
ELLIOTT, NELLIE R, BEAUMONT, TX	08/10/95
FLIEDNER, EUSTACE CONWAY, ARLINGTON, TX	08/10/95
FRENCH, ROBERT LEE, WHITE DEER, TX	08/10/95
GOOD, CLIFFORD N, ARLINGTON, TX	08/10/95
GREENE, VIRGINIA, MALDEN, MA	08/16/95
HART, ALRUNDUS, TRUTH OR CONSEQUENCE, NM	08/10/95
HERRING, DIANE, BROOKLINE, MA	08/16/95
HOLLIMAN, DANIEL, SAN ANDREAS, CA	08/03/95
IONASCU, NATHAN, CHAPPAQUA, NY	08/16/95
JACKSON, DORIS D, IRVING, TX	08/03/95
JOHNSON, MARILYNN L, ROCHESTER, MN	08/14/95
KASCHUB, TONI L, ARLINGTON, TX	08/10/95
KOSER, WILLIAM J, ALBANY, CA	08/03/95
LANKFORD, JAMES E JR, UPPERCO, MD	08/14/95
LOCKHART, JOYCE BASDAI, SILSBEE, TX	08/10/95
McMICHAEL, RITA FAYE, LITTLE ROCK, AR	08/10/95
MOHLER, MARSHA MARGUERITE, AUSTIN, TX	08/10/95
MOKLER, JOYCE, WINCHESTER, MA	08/16/95
NAYAK, KRISHEN K, BETHEL PARK, PA	08/14/95
PINE, MICHAEL J, BROOKINGS, OR	08/03/95
POHL, MALCOLM W, WEYMOUTH, MA	08/16/95
REMSBURG, LAURA ELLEN, PARIS, TX	08/10/95
ROBERTS, EDWIN A, HAYWARD, CA	08/03/95
SHLIMBAUM, CHARLES, BRIGHTWATERS, NY	08/16/95
STEWART, DONNA LOUISE, HOUSTON, TX	08/10/95
STRUCK, RAYMOND, LITCHFIELD, MN	08/14/95
TURK, MARY KATHERINE, KILLEEN, TX	08/10/95
WATHEN, BRUCE D, MUSKEGON, MI	08/14/95
FEDERAL/STATE EXCLUSION/SUSPENSION	
BUSH, KRISTY, ALVARADO, TX	08/10/95
CLARK, LINDA KAY, KERMIT, TX	08/10/95
NEWTON, JOEL LANE, KAUFMAN, TX	08/10/95
POLLEY, SUZANNE M, AUSTIN, TX	08/10/95
SAXMAN, MICHAEL, NAMPA, ID	08/03/95
SCHULD, JOHN T, PHILADELPHIA, PA	08/14/95
WESTWIND MANOR, CROWN POINT, IN	08/14/95
ENTITIES OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
CARDIO MARKETING, PARKER, TX	08/10/95
CENTER FOR HUMAN GROWTH, EL RENO, OK	08/03/95
HEALTH EDUCATION SERVICES, EL RENO, OK	08/03/95
R M MEDICAL SUPPLY, PARKER, TX	08/10/95
WAYNE BOLAN & ASSOCIATES, EL RENO, OK	08/03/95
WAYNE BOLAN, PH.D. & ASSOC, EL RENO, OK, DEFAULT ON HEAL LOAN	08/03/95
ABDAL-ALIM, KHALID B, HOUSTON, TX	08/10/95
CHMELIK, GREGORY J, FAIRBAULT, MN	08/14/95
COBY, MICHAEL E, AMHERST, MA	08/16/95
COGGINS, CHERYL R, ANTIOCH, TN	08/14/95
ELLIS, ROBERT W, TERRELL, TX	08/10/95
HATTER, MARCUS A, LANSING, MI	08/14/95
HOLMES, CLARENCE J, SPOKANE, WA	08/03/95
JEWETT, CHARLES D, VERSAILLES, KY	08/14/95
JORDAN, MARTIN E, CLEVELAND, OH	08/14/95
MACHARA, KATHERINE L, ENTERPRISE, FL	08/14/95
SMITH, TIMOTHY L, SAN ANTONIO, TX	08/10/95
URKEVIC, JAN P, BROOKLINE, MA	08/16/95
WILLIAMS, EDWARD JR, FT LAUDERDALE, FL	08/14/95
WOOD, CAROL S, INDIANOLA, WA	08/03/95

Dated: August 25, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–22045 Filed 9–5–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3831–N–02]

Announcement of Funding Awards for the HUD-Administered Small Cities Community Development Block Grant Program Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department under the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program for Fiscal Year 1995. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Stephen Rhodeside, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708–1322 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title I of the Housing and Community Development Act of 1974, as amended (the HCD Act), authorizes the Community Development Block Grant (CDBG) Program. Section 106 provides that HUD will administer the CDBG Program for nonentitled units of local government within a State which does not elect to assume the administrative responsibility for the program. As such HUD, continues to operate the nonentitlement CDBG Program in Hawaii and New York in accordance with 24 CFR part 570, subpart F. In Hawaii, HUD distributes funds in Hawaii on a formula basis since there are only three nonentitlement entities. In New York State, HUD conducts an annual competition in which nonentitled units of general local government may apply for nonentitled CDBG funds allocated to New York State.

The Fiscal Year 1995 competition in New York State was announced in a notice of funding availability (NOFA) published in the **Federal Register** on December 5, 1994 (59 FR 62474). The NOFA announced the availability of allocation of $50,616,000 for nonentitled communities in New York State. The NOFA also announced the allocation of this funding amount between the New York Office and the Buffalo Office.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the grantees, and the amount of the award made to each grantee. This information is provided in Appendix A to this document.

Dated: August 30, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX A—1995 SMALL CITIES GRANTEES

Grantee	Grant No.	Amount
New York Office		
Town of Bethel, Box 300, White Lake, New York 12786	B–95–DH–36–0109	$250,000
Town of Fallsburg, P.O. Box 830, South Fallsburg, New York 12779	B–95–DH–36–0111	155,000
Village of Highland Falls, 180 Main Street, Highland Falls, New York 10928	B–95–DH–36–0102	400,000
City of Kingston, City Hall, 1 Garraghan Drive, Kingston, New York 12401	B–95–DH–36–0107	900,000
Town of Liberty, 120 North Main Street, Liberty, New York 12754	B–95–DH–36–0116	400,000
Town of Marlborough, Route 9W, Milton, New York 12547	B–95–DH–36–0117	400,000
Village of New Paltz, 25 Plattekill Avenue, P.O. Box 877, New Paltz, New York 12561	B–95–DH–36–0123	400,000
Village of New Square, 766 North Main Street, New Square, New York 10977	B–95–DH–36–0103	400,000
City of Port Jervis, Municipal Building, 20 Hammond Street, Port Jervis, New York 12771	B–95–DH–36–0122	696,000
Town of Rockland, Town Hall, Livingston Manor, New York 12758	B–95–DH–36–0112	275,000
Town of Rosendale, Box 423, Rosendale, New York 12472	B–95–DH–36–0101	400,000
Town of Shawangunk, P.O. Box 247, Wallkill, New York 12589	B–95–DH–36–0104	400,000
Town of Ulster, Town Hall, Neighborhood Road, Lake Katrine, New York 12449	B–95–DH–36–0118	400,000
Village of Walden, 8 Scofield Street, Walden, New York 12586	B–95–DH–36–0106	400,000
Village of Woodridge, P.O. Box 655, Woodridge, New York 12789	B–95–DH–36–0114	302,000
Buffalo Office		
Village of Weedsport, P.O. Box 190, Weedsport, NY 13166	B–95–DH–36–0002	$400,000
Village of Randolph, 26 Jamestown Street, Randolph, NY 14772	B–95–DH–36–0003	600,000
Town of Northampton, Northampton Municipal Bldg, South Main Street, Northville, NY 12134	B–95–DH–36–0006	400,000
Town of Mooers, Town Hall, P.O. Box 238, Mooers, NY 12958	B–95–DH–36–0008	400,000
Town of Bellmont, Star Route, Merrill, NY 12955	B–95–DH–36–0009	400,000
County of Lewis, Court House, 7660 State Street, Lowville, NY 13367	B–95–DH–36–0010	600,000
Town of Willet, Town Hall, P.O. Box 37, Willet, NY 13863	B–95–DH–36–0011	400,000
City of Watertown, Watertown Municipal Building—Room 302, 245 Washington Street, Watertown, NY 13601.	B–95–DH–36–0013	400,000
Village of Addison, P.O. Box B, Addison, NY 14801	B–95–DH–36–0017	810,791
Town of New Hudson, Town Hall, Black Creek, NY 14714	B–95–DH–36–0018	400,000
County of St. Lawrence, County Courthouse, 48 Court Street, Canton, NY 13617	B–95–DH–36–0019	400,000
Town of Montezuma, RD #1, Montezuma, NY 13034	B–95–DH–36–0021	399,360
Town of Pittsfield, RD #3 P.O. Box 231, Pittsfield, NY 13411	B–95–DH–36–0023	400,000
Town of Brookfield, Town Hall, Main Street, Brookfield, NY 13314	B–95–DH–36–0024	400,000
Town of Westville, RD 3, Malone, NY 12953	B–95–DH–36–0027	400,000
Town of Plattsburgh, Town Office, 152 Banker Road, Plattsburgh, NY 12901	B–95–DH–36–0028	400,000
Village of Canastota, Village Hall, 205 South Petersboro Street, Canastota, NY 13032	B–95–DH–36–0029	830,000

APPENDIX A—1995 SMALL CITIES GRANTEES—Continued

Grantee	Grant No.	Amount
Village of Penn Yan, P.O. Box 426, 3 Maiden Lane, Penn Yan, NY 14527	B–95–DH–36–0030	91,500
Village of Northville, Village Offices, North Third Street, Northville, NY 12134	B–95–DH–36–0031	400,000
Town of Palmyra, 201 East Main Street, Palmyra, NY 14552	B–95–DH–36–0032	400,000
City of Oswego, City Hall, Oswego, NY 13126	B–95–DH–36–0036	900,000
Village of Saranac Lake, Power & Light Building, 2 Main Street—3rd Floor, Saranac Lake, NY 12983	B–95–DH–36–0038	400,000
Town of Black Brook, Town Offices, Main Street AuSable, Forks, NY 12921	B–95–DH–36–0039	400,000
Town of Dannemora, P.O. Box 658, Cook Street, Dannemora, NY 12929	B–95–DH–36–0040	400,000
Town of AuSable, Town Hall, South Sable Street, Keeseville, NY 12944	B–95–DH–36–0041	400,000
Town of Franklin, Box 73, Franklin, NY 12989	B–95–DH–36–0042	400,000
City of Lockport, Lockport Municipal Building, One Locks Plaza, Lockport, NY 14094	B–95–DH–36–0043	400,000
City of Amsterdam, City Hall, 61 Church Street, Amsterdam, NY 12010	B–95–DH–36–0044	400,000
Town of Ohio, R.R. #1, Box 561, Cold Brook, NY 13324	B–95–DH–36–0046	400,000
Town of Yates, 8 South Main Street, P.O. Box 197, Lyndonville, NY 14098	B–95–DH–36–0047	400,000
City of Hornell, City Hall, 108 Broadway, Hornell, NY 14843	B–95–DH–36–0050	400,000
City of Batavia, 10 West Main Street, City Hall, Batavia, NY 14020	B–95–DH–36–0051	400,000
Village of Albion, 35–37 East Bank Street, Albion, NY 14411	B–95–DH–36–0052	400,000
Village of Holley, 72 Public Square, Holley, NY 14470	B–95–DH–36–0053	390,000
City of Geneva, 47 Castle Street, P.O. Box 273, Geneva, NY 14456	B–95–DH–36–0058	900,000
City of Canandaigua, 2 North Main Street, Canandaigua, NY 14424	B–95–DH–36–0059	900,000
City of Little Falls, City Hall, 659 Main Street, Little Falls, NY 13365	B–95–DH–36–0060	400,000
Town of Dryden, 65 East Main Street, Dryden, NY 13053	B–95–DH–36–0061	400,000
Town of Cincinnatus, Town Hall, Main Street, Cincinnatus, NY 13040	B–95–DH–36–0062	338,000
Village of Clyde, South Park Street, Clyde, NY 14433	B–95–DH–36–0065	400,000
Town of Dickinson, P.O. Box 101, Dickinson Center, NY 12930	B–95–DH–36–0067	400,000
County of Seneca, County Hall, One DePronio Drive, Waterloo, NY 13165	B–95–DH–36–0068	291,000
County of Niagara, 59 Park Avenue, Lockport, NY 14094	B–95–DH–36–0069	600,000
Town of Summit, Town Hall, P.O. Box 132, Summit, NY 12175	B–95–DH–36–0070	400,000
City of Gloversville, City Hall, Frontage Road, Gloversville, NY 12078	B–95–DH–36–0071	400,000
Town of Ticonderoga, 324 Champlain Avenue, Ticonderoga, NY 12883	B–95–DH–36–0075	400,000
City of Plattsburgh, 41 City Hall Place, Plattsburgh, NY 12901	B–95–DH–36–0079	900,000
County of Tompkins, Tompkins County Courthouse, 320 North Tioga Street, Ithaca, NY 14850	B–95–DH–36–0080	118,500
Town of Groton, 101 Conger Boulevard, Groton, NY 13073	B–95–DH–36–0081	315,000
Town of Gaines, 14087 Ridge Road, Albion, NY 14411	B–95–DH–36–0083	500,000
Town of Barre, 14317 West Barre Road, Albion, NY 14411	B–95–DH–36–0084	400,000
County of Ontario, Ontario County Courthouse, 27 North Main Street, Canandiagua, NY 14424	B–95–DH–36–0086	600,000
Village of Frankfort, P.O. Box 188, 126 East Orchard Street, Frankfort, NY 13340	B–95–DH–36–0087	400,000
Village of Cold Brook, P.O. Box 215, Cold Brook, NY 13324	B–95–DH–36–0088	400,000
County of Montgomery, Park Street, P.O. Box 1500, County Annex Building, Fonda, NY 12068	B–95–DH–36–0089	600,000
County of Wayne, Wayne County Courthouse, 26 Church Street, Lyons, NY 14489	B–95–DH–36–0091	350,000
City of Fulton, 141 South First Street, Fulton, NY 13069	B–95–DH–36–0092	900,000
City of Ithaca, City Hall, 108 East Green Street, Ithaca, NY 14850	B–95–DH–36–0094	900,000
County of Cattaraugus, 303 Court Street, Little Valley, NY 14755	B–95–DH–36–0095	550,000
City of North Tonawanda, City Hall, 216 Payne Avenue, North Tonawanda, NY 14120	B–95–DH–36–0096	600,000
Town of Starkey, Starkey Town Hall, 40 Seneca Street, Dundee, NY 14837	B–95–DH–36–0097	400,000
Town of Allegany, Town Hall Building, 5 Mile Road, Allegany, NY 14706	B–95–DH–36–0099	400,000
Village of Medina, 600 Main Street, Medina, NY 14103	B–95–DH–36–0200	400,000
Village of Remsen, P.O. Box 335, Remsen, NY 13438	B–95–DH–36–0208	400,000
Town of Ephratah, 5799 Southway 29, St. Johnsville, NY 13452	B–95–DH–36–0209	400,000
Town of Hague, Town Hall, Hague, NY 12836	B–95–DH–36–0210	400,000
City of Rensselaer, City Hall, 505 Broadway, Rensselaer, NY 12144	B–95–DH–36–0212	900,000
Village of Hudson Falls, 220 Main Street, Hudson Falls, NY 12839	B–95–DH–36–0214	400,000
Town of Gouverneur, RD #5—Box 10, Gouverneur, NY 13642	B–95–DH–36–0215	400,000
Village of Fort Plain, Village Hall, 168 Canal Street, Fort Plain, NY 13339	B–95–DH–36–0217	400,000
Town of Barton, 304 NYS Route 17c, Waverly, NY 14892	B–95–DH–36–0218	194,000
City of Cohoes, City Hall, 97 Mohawk Street, Cohoes, NY 12047	B–95–DH–36–0220	400,000
Town of Moriah, Town Offices, Park Street, Port Henry, NY 12974	B–95–DH–36–0224	400,000
County of Madison, P.O. Box 606, Madison County Office Bldg, Wampsville, NY 13163	B–95–DH–36–0225	225,000
County of Rensselaer, Ned Pattison Govment Ct, 1600 7th Avenue, Troy, NY 12180	B–95–DH–36–0227	380,000
Town of Meredith, Turnpike Road, Meredith Square, Meridale, NY 13806	B–95–DH–36–0228	400,000
County of Chenango, 5 Court Street, County Office Building, Norwich, NY 13815	B–95–DH–36–0231	600,000
City of Oneonta, City Hall, 258 Main Street, Oneonta, NY 13820	B–95–DH–36–0232	310,000
Town of Chateaugay, Town Hall, 45 East Main Street, Chateaugay, NY 12920	B–95–DH–36–0233	400,000
City of Ogdensburg, City Hall, 330 Ford Street, Ogdensburg, NY 13669	B–95–DH–36–0236	900,000
Town of Edinburg, Town Hall, 47 Military Road, Edinburg, NY 12134	B–95–DH–36–0237	362,000
County of Madison, P.O. Box 606, Madison County Office Bldg, Wampsville, NY 13163	B–95–DH–36–0242	600,000
Village of Gouverneur, 33 Clinton Street, Gouverneur, NY 13642	B–95–DH–36–0244	400,000
County of Tompkins, Tompkins County Courthouse, 320 North Tioga Street, Ithaca, NY 14850	B–95–DH–36–0247	270,000
Village of Keeseville, Civic Center, Main Street, Keeseville, NY 12944	B–95–DH–36–0248	255,000
Town of Poestenkill, P.O. Box 210, Poestenkill, NY 12140	B–95–DH–36–0250	382,000
County of Washington, County Office Building, Upper Broadway, Fort Edward, NY 12828	B–95–DH–36–0251	600,000
County of Columbia, 401 State St. Office Bldg, Hudson, NY 12534	B–95–DH–36–0254	200,000
County of Columbia, 401 State St. Office Bldg, Hudson, NY 12534	B–95–DH–36–0255	400,000

APPENDIX A—1995 SMALL CITIES GRANTEES—Continued

Grantee	Grant No.	Amount
Village of Dresden, One Firehouse Avenue, Dresden, NY 14441	B–95–DH–36–0256	400,000
Village of Warsaw, P.O. Box 49, Warsaw, NY 14569	B–95–DH–36–0259	400,000
Town of Southport, 1139 Pennsylvania Avenue, Town Hall, Elmira, NY 14904	B–95–DH–36–0261	233,000
County of Tioga, 56 Main Street, Owego, NY 13827	B–95–DH–36–0262	600,000
Town of Chesterfield, Town Hall, Keeseville, NY 12944	B–95–DH–36–0263	400,000
Town of Prattsburgh, 15 Chapel Street, Prattsburgh, NY 14873	B–95–DH–36–0264	400,000
Village of McGraw, P.O. Box 676—Cemetery Street, McGraw, NY 13101	B–95–DH–36–0265	793,407
Village of Potsdam, Civic Center, P.O. Box 5168, Potsdam, NY 13676	B–95–DH–36–0266	600,000
Town of Colchester, Town Hall—Main Street, P.O. Box 554, Downsville, NY 13755	B–95–DH–36–0267	162,520
Town of Malone, 12 Elm Street, Malone, NY 12953	B–95–DH–36–0270	350,000
Village of Harrisville, State Street, P.O. Box 249, Harrisville, NY 13648	B–95–DH–36–0272	400,000
City of Oneida, City Hall-109 N. Main St, P.O. Box 550, Oneida, NY 13421	B–95–DH–36–0273	900,000
Town of Preston, RR 2—Box 288, Oxford, NY 13830	B–95–DH–36–0275	400,000
Town of New Berlin, 21 North Main Street, P.O. Box 163, New Berlin, NY 13411	B–95–DH–36–0278	339,600
City of Cortland, City Hall, 25 Court Street, Cortland, NY 13045	B–95–DH–36–0279	400,000
Town of Verona, Germany Road, Road #1—Box 249, Durhamville, NY 13054	B–95–DH–36–0280	400,000
County of St. Lawrence, County Courthouse, 48 Court Street, Canton, NY 13617	B–95–DH–36–0282	600,000
Town of Middletown, P.O. Box 577, Margaretville, NY 12455	B–95–DH–36–0283	81,750
Town of Elizabethtown, Town Hall, Court Street, Elizabethtown, NY 12932	B–95–DH–36–0286	400,000
Town of Hornellsville, Park Avenue, Arkport, NY 14807	B–95–DH–36–0287	248,892
Town of Independence, P.O. Box 38, Marietta Avenue, Whitesville, NY 14897	B–95–DH–36–0288	400,000
City of Johnstown, City Hall, 33-41 East Main Street, Johnstown, NY 12095	B–95–DH–36–0294	900,000
Village of Whitehall, 1 Saunders Street, Village Hall, Whitehall, NY 12877	B–95–DH–36–0295	842,680

[FR Doc. 95–21980 Filed 9–5–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY985–01–0777–64]

Change of Address/Relocation and Office Closure: Wyoming

SUMMARY: Effective on or about September 25, 1995, the Wyoming State Office will be relocating to 5353 Yellowstone, Cheyenne, Wyoming 82009–4137. The mailing address will remain: Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Please address all correspondence to this address.

Because of the relocation of the BLM Wyoming State Office, records will be unavailable for inspection, and the Public Room will be closed on the following dates: September 25 through September 27, 1995. We plan to have the Public Room open for business and records review on September 28, 1995 from 9:00 a.m. to 4:00 p.m., normal Public Room hours.

EFFECTIVE DATE: September 25, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Bennett, Supervisory Contact Representative, BLM, Wyoming State Office, 307–775–6131.

Alan R. Pierson,

State Director.

[FR Doc. 95–21974 Filed 9–5–95; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 26, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 21, 1995.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Barbour County

Grace Episcopal Church, Louisville St. S of Courthouse Sq., Clayton, 95001116

ARKANSAS

Franklin County

Franklin County Courthouse, 211 W. Commercial St., Ozark, 95001123

Johnson County

Dickerson, N. E., Store, E of AR 215, Ozark, 95001124

Logan County

Burnett Springs, End of Co. Rd. 704, approximately one mi. E of Corley, Corley vicinity, 95001126

Schriver House, Leo Ave., N of jct. with AR 22, Subiaco vicinity, 95001125

Lonoke County

Coy Mound Site, Address Restricted, Coy vicinity, 95001120

Pulaski County

Boyle Park (Facilities Constructed by Civilian Conservation Corps in Arkansas MPS), Roughly bounded by 38th St., Dorchester Dr., Covewood Cir., Glenmere Dr., Kanis Rd. and W. 12th St., Little Rock, 95001119

Sharp County

Hardy Downtown Historic District, Roughly bounded by Kelly, Front, Church and 3rd Sts., Hardy, 95001121

COLORADO

Douglas County

Louviers Village Club, Jct. of Louviers Blvd. and First St., Louviers, 95001117

MISSOURI

Platte County

Banneker, Benjamin, School, 31 W. Eighth St., Parkville, 95001115

NORTH CAROLINA

Lincoln County

Sales Union Church and Cemetery, Jct. of NC 1005 (Startown Rd.) and NC 1274 (Maiden—Salem Rd.), SE corner, Maiden vicinity, 95001118

SOUTH DAKOTA

Davison County

Kibbee—Nepstad House, 409 E. Fifth Ave., Mitchell, 95001122

[FR Doc. 95–21972 Filed 9–5–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32689]
[Finance Docket No. 32689 (Sub-No. 1); Finance Docket No. 32690]

Patrick D. Broe, OmniTRAX, Inc., and Chicago Rail Link, L.L.C.—Control—Calumet Western Railway Company in Cook County, IL; Calumet Western Railway Company Restructuring in Cook County, IL; Indiana Harbor Belt Railroad Company—Acquisition Exemption—Calumet Western Railway Company in Cook County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: In Finance Docket No. 32689, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition of control by Patrick D. Broe, OmniTRAX,Inc., and Chicago Rail Link, L.L.C. (CRL), of Calumet Western Railway Company (Cal West) through purchase of its outstanding stock. In Finance Docket No. 32689 (Sub-No. 1), the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition by Cal West of certain track and the acquisition by CRL of certain operating and trackage rights. In Finance Docket No. 32690, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–45 the acquisition by Indiana Harbor Belt Railroad Company of a segment of track and certain operating and trackage rights. The exemptions are subject to standard employee protective conditions.

DATES: The exemptions will be effective on September 21, 1995. Petitions for stay must be filed by September 18, 1995, and petitions to reopen must be filed by September 26, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32689, Finance Docket No. 32689 (Sub-No. 1), and Finance Docket No. 32690, to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Louis E. Gitomer, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [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., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22028 Filed 9–5–95; 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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Individuals or households. Other: Individuals or households. Required information is needed to maintain a closed system of records by requiring the individual practitioner to keep records of (1) complimentary samples of controlled substances dispensed to patients and (2) controlled substances which are both administered and dispensed to patients.

(4) 100,500 respondents/recordkeepers with .5 hours per response.

(5) 50,250 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22007 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Roberts B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Import/Export Declaration: Precursor and Essential Chemicals.

(2) Form: DEA Form 486. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individual or households. The Chemical Diversion and Trafficking Act of 1988 requires those who import/export certain chemicals to notify DEA 15 days prior to shipment. Information will be used to prevent shipments not intended for legitimate purposes.

(4) 1,800 respondents .20 hours per response.

(5) 364 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22008 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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) 295–7340 *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 the 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.

New Collection

(1) Regional Coordination Initiative/Regional Field Coordinator Application Form.

(2) Form: None. Office for Victims of Crime, Office of Justice Programs, United States Department of Justice.

(3) Primary: Not-for-profit institutions. Other: State, Local, or Tribal Government. The information requested is necessary to identify Regional Field Coordinators who, with support from the Office for Victims of Crime, will develop and implement regional training and technical assistance projects on victim issues. Victims of Crime Agency administrators and victim service providers across the nation will be given an opportunity to respond via this application.

(4) 70 responses per year at .5 hours per response.

(5) 50 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22009 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–18–M

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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Report of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individual or households. The Domestic Chemical Diversion Control Act of 1993 amends DEA's chemical recordkeeping requirements to remove the exemption for certain drugs which contain ephedrine. Persons who previously were not required to keep records or make reports regarding sales of these products now must do so.

(4) 20,600 responses per year at .17 hours per response. 6,000 records at 1 minute per record.

(5) 1,003,502 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22010 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Reporting on Psychotropic Substances.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. Pursuant to the Economic and Social Council of the United Nations resolution (1991/44) under the United Nations Convention on Psychotropic Substances, the United States must provide to the International Narcotics Control Board of the United Nations certain information concerning psychotropic substances. This collection will provide necessary data to be reported to the United Nations.

(4) 750 responses per year at 1.0 hours per response.

(5) 750 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22011 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act.

(2) Form: DEA Form 510, DEA Form 510a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households. The Domestic Chemical Diversion Control Act requires that distributors, importers, and exporters of listed chemicals which are being diverted in the United States for the production of illicit drugs must register with the DEA. Registration provides a system to aid in the tracking of the distribution of list I chemicals.

(4) 11,500 responses per year at .5 hours per response.

(5) 5,750 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22012 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Removal of Restrictions on Employing Certain Individuals.

(2) Form: None. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government. The information is necessary to maintain a closed system of distribution by requiring notification from DEA registrants of their intent to employ persons convicted of a felony offense.

(4) 100 responses per year at .5 hours per response.

(5) 50 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22013 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 95–511 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 the 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.

Extension of a Currently Approved Collection

(1) Report of Theft or Loss of Controlled Substances.

(2) DEA Form 106. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households. DEA Form 106 was designed to provide a standardized format with which DEA registrants could use to report a discovery of a theft or loss of a controlled substance. The purpose is to maintain an accurate accounting of all controlled substances, monitor substances diverted into illicit markets and develop leads for criminal investigations.

(4) 8398 annual respondents at .5 hours per response.

(5) 4199 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22014 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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;

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(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 the 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.

Extension of a Currently Approved Collection

(1) ARCOS Transaction Reporting.

(2) DEA Form 333. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. The information is necessary for the United States to meet obligations under two international treaties: Single convention on Narcotic Drugs and Convention of Psychotropic Substances. Treaties require information on the manufacture and consumption of certain substances. Information tracks substances from manufacture to sale to dispensing level.

(4) 2,468 annual respondents at 1.0 hours per response.

(5) 2,468 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22015 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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:

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(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 for 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 the 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.

Extension of a Currently Approved Collection

(1) Application for Permit to Export Controlled Substances.

(2) DEA Form 161. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. 21 CFR Section 1312.22 requires individuals who export controlled substances in Schedules I and II to obtain a permit from DEA. The information collected is used to issue export permits and exercise control over the exportation of controlled substances and compile data for submission to the United Nations for treaty requirements.

(4) 67 respondents with an average of 13 responses per year at .247 hours per response.

(5) 215 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22016 Filed 9–05–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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:

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(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 the 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.

Extension of a Currently Approved Collection

(1) Registrants Inventory of Drugs Surrendered.

(2) DEA Form 41. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. Section 1307.21 of 21 CFR requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA Form 41 and submit it to the nearest DEA office. The DEA 41 is used to account for surrendered destroyed controlled substances, and its use is mandatory.

(4) 20,000 respondents with .5 hours per response.

(5) 10,000 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22017 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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:

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(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 Office, 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 the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Office, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Controlled Substances Import/Export Declaration.

(2) DEA Form 236. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: None. DEA Form 236 provides the Drug Enforcement Administration with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws. Affected public consists of businesses or other nonprofit organizations.

(4) 2,760 respondents with .25 hours per response.

(5) 690 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comment on this item is encouraged.

Dated; August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22018 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. Chapter 35) and 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 the 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.

Extension of a Currently Approved Collection

(1) United States Official Order Forms for Schedule I and II Controlled Substances (ACCOUNTABLE FORMS). Order Form Requisition.

(2) DEA Form 222, DEA Form 222a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Business or other for-profit. Other: Individuals or households, Federal Government, State, Local or Tribal Government. DEA Form 222 is used to transfer or purchase schedule I and II controlled substances and the data is needed to provide an audit of the transfer and purchase. DEA Form 222a is used to obtain DEA 222 order form. Respondents are DEA registrants desiring to handle these controlled substances.

(4) 436,000 respondents with .25 hours per response.

(5) 109,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22019 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Application for Registration and Application for Registration Renewal.

(2) DEA Form 363, DEA Form 363a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: Individuals or households. Other: Business or Other for-profit. All firms and individuals who distribute or dispense controlled substances must register with DEA under the Controlled Substance Act. Registration via DEA Form 224 and DEA Form 224a are necessary for adequate oversight control over legal handlers of controlled substances and is used to monitor their activities.

(4) 275,000 responses with .20 hours per response.

(5) 55,000 annual burden hours.

(6) Not applicable under section 3504(h) of Public Law 96–511. Public comment on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22020 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

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 U.S.C. 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 the 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.

Extension of a Currently Approved Collection

(1) Application for Registration and Application for Registration Renewal.

(2) DEA Form 363, DEA Form 363a. Drug Enforcement Administration, United States Department of Justice.

(3) Primary: State, Local or Tribal Government. Other: Business or Other for-profit, Not-for-profit institutions. Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with DEA under the Narcotic Addict Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

(4) 900 respondents with .50 hours per response.

(5) 450 annual burden hours.

(6) Not applicable under section 3504 (h) of Public Law 96–511. Public comments on this item is encouraged.

Dated: August 29, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–22021 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Notice of Postponement of Closed Meeting

This document postpones the September 8, 1995 closed meeting of the President's Committee on the ILO until September 14, 1995. Notice of this closed meeting was previously published in the **Federal Register** on August 16, 1995, 60 FR 42588. The meeting is being postponed because of the scheduling difficulties of certain participants.

The closed meeting will now take place on Thursday, September 14, 1995 at 10:00 am at the U.S. Department of Labor, Third & Constitution Avenue, N.W., Room S–2508, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Joaquin F. Otero, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2235, Washington, DC 20210, Telephone (202) 219–6043.

Signed at Washington, D.C. this 31st day of August, 1995.

Andrew J. Samet,

Associate Deputy Under Secretary International Affairs.

[FR Doc. 95–22080 Filed 9–5–95; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

National Skill Standards Board; Notice of Open Meeting

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the Goals 2000: Educate America Act of 1994, Title V, Pub. L. 103–227. The 28-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

Time and Place: The meeting will be held from 2 p.m. to approximately 5:30 p.m. on Wednesday, September 20, 1995, in the Auditorium of the Francis Perkins Building, Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The agenda for the Board Meeting will include presentations on a variety of methods for occupational clusters.

Public Participation: The meeting from 2 p.m. to approximately 5:30 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact Ed Rugenstein at (301) 495–1591, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ed Rugenstein at (301) 495–1591.

Signed at Washington, DC., this 30th day of August, 1995.

Judy Gray,

Executive Director, National Skill Standards Board.

[FR Doc. 95–22047 Filed 9–5–95; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–76; Exemption Application No. D–09819, et al.]

Grant of Individual Exemptions; John B. Toomey Rollover IRA (the IRA), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

John B. Toomey Rollover IRA (the IRA), Located in Lorton, Virginia

[Prohibited Transaction Exemption 95–76 Exemption Application No. D–09819]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the installment sale of 36.2 shares of common stock (the Stock) in JBT Holding Corporation (JBT) by the IRA [1] to JBT, a disqualified person with respect to the IRA; provided that: (a) The purchase price JBT pays for the Stock is the greater of $410,146 or the fair market value of the Stock on the date of the sale; (b) the fair market value of the Stock is determined by a qualified independent appraiser, as of the date of the sale; (c) the terms of the transaction are no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances; (d) the trustee of the IRA

[1] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

monitors compliance with the terms of the transaction throughout the duration of the installment sale; (e) the IRA receives a cash downpayment of no less than $210,146 on the date of the sale and thereafter receives three (3) equal annual installment payments of $66,667, the first of which is due and payable December 31, 1995, plus interest at the fair market rate of interest, as determined by an independent, qualified third party, as of the date of the transaction, on the outstanding balance of the installment payments, payable annually until all the installment payments have been made by JBT on or before December 31, 1997; (f) the outstanding balance of the installment payments at no time exceeds 25 percent (25%) of the value of the assets of the IRA; (g) the outstanding balance on the installment payments is secured by a recorded first mortgage interest in real property pledged by JBT in favor of the IRA; (h) the collateral which secures the installment payments has a value, as determined by an independent, qualified appraiser, which at all times is no less than 150 percent (150%) of the outstanding balance of the installment payments; and (i) the IRA pays no commissions, fees, or other expenses in connection with the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 21, 1995, at 58 FR 37682.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department (202) 219–8883. (This is not a toll-free number.)

Phillips Petroleum Company (Phillips) Located in Bartlesville, OK

[Prohibited Transaction Exemption 95–77; Exemption Application No. D–09907]

Exemption

The restrictions of sections 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the making of interest-free loans to the Thrift Plan of Phillips Petroleum Company (the Plan) by Phillips, the Plan sponsor pursuant to the terms of a credit facility arrangement; and (2) the repayment of such loans by the Plan to Phillips.

This exemption is conditioned on the following requirements:

(a) Each loan executed under the proposed credit facility arrangement provides short-term funds to the Plan in connection with inter-fund transfers, withdrawals and participant loans and permits the orderly disposal of Phillips common stock.

(b) Each loan made under the proposed credit facility arrangement is unsecured and no interest, commissions or expenses are paid by the Plan.

(c) In the event of a loan default or delinquency, Phillips has no recourse against the Plan.

(d) Each loan is initiated, accounted for and administered by an independent fiduciary who monitors the terms and conditions of the exemption.

Written Comments

The Department received six written comments with respect to the notice of proposed exemption and no requests for a public hearing. Of the written comments received, five commenters recommended that the Department grant the proposed exemption. The sixth commenter questioned whether the proposed credit facility arrangement would be in the best interest of the Plan since it would allow no recourse against Plan assets. The commenter also raised several questions about the Plan's participant loan program.

In response to the sixth commenter, Bankers Trust Company (BTC), the Plan trustee and independent fiduciary with respect to the proposed transactions, notes that the purpose of the credit facility arrangement is to facilitate participant directions regarding their account balances on a more timely basis. According to BTC, receiving the loans on an interest-free basis from Phillips meets this purpose and it allows the Plan to avoid the expense of its current credit facility arrangement with NationsBank of Dallas, Texas. BTC further represents that by requiring that the loans be on a non-recourse basis provides an additional safeguard to the Plan and ensures that participant account balances will not be impacted adversely.

With respect to the Plan's participant loan program, the commenter has inquired about the (a) number of participants in the Plan having outstanding participant loans, (b) the frequency of loan repayments, (c) the percentage of such loans that are in arrears or default, and (d) what safeguards can and should be implemented to prevent depreciation in the value of Phillips common stock.

Phillips has responded to each of the commenter's concerns on these matters. In this regard, Phillips represents that as of July 17, 1995, approximately 2,000 participants had outstanding participant loans with the Plan. Phillips notes that for these loans, repayment schedules range from three months to 180 months in duration depending upon the election of the participant. Phillips further explains that virtually none of the loans are in arrears or default since the Plan requires that loan repayments be made by payroll deduction or repaid in full. However, should a participant loan be in default, Phillips states that there will be no impact on Plan participants since the participant's account will serve as security for the loan and the event of default will become a taxable distribution to the participant. Finally, Phillips notes that neither the Plan nor BTC can control the value of Phillips common stock that is held by the Plan and that the intent of the exemption is to allow participants the flexibility of moving into or out of stock funds with the value of the stock established as of the transaction valuation date.

Technical Correction

The Department notes that the correct application number for the subject request is ''D–09907'' and not ''D–09909'' as it appeared in the proposed exemption. Therefore, the Department has incorporated this revision into the grant notice.

After giving full consideration to the entire record, including the written comment that was submitted and the responses made by BTC and Phillips, the Department has decided to grant the exemption as described and revised above. The comment letter and responses have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 7, 1995 at 60 FR 30106.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

KeyCorp 401(k) Savings Plan (the Plan), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 95–78; Exemption Application No. D–10023]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the

application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of funds (the Loan) to the Plan by KeyCorp the sponsor of the Plan, with respect to Guaranteed Investment Contract No. 62149 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the potential repayment by the Plan of the Loan upon receipt of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or other expenses are paid by the Plan in connection with the Loan; (b) All of the terms and conditions of the Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) The Loan will be no less than the amount described in paragraph 4 of the Notice of Proposed Exemption; (d) The repayment of the Loan will not exceed the total amount of the Loan; (e) The repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation or other responsible third parties with respect to the GIC; and (f) The repayment of the Loan will be waived to the extent the amount of the Loan exceeds the proceeds the Plan receives from the GIC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1995 at 60 FR 33871.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Bank of New York (the Bank) Located in New York, New York

[Prohibited Transaction Exemption 95–79; Application No. D–10030]

Exemption

Section I—Exemption for the Acquisition, Holding and Disposition of BNY Stock

The restrictions of sections 406(a)(1)(D), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply to the acquisition, holding or disposition of the common stock of the Bank's parent corporation, The Bank of New York Company, Inc. (BNY Stock), by Index or Model-Driven Funds, if the following conditions and the General Conditions of Section II are met:

(a) The Index or Model-Driven Fund is based on an index which represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (1) engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients, (2) a publisher of financial news or information, or (3) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of the Bank and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of the Bank or its affiliates.

(b) The acquisition or disposition of the BNY Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(c) All acquisitions comply with Rule 10b–18 of the Securities and Exchange Commission, including the limitations regarding the price paid or received for such stock.

(d) Aggregate daily purchases of BNY Stock constitute no more than the greater of: (1) 10 percent of the stock's average daily trading volume for the previous five days; or (2) 10 percent of the stock's trading volume on the date of the transaction.

(e) If the necessary number of shares of BNY Stock cannot be acquired within 10 business days from the date of the event which causes the particular Index or Model-Driven Funds to require BNY Stock, the Bank appoints a fiduciary which is independent of the Bank and its affiliates to design acquisition procedures and monitor the Bank's compliance with such procedures.

(f) All purchases and sales of BNY Stock are executed on the national exchange on which BNY Stock is primarily traded.

(g) No transactions involve purchases from, or sales to, the Bank or any affiliate (including officers, directors and employees of the Bank, as defined in Section III(c) below), or any party in interest with respect to a plan which has invested in an Index or Model-Driven Fund.

(h) No more than five (5) percent of the total amount of BNY Stock issued and outstanding at any time is held in the aggregate by the Index and Model-Driven Funds.

(i) BNY Stock constitutes no more than two (2) percent of the value of any independent third-party index on which the investments of an Index or Model-Driven Fund are based.

(j) A plan fiduciary independent of the Bank and its affiliates authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds BNY Stock.

(k) A fiduciary independent of the Bank and its affiliates directs the voting of the BNY Stock held by an Index or Model-Driven Fund on any matter in which shareholders of BNY Stock are required or permitted to vote.

Section II—General Conditions

(a) The Bank maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of the exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) through (D) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions

(a) Index Fund—Any investment fund, account or portfolio sponsored, maintained and/or trusteed by the Bank, or an affiliate of the Bank, in which one or more investors invest which is designed to replicate the capitalization-weighted composition of a stock index which satisfies the conditions of Section I(a) and (i).

(b) Model-Driven Fund—Any investment fund, account or portfolio sponsored, maintained and/or trusteed by the Bank, or an affiliate of the Bank, in which one or more investors invest which is based on computer models using prescribed objective criteria to transform an independent third-party stock index which satisfies the conditions of Section I (a) and (i).

(c) Affiliate—Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or a sister of such person; and any corporation or partnership of which such person is an officer, director, or partner.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 12, 1995, at 60 FR 35944.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Rollover Individual Retirement Accounts for Joseph Shepard, Located in Jacksonville, Florida; William Haspel, Located in Bethesda, Maryland; and Richard Geisendaffer, Paul Petryszak, William Kroh and Rolf Graage, Located in Baltimore, Maryland (Collectively, the IRAs)

[Prohibited Transaction Exemption 95–80; Exemption Application Nos. D–10054–10059]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale by the IRAs of all the common stock (the Stock) of Purchase Port Services, Inc. (PPS) held by the IRAs to PPS, provided that the following conditions were satisfied: (1) The sale of Stock by each IRA was a one-time transaction for cash; (2) no commissions or other expenses were paid by the IRAs in connection with the sale; and (3) the IRAs received the greater of: (a) the fair market value of the Stock as determined by a qualified independent appraiser as of May 31, 1995, or (b) the fair market value of the Stock as of the time of the sale.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 21, 1995 at 60 FR 37688.

EFFECTIVE DATE: This exemption is effective July 28, 1995.

WRITTEN COMMENT: The Department received one written comment with respect to the proposed exemption, which was submitted by the applicants. The applicants had represented (see notice of proposed exemption, rep. 4) when they filed their exemption application that ''Business and income tax considerations have compelled PPS to consider making an election to be treated as a 'Subchapter S' Corporation under section 1362(a) of the Code.'' The applicants noted in their comment letter that subsequent to the filing of the exemption request, PPS determined that, rather than electing Subchapter S Corporation status itself, PPS would merge into its subsidiary, Hobelmann Port Services, Inc. (HPS), and that HPS would elect Subchapter S Corporation status. That merger was concluded effective July 31, 1995, and HPS elected Subchapter S Corporation status effective August 1, 1995. The applicants represent that the decision to make HPS rather than PPS the entity to elect Subchapter S status was made for business purposes unrelated to the redemption of the IRAs' shares, and is not material to the requested exemption.

The applicants also requested that the exemption be made effective July 28, 1995, instead of July 31, 1995, as had been proposed. The sale of shares from the IRAs to PPS occurred on July 28, 1995 to allow sufficient time before July 31, 1995 to complete other steps relating to the Subchapter S Corporation election. The applicants represent that the sale was made in accordance with all of the conditions set forth in the proposed exemption.

The Department has considered the entire record, including the comment submitted by the applicants, and has determined to grant the exemption effective July 28, 1995.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[2] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 31st day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22042 Filed 9–5–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09956, et al.]

Proposed Exemptions; TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request; and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

TSC International Ltd., Custom Marketing and Import Profit Sharing Plan (the Plan) Located in Kansas City, MO

[Application No. D–09956]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed (1) redemption by TSC International Merchandising Ltd., Custom Marketing and Import Company (TSC) of 19,000 shares of common stock issued by TSC and held by the Plan; and (2) the extension of credit by the Plan to TSC in connection with the redemption of the stock.[1]

The proposed exemption is conditioned on the following requirements:

(1) The redemption price for the stock is determined by a qualified, independent appraiser.

(2) The note which evidences the redemption price for the stock represents not more than 25 percent of the Plan's assets.

(3) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(4) The stock, which secures TSC's obligations under the note, at all times represents 200 percent of the outstanding balance of the note; however, if the value of the stock ever falls below the 200 percent level, TSC will pledge additional collateral.

(5) The Plan is not required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(6) Boatmen's First National Bank of Kansas City (Boatmen's) holds certificates representing the stock in an escrow account until TSC pays the redemption price in full.

(7) The Plan increases its liquidity and investment yield by disposing of an asset and receives cash to promote asset diversification.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with Mr. Jack Hardgree as its only participant. As of December 12, 1994, the Plan had net assets of $565,500. The trustee of the Plan and the decisionmaker with respect to the Plan's investments is Mr. Hardgree.

2. TSC is a ''C'' corporation that maintains its principal place of business in Prairie Village, Kansas. It is engaged in the import business and primarily deals in metal products for U.S. manufacturers. Mr. Hardgree is the sole director, officer and employee of TSC.

3. The Plan currently holds 19,000 shares of common stock of TSC. The stock has a stated par value of $10 per share and it is not publicly-traded. The shares of stock that are held by the Plan represent 97 percent of the issued and outstanding stock of TSC. The 3 percent remaining shares of stock are owned by Mr. Hardgree.

4. Prior to the incorporation of TSC in January 1984, Mr. Hardgree was a manufacturer's representative with an unrelated company, Merchandise International, Inc. (MII). That company had a money purchase pension plan (the MII Plan) with individually-directed accounts. In late 1983, Mr. Hardgree resigned from his employment with MII, having been bought out by the two remaining principals of MII. Although Mr. Hardgree had no further connections with MII as an employee or

[1] Because Mr. Jack Hardgree is the sole participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

owner after his resignation, he continued to participate in the MII Plan.

5. In January 1984, Mr. Hardgree formed TSC. At the time of incorporation of TSC, Mr. Hardgree, in his personal capacity, acquired 500 shares of TSC common stock directly from TSC for $10 per share. This amount represented the par value of such stock. In May 1985, Mr. Hardgree directed the trustee of the MII Plan to acquire, from TSC, 9,500 shares of TSC common stock for his individually-directed account in such Plan. The acquisition price for the stock was $10 per share. Although the stock had been authorized in TSC's corporate charter, it had not been been issued.

In 1986, Mr. Hardgree again directed the trustee of the MII Plan to acquire, from TSC, an additional 9,500 shares of TSC's authorized but unissued common stock, for his individually-directed account in the MII Plan. The acquisition price for the stock was also established at $10 per share. It is represented that at the time of both stock acquisitions, Mr. Hardgree had no interest in MII other than as a participant in the MII Plan. It is also represented that following the stock acquisitions, TSC common stock constituted the majority of the assets of Mr. Hardgree' account in the MII Plan.[2]

6. In January 1991, TSC established the Plan by adopting the Mid American Bank & Trust Company Defined Contribution Master Plan. Soon after the establishment of the Plan, the trustee of the MII Plan transferred all 19,000 shares of TSC common stock to Mid American Bank & Trust Company, the former trustee of the Plan, in a ''trustee-to-trustee transfer.'' It is represented that Mr. Hardgree was advised that the stock transfer which was made on behalf of the Plan did not constitute a prohibited transaction.[3]

7. Mid American Bank & Trust Company later became part of Johnson County Bank which was thereafter acquired by Mercantile Bank. In December 1994, Mercantile Bank became the custodian for the Plan and Mr. Hardgree, the trustee.

8. TSC paid an unrelated third-party investment banking firm, Stern Brothers & Co. of Kansas City, Missouri for a valuation report of the 19,000 shares of TSC common stock that are held by the Plan. According to the appraisal report dated December 14, 1994, which was prepared by Messrs. John C. Korschot, CFA, ASA, CBA and David K. Jones, CBA of the firm, as of December 2, 1994, the 19,000 shares of TSC common stock held by the Plan had a fair market value of $535,500 or $27.46 per share. The appraisers stated that they used the adjusted book value approach and the market comparison approach in rendering their opinion as to the fair market value of the Plan's controlling interest in the stock. In addition, the appraisers explained that they applied a discount factor of 15 percent to the initial value of $640,000 they had determined for the stock due to its lack of marketability. The appraisers further noted that a control premium was implied in the $640,000 initial value.

9. Although the value of TSC common stock and Plan assets have increased significantly, it is represented that by holding only TSC stock, the Plan is in an illiquid position should assets be needed for distributions. Moreover, it is represented that TSC cannot promise that its stock will hold or increase in value. Therefore, TSC requests an administrative exemption from the Department in order to redeem the shares of TSC common stock that are held by the Plan in return for cash and a promissory note.

10. TSC proposes to redeem the stock held by the Plan by giving the Plan a cash downpayment of $394,125 and a promissory note in the principal amount of $141,375. The note will bear a fixed rate of interest of 11 percent per annum. The note will also provide for monthly installments of principal and interest over a period of two years after the date of the redemption. The note may be prepayable without penalty at any time by TSC. In addition, the Plan will not be required to pay any fees or commissions in connection with the redemption of the TSC common stock or with respect to the administration of the proposed loan.

11. The note will be secured by the shares of the TSC common stock that are redeemed from the Plan. The security interest in such shares will be a first security interest and it will be governed by an escrow agreement (the Escrow Agreement) between TSC and Boatmen's, with whom TSC currently has a revolving loan arrangement, as escrow agent. At all times, the fair market value of the stock will represent 200 percent of the outstanding principal balance of the note. If, however, the fair market value of the stock should ever fall below this level, TSC will pledge additional collateral to cover the loan payments made under the note. As further security, Mr. Hardgree will assign a portion of his life insurance policy in the amount of the note.

12. By letter dated June 23, 1995, TSC received a loan commitment in the amount of $141,375 from an unrelated lender, Missouri Bank & Trust Company of Kansas City (Missouri Bank & Trust). The terms offered by Missouri Bank & Trust are comparable to the terms of the note.

13. Under the Escrow Agreement, TSC will pledge all 19,000 shares of the stock that are redeemed from the Plan by the delivery of certificates evidencing such pledged shares to Boatman's. Boatmen's will hold the certificates until the loan is repaid. If at any time TSC defaults in the payment of principal or interest on the note, and the default remains uncured for two months after written notice, the entire unpaid principal amount of the note and accrued interest thereon will become immediately due and payable. Then, the Plan will have all of the certificates on deposit delivered to it. At the end of 20 days after receipt of a written demand from the Plan, together with evidence that the notice of the demand has been given to TSC, Boatmen's will deliver to the Plan the certificates held by Boatmen's. If, however, satisfactory proof is presented to Boatmen's that all installments of the note have been paid, Boatmen's will deliver to TSC, the shares remaining in its possession. Afterwards, all obligations between the Plan, TSC and Boatmen's will cease.

The Plan will not be required to pay any fees or expenses in connection with the administration of the Escrow Agreement. Further, no parties to the Escrow Agreement will grant a security interest in any of the securities deposited with Boatmen's or create a lien, encumbrance, or other claim against monies or borrow from such stock.

14. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The redemption price for the stock has been determined by a qualified, independent appraiser.

(b) The note which evidences the redemption price for the stock will represent 25 percent of the Plan's assets.

(c) The terms of the note are based upon terms that are comparable to those that would be extended by a third party lender.

(d) The stock, which secures TSC's obligations under the note, at all times will represent 200 percent of the outstanding balance of the note.

[2] The Department expresses no opinion herein on whether the acquisition of TSC common stock by Mr. Hardgree's individually-directed account in the MII Plan violated any of the provisions of Part 4 of Title I of the Act.

[3] The Department expresses no opinion herein on whether the transfer of the TSC common stock from the MII Plan to the Plan violated the exclusive benefit rule of section 401(a) of the Code.

(e) The Plan will not be required to pay any fees or commissions in connection with the redemption of the stock or the administration of the note.

(f) Boatmen's will hold certificates representing the stock in an escrow account until TSC pays the redemption price for the stock in full.

(g) The Plan will increase its liquidity and investment yield by disposing of an asset and receive cash to promote greater asset diversification.

Notice to Interested Persons

Because Mr. Hardgree is the only participant in the Plan who will be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 31st day of August, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22043 Filed 9–5–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–084]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; 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 NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: October 17, 1995, 8:30 a.m. to 4:30 p.m.; October 18, 1995, 8:30 a.m. to 4:30 p.m.; and October 19, 1995, 8:30 a.m. to 11:30 a.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268A, Room 2120, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5567.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—NASA Actions on Committee's Previous Recommendations
—NASA Human Factors Overview and Updates on Ames Research Center and Langley Research Center Programs
—Crew-Centered Design Philosophy
—Aviation Safety and Automation Program
—Human Engineering Methods
—Air Traffic Management Human Factors

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 visitors register.

Dated: August 31, 1995.

Danalee Green,

Management Controls Office.

[FR Doc. 95–22076 Filed 9–5–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the President's Committee on the Arts and the Humanities will hold five Regional Planning Meetings in the month of September 1995.

The date, times, and locations are as follows:

Dates/times	Locations
September 13 from 2:30 p.m. to 4:30 p.m.	Lyndon Baines Johnson Library, 2313 Red River Street, Austin, TX 78705.
September 15 from 1:30 p.m. to 3:30 p.m.	J. Paul Getty Trust, 401 Wilshire Boulevard, Santa Monica, CA 90401.
September 18 from 2:30 p.m. to 4:30 p.m.	Room 527, Nancy Hanks Center, 1100 Pennsylvania Avenue, Washington, DC 20506.
September 19 from 2:00 p.m. to 4:00 p.m.	American Express Company, 200 Vesey Street, New York, NY 10285.
September 22 from 2:00 p.m. to 4:00 p.m.	Sara Lee Corporation, Three First National Plaza, Chicago, IL 60602.

These meetings will be open to the public on a space available basis for the purpose of planning for the future.

If, in the course of discussion, it becomes necessary for the Committee to discuss nonpublic commercial or financial information of intrinsic value, the committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the committee in closed session, in accordance with subsection (c)(6) of U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: August 30, 1995.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 95–22075 Filed 9–5–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–925]

Consideration of Amendment Request for Decommissioning the Cimarron Corporation Facility in Crescent, Okla., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Cimarron Corporation Facility in Crescent, Oklahoma, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM–928, issued to the Cimarron Corporation (the Licensee), for the decommissioning of its former nuclear fuel fabrication facility in Crescent, Oklahoma.

The Licensee requested the amendment in a letter dated May 4, 1995, requesting that License No. SNM–928 be amended to incorporate the decommissioning plan (DP) for the Cimarron facility submitted to NRC in April 1995. Radioactive contamination at the Cimarron facility resulted from operations to produce enriched uranium reactor fuels conducted from 1965 through 1977. The Licensee also submitted a site characterization report in support of the DP. The license amendment would authorize the Licensee to decommission the Cimarron facility in accordance with the DP.

The NRC will require the Licensee to remediate the Cimarron facility to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents and doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Cimarron Corporation, Kerr-McGee Center, P.O. Box 25861, Oklahoma City, OK, 73125, Attention: Mr. Jess Larsen, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, MD, this 23rd day of August 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22039 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Co.; Trojan Nuclear Power Station; Federal Court Decision and Opportunity for Public Comments

On July 20, 1995, the United States Court of Appeals for the First Circuit issued a decision granting a petition by the Citizens Awareness Network (''CAN'') for review of a decision by the Nuclear Regulatory Commission. *See Citizens Awareness Network, Inc. v. NRC*, No. 94–1562, _____ F.3d _____, 1995 WL 419188 (1st Cir., July 20, 1995). The First Circuit found that the Commission erred when it rejected CAN's request for a hearing on the component removal project (''CRP'') that Yankee Atomic Electric Power Company (''YAEC'') is carrying out as part of decommissioning the Yankee Nuclear Power Station, located in Rowe, Massachusetts. The Court held that ''CAN was entitled to a hearing under section 189a [of the Atomic Energy Act of 1954] in connection with the NRC decision to permit YAEC's early CRP.'' Slip op. at 26. The Court also held that

the Commission had violated the National Environmental Policy Act by permitting YAEC to initiate the CRP before the agency had prepared an environmental assessment or impact statement. The Court remanded the case to the Commission for further action in accordance with these holdings.

In reaching these results the Court criticized the Commission's change in interpretation of its 1988 decommissioning regulations [1] that it announced in a staff requirements memorandum dated January 14, 1993. In that memorandum, the Commission decided to allow its licensees to conduct ''any decommissioning activity'' prior to NRC approval of a decommissioning plan, so long as the activity did not ''violate the terms of the licensee's existing license * * * or 10 CFR 50.59 as applied to the existing license.'' Previously, the Commission had required that ''major dismantling and other activities * * * must await NRC approval of a decommissioning plan.'' *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–91–2, 33 NRC 61, 73 n.5 (1991). *Accord, Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61 n.7 (1992). Relying on the Commission's new interpretation, YAEC began removing major components from its Yankee reactor before obtaining approval of a decommissioning plan.[2] In its decision, the First Circuit held (among other things) that the Commission had failed to give an adequate explanation for its shift in policy.

The Commission will not seek either rehearing of this decision by the First Circuit or review in the United States Supreme Court. When the First Circuit's mandate issues, the Commission will comply with the decision.[3] The Commission currently believes that, pending completion of its ongoing rulemaking on decommissioning, further decommissioning activities must be conducted under existing NRC regulations as the Commission interpreted and applied them prior to the 1993 change in interpretation that the court rejected.[4] Prior to January, 1993, NRC licensees could not initiate major dismantling activities prior to Commission approval of a decommissioning plan. Furthermore, prior to 1993 the Commission consistently offered opportunities for hearings on proposed decommissioning plans.[5]

By a separate notice published today the Commission is soliciting public comments on how to proceed on remand in the Yankee proceeding itself. But other nuclear power plants contemplating or engaged in decommissioning may also be affected by the First Circuit decision. The most notable of these is the Trojan Nuclear Power Station, located near Portland, Oregon, and operated by Portland General Electric (''PGE''). Currently, PGE is engaged in a program of dismantlement and removal of large components in advance of receiving NRC approval of the Trojan decommissioning plan. The Trojan decommissioning plan was submitted to the NRC in January, 1995, and review by the NRC staff is currently in progress.

In view of the First Circuit decision the Commission intends to issue a **Federal Register** notice offering an opportunity for a hearing on whether to approve the Trojan plan. In addition, the Commission is considering whether it is necessary to halt any decommissioning activity at Trojan, pending a hearing. The First Circuit decision does not require the Commission to take affirmative action halting dismantling activities currently being conducted in reliance on the interpretation rejected by the court. Nonetheless, the Commission's prior interpretation of its rules precludes major dismantling activities prior to approval of a decommissioning plan.

Comments submitted at this time by interested persons should address the Commission's legal authority to allow or forbid further decommissioning activity at Trojan and should address the current balance of equities, including (1) any consequences for public health and safety and the environment, (2) the costs to PGE and others from interrupting decommissioning activities, and (3) the public interest. The Commission also requests comments on the Commission's proposed response to the First Circuit decision as a general matter. Alternative suggestions on how the Commission should oversee decommissioning in the wake of the First Circuit decision are welcome.

The NRC requests PGE to submit its comments no later than 10 calendar days after publication of this notice. The NRC requests other interested members of the public to submit comments as soon thereafter as possible, but no later than 17 calendar days after publication of this notice. The NRC promptly will place copies of all comments in its Public Document Room and in the Local Public Document Room at the Trojan site.

In addition, PGE and the parties to the Oregon state proceeding reviewing the Trojan CRP should serve their comments directly on each other and on the NRC staff. All comments should be addressed to: Emile Julian, Chief, Docketing and Service Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Service of comments on the NRC Staff may be accomplished by addressing them to: Seymour H. Weiss, Chief, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Lawrence J. Chandler, Esq., Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal Workdays.

FOR FURTHER INFORMATION CONTACT: Charles Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 415–1606.

Dated at Rockville, MD, this 30th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95–22034 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[1] *See* 53 FR 24018 (June 27, 1988).

[2] Subsequently, on February 14, 1995, the NRC approved a decommissioning plan for Yankee Rowe. *See* 60 FR 9870 (February 22, 1995). During the approval process, the NRC staff held an informal public meeting to receive comments about the plan.

[3] Pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the Court's mandate will issue no later than September 12, 1995, unless the intervenor YAEC petitions for rehearing or obtains a stay of mandate pending a petition for Certiorari.

[4] The Commission has published for comment a proposed decommissioning rule that would introduce significant changes in the present regulations. *See* 60 FR 37374 (July 20, 1995). Because this new rulemaking is underway, the Commission does not intend to undertake procedures to reinstate the 1993 policy change.

[5] The NRC staff offered an opportunity for hearings on proposed orders approving the Shoreham, Fort St. Vrain, and Rancho Seco decommissioning plans, which were the only plans approved under the Commission's 1988 decommissioning regulations. *See, e.g.,* 56 FR 66459 (December 23, 1991); 57 FR 8940 (Mar. 13, 1992); and 57 FR 9577 (Mar. 19, 1992). A hearing was requested on the Rancho Seco plan and was being conducted when the case was settled. A hearing was requested on the Shoreham plan, but the case was settled before the hearing opened.

[Docket No. 50–29]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Federal Court Decision and Opportunity for Public Comments

On July 20, 1995, the United States Court of Appeals for the First Circuit issued a decision granting a petition by the Citizens Awareness Network (''CAN'') for review of a decision by the Nuclear Regulatory Commission. *See Citizens Awareness Network, Inc. v. NRC,* No. 94–1562, ———F.3d———, 1995 WL 419188 (1st Cir., July 20, 1995). The First Circuit found that the Commission erred when it rejected CAN's request for a hearing on the component removal project (''CRP'') that Yankee Atomic Electric Power Company (''YAEC'') is carrying out as part of decommissioning the Yankee Nuclear Power Station, located in Rowe, Massachusetts. The Court held that ''CAN was entitled to a hearing under section 189a (of the Atomic Energy Act of 1954) in connection with the NRC decision to permit YAEC's early CRP.'' Slip op. at 26. The Court also held that the Commission had violated the National Environmental Policy Act by permitting YAEC to initiate the CRP before the agency had prepared an environmental assessment or impact statement. The Court remanded the case to the Commission for further action in accordance with these holdings.

In reaching these results the Court criticized the Commission's change in interpretation of its 1988 decommissioning regulations [1] that it announced in a staff requirements memorandum dated January 14, 1993. In that memorandum, the Commission decided to allow its licensees to conduct ''any decommissioning activity'' prior to NRC approval of a decommissioning plan, so long as the activity did not ''violate the terms of the licensee's existing license * * * or 10 CFR 50.59 as applied to the existing license.'' Previously, the Commission had required that ''major dismantling and other activities * * * must await NRC approval of a decommissioning plan.'' *See Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–91–2, 33 NRC 61, 73 n.5 (1991). *Accord, Sacramento Municipal Utility District* (Rancho Seco Nuclear Generating Station), CLI–92–2, 35 NRC 47, 61 n.7 (1992). Relying on the Commission's new interpretation, YAEC began removing major components from its Yankee reactor before obtaining approval of a decommissioning plan.[2] In its decision, the First Circuit held (among other things) that the Commission had failed to give an adequate explanation for its shift in policy.

The Commission will not seek either rehearing of this decision by the First Circuit or review in the United States Supreme Court. When the First Circuit's mandate issues, the Commission will comply with the decision.[3] By this notice the Commission intends (1) to inform persons with an interest in decommissioning activities at Yankee about the Commission's present views on what compliance likely will entail and (2) to solicit those persons' views on the compliance issue.

The Commission currently believes that, pending completion of its ongoing rulemaking on decommissioning, further decommissioning activities must be conducted under NRC decommissioning regulations as the Commission interpreted and applied them prior to the 1993 change in interpretation that the court rejected.[4] Prior to January, 1993, NRC licensees could not initiate major dismantling activities prior to Commission approval of a decommissioning plan. Furthermore, prior to 1993 the Commission consistently offered opportunities for hearings on proposed decommissioning plans.[5]

Thus, after the mandate issues, the Commission intends to issue a **Federal Register** notice that will offer an opportunity for a hearing on the Yankee decommissioning plan and on whatever remains to be done under the CRP. In addition, the Commission is considering whether it is necessary to halt any decommissioning activity at Yankee, pending a hearing. The First Circuit's decision does not require the Commission to take affirmative action halting dismantling activities YAEC currently is conducting in reliance on the interpretation rejected by the court. Nevertheless, the Commission's prior interpretation of its rules precludes major dismantling activities prior to approval of a decommissioning plan.

Comments submitted at this time by interested persons should address the Commission's legal authority to allow or forbid further decommissioning activity at Yankee and should address the current balance of equities, including (1) any consequences for public health and safety and the environment, (2) the costs to YAEC and others from interrupting decommissioning activities, and (3) the public interest. The Commission also requests comments on the Commission's proposed response to the First Circuit decision as a general matter. Alternative suggestions on how the Commission should oversee decommissioning in the wake of the First Circuit decision are welcome.

The NRC requests YAEC to submit its comments no later than 10 calendar days after publication of this notice. The NRC requests other interested members of the public, including CAN, to submit comments as soon thereafter as possible, but no later than 17 calendar days after publication of this notice. The NRC promptly will place copies of all comments in its Public Document Room and in the Local Public Document Room at the Yankee site.

In addition, CAN and YAEC should serve their comments on each other and on the NRC staff. All comments should be addressed to: Emile Julian, Chief, Docketing and Service Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Service of comments on the NRC Staff may be accomplished by addressing them to: Seymour H. Weiss, Chief, Non-Power Reactors and Decommissioning Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Lawrence J. Chandler, Esq., Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may be hand-delivered to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland 20852.

FOR INFORMATION CONTACT: Charles Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission,

[1] *See* 53 FR 24018 (June 27, 1988).

[2] Subsequently, on February 14, 1995, the NRC approved a decommissioning plan for Yankee Rowe. *See* 60 FR 9870 (February 22, 1995). During the approval process, the NRC staff held an informal public meeting to receive comments about the plan.

[3] Pursuant to Rule 41 of the Federal Rules of Appellate Procedure, the Court's mandate will issue no later than September 12, 1995, unless the intervenor YAEC petitions for rehearing or obtains a stay of mandate pending a petition for Certiorari.

[4] The Commission has published for comment a proposed decommissioning rule that would introduce significant changes in the present regulations. *See* 60 FR 37374 (July 20, 1995). Because this new rulemaking is underway, the Commission does not intend to undertake procedures to reinstate the 1993 policy change.

[5] The NRC staff offered an opportunity for hearings on proposed orders approving the Shoreham, Fort St. Vrain, and Rancho Seco decommissioning plans, which were the only plans approved under the Commission's 1988 decommissioning regulations. *See, e.g.,* 56 FR 66459 (December 23, 1991); 57 FR 8940 (Mar. 13, 1992); and 57 FR 9577 (Mar. 19, 1992). A hearing was requested on the Rancho Seco plan and was being conducted when the case was settled. A hearing was requested on the Shoreham plan, but the case was settled before the hearing opened.

Washington, DC 20555, telephone (301) 415–1606.

Dated at Rockville, MD, this 30th day of August, 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 95–22035 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No.: 070–3073]

Consideration of Amendment Request for Decommissioning the Kerr-McGee Corp. Cushing Facility in Cushing, Okla., and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of Amendment Request for Decommissioning the Kerr-McGee Corporation Cushing Facility in Cushing, Oklahoma, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Special Nuclear Material License No. SNM–1999, issued to the Kerr-McGee Corporation (the Licensee), for the decommissioning of its former enriched uranium and thorium processing facility in Cushing, Oklahoma.

The Licensee requested the amendment in a letter dated May 9, 1995, requesting that License No. SNM–1999 be amended to incorporate the decommissioning plan (DP) for the Cushing facility submitted to NRC in April 1994. Radioactive contamination at the Cushing facility resulted from operations to convert uranium hexafluoride or other compounds and/or scrap to nuclear fuel materials, and operations to process thorium to produce thorium pellets. These operations were conducted from 1962 through mid-1966. The license amendment would authorize the Licensee to decommission the Cushing facility in accordance with the DP.

The NRC will require the Licensee to remediate the Cushing facility to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents and doses as low as reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Kerr-McGee Corporation, Kerr-McGee Center, Oklahoma City, OK, 73125, Attention: Mr. Jess Larsen, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Md., this 23rd day of August, 1995.

For the Nuclear Regulatory Commission,

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22038 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–271]

In the Matter of: Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Exemption

I

The Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) is the holder of Facility Operating License No. DPR–28 which authorizes operation of the Vermont Yankee Nuclear Power Station (the facility) at power levels no greater than 1593 megawatts thermal. The facility is a single-unit boiling water reactor (BWR) located at the licensee's site in Windham County, Vermont.

The License provides, among other things, that the Vermont Yankee Nuclear Power Station is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Subsection III.J is the subject of the licensee's exemption request.

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

III

By letter dated June 29, 1995, the licensee requested an exemption from Section III.J of Appendix R. In particular, the licensee stated that it cannot meet the requirements for emergency lighting units with at least an 8- hour battery power supply in the following areas:

(1) A portion of general yard areas for access and egress to the Intake

Structure, the Northwest Cooling Tower valve pit, and the fuel oil transfer pump building, and

(2) In those areas needed for manual hookup of a portable fuel oil transfer pump.

The licensee proposes to utilize the security perimeter lighting for outdoor egress routes and one outdoor task. Based on the staff's review of the information provided by the licensee, the staff has concluded that, given that the security lighting is powered from a separate power source, the security lighting is not vulnerable to fire loss. The security lighting is inspected and maintained as part of the plant security requirements. The licensee has confirmed that the illumination levels in the affected areas of the plant are adequate to enable operators to implement the actions required for safe shutdown.

Therefore, the staff considers the licensee's alternative lighting configuration to be equivalent to that achieved by literal conformance with Appendix R to 10 CFR part 50 and, therefore, meets the underlying purpose of Section III.J of Appendix R. Therefore, the licensee's request for exemption from the requirements of Section III.J in the subject locations should be granted.

IV

Pursuant to 10 CFR 50.12(a)(2), the Commission will not consider granting an exemption unless special circumstances are present. Item (ii) of the subject regulation includes special circumstances where application of the subject regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of Section III.J of Appendix R is to provide adequate illumination to assure the capability of performing all necessary safe shutdown functions as well as provide illumination for required movements into and out of the plant. In lieu of the 8-hour battery powered units specified by Appendix R, the licensee has proposed using existing security lighting. The staff has reviewed the proposed alternative and has concluded, as described above, that the security lighting system would be a reliable alternative and would provide an adequate level of illumination to assure that all required safe shutdown functions and required personnel movements can be performed. Therefore, the staff concludes that special circumstances exist for the licensee's requested exemption in that imposition of the literal requirements of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of Appendix R to 10 CFR part 50.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances exist in that existing levels of emergency lighting satisfy the underlying purpose of Appendix R to 10 CFR part 50. Further, the staff has concluded that the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the exemption request from the requirements of Section III.J of Appendix R to 10 CFR part 50 described in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (60 FR 44088).

This Exemption is effective upon issuance.

Dated at Rockville, Md., this 30th day of August 1995.

For the Nuclear Regulatory Commission,

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22036 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–271]

In the Matter of: Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station); Revocation of Exemption

I

The Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) is the holder of Facility Operating License No. DPR–28 which authorizes operation of the Vermont Yankee Nuclear Power Station (the facility) at power levels no greater than 1593 megawatts thermal. The facility is a single-unit boiling water reactor (BWR) located at the licensee's site in Windham County, Vermont.

The License provides, among other things, that the Vermont Yankee Nuclear Power Station is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. Subsection III.J is the subject of the licensee's request.

Section III.J of Appendix R requires that emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. On June 26, 1989, the NRC granted an exemption from these requirements for specified areas of the Reactor Building.

By letter dated June 29, 1995, the licensee requested revocation of that exemption.

III

Since the issuance of the exemption from the emergency lighting requirements of Appendix R, the licensee has installed conforming 8-hour battery powered lighting in the affected areas. As a result, these areas conform to the lighting requirements of the regulation and the exemption is no longer needed by the licensee. The licensee has therefore requested revocation of the exemption.

The NRC staff has reviewed the information submitted by the licensee and concludes that the conditions for which the exemption for emergency lighting was granted no longer exist because the licensee has installed 8-hour battery powered lighting which conform to Section III.J of Appendix R to 10 CFR part 50.

IV

Accordingly, the Commission has determined that the specific exemption from 10 CFR part 50, Appendix R, granted on June 26, 1989, for emergency lighting is hereby revoked in that it is no longer needed.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this Revocation of Exemption will have no significant impact on the quality of the human environment (60 FR 44088).

This Revocation of Exemption is effective upon issuance.

Dated at Rockville, MD., this 30th day of August 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II,Office of Nuclear Reactor Regulation.

[FR Doc. 95–22037 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–302]

Florida Power Co.; Environmental Assessment and Finding of No Significant Impact

The U. S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–72, issued to Florida Power Corporation, (the licensee), for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR3), located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated May 19, 1995, as supplemented August 8, 1995, for exemption from certain requirements of Title 10 Code of Federal Regulations, part 50 (10 CFR part 50), Appendix J, ''Primary Reactor Containment Leakage Testing for Water Cooled Power Reactors,'' Paragraph III.D.1.(a), relating to Integrated Leak Rate Test (ILRT) frequency. The proposed exemption would allow CR3 a one-time interval extension for the Type A test (containment integrated leak rate test) by approximately 24 months from the spring 1996 refueling outage to the spring 1998 refueling outage.

The Need for the Proposed Action

Pursuant to 10 CFR part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' criterion 16, ''Containment design,'' the ''[r]eactor containment and associated systems shall be provided to establish an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment and to assure that the containment design conditions important to safety are not exceeded for as long as postulated accident conditions require.'' 10 CFR 50.54, ''Conditions of License,'' paragraph O, states that ''[p]rimary reactor containments for water cooled power reactors shall be subject to the requirements set forth in Appendix J to this part.'' 10 CFR part 50, Appendix J, requires periodic verification by tests of the leak-tight integrity of the primary reactor containment and establishes the acceptance criteria for such tests. The purposes of the tests are to assure that periodic surveillance of reactor containment penetrations is performed so that proper maintenance and repairs are made during the service life of the containment and leakage through the primary reactor containment shall not exceed allowable leakage rate values as specified in the technical specifications or associated bases. Paragraph III.D.1 specifies that a set of three Type A tests is to be performed at approximately equal intervals during each 10-year service period. Such tests are to be limited to periods when the plant is non-operational and secured in the shutdown condition under the administrative controls and in accordance with the safety procedures defined in the license.

For CR3, the next available opportunity for performing the ILRT would be in Spring 1996. The licensee requested a one-time interval extension for the ILRT by approximately 24 months from the Spring 1996 refueling outage to the Spring 1998 refueling outage. The licensee indicated that approval of its request would save over two million dollars and would reduce personnel radiation exposure. The proposed action is needed to permit the licensee to defer the ILRT.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents.

In support of its exemption request, the licensee submitted information pertaining to Types A, B and C testing history, structural capability, and risk assessment.

Two ILRTs have been performed during the last seven years with successful results. There have been no permanent or temporary modifications to the containment structure, liner or penetrations since the last Type A test, and no future modifications are planned prior to the 1998 refueling outage which could adversely affect the Type A test results.

The licensee will continue to be required to conduct the Type B and C local leak rate tests which are, in general, the principal means of detecting containment leakage paths with the Type A tests confirming the Type B and C test results. Types B and C testing history at CR3 shows that the overall combined as-found leakage has been less than the allowed combined leakage rate of 0.6 La (266,431 SCCM) at the calculated maximum peak containment pressure as specified in Appendix J. The NRC staff considers that these inspections provide the necessary level of confidence in the continued integrity of the containment boundary. It is also noted that the licensee, as a condition of the proposed exemption, will perform the visual containment inspection although it is required by Appendix J to be performed only in conjunction with Type A tests. The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary. The change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Crystal River Unit 3, dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on August 28, 1995, the NRC staff consulted with the State of Florida official, Dr. Lyle Jerretti, Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental

assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 19, 1995, as supplemented August 8, 1995, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, MD, this 28th day of August 1995.

For the Nuclear Regulatory Commission,

David B. Matthews,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22041 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 040–8801]

Organization, Functions, and Authority Delegations; West Lake Landfill

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Deferral of Regulatory Oversight to the U.S. Environmental Protection Agency for the West Lake Landfill, Bridgeton, Missouri, and Removal of West Lake Landfill From SDMP List.

This notice is to inform the public that, on June 16, 1995, the U.S. Nuclear Regulatory Commission (the Commission) deferred regulatory oversight to the U.S. Environmental Protection Agency (EPA) for the remedial actions at the West Lake Landfill site in Bridgeton, Missouri. The site contains both hazardous and radioactive waste, is currently being remediated by EPA, and does not hold a current NRC license.

NRC and EPA conduct regulatory programs for site remediation under the Atomic Energy Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), respectively. Based on the reviews to date, NRC concluded that the remedial program being administered by EPA at the West Lake Landfill site under CERCLA is adequate to protect the public and the environment from the risks associated with the radioactive contamination at the site. Therefore, NRC oversight of remediation at the site would be burdensome and duplicative. Consequently, NRC is deferring to EPA regulatory oversight of the remedial actions at West Lake Landfill. In addition, the West Lake Landfill site will be removed from NRC's Site Decommissioning Management Plan list. NRC staff does not plan to take any further action on the West Lake Landfill site unless specifically requested by EPA. Any questions regarding NRC's deferral decision should be forwarded to Ron Uleck by mail at Mail Stop T8F37, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or by phone at (301) 415–6722.

Dated at Rockville, Maryland, this 28th day of August 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–22040 Filed 9–5–95; 8:45 am]

BILLING CODE 7590–01–P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice of Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, September 12 and 13, 1995 at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The Full Commission will convene at 9:00 a.m. on September 12, 1995, and adjourn at approximately 5 p.m. On Wednesday, September 13, 1995, the meeting will convene at 8 a.m. and adjourn at noon. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Molly Ryan,

Executive Officer.

[FR Doc. 95–22030 Filed 9–5–95; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21324; 811–6021]

American Adjustable Rate Term Trust Inc.—1995; Notice of Application

August 29, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: American Adjustable Rate Term Trust Inc.—1995.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 25, 1995 and amended on August 17, 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 September 25, 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, 222 South Ninth Street, Piper Jaffray Tower, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, 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 a closed-end diversified investment company organized as a Minnesota corporation. On January 5, 1990, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective and applicant's initial public offering commenced on February 15, 1990.

2. Applicant is a ''term trust'' established and managed by Piper Capital Management Incorporated (the ''Adviser'') with a scheduled termination date of April 15, 1995. No action was needed by shareholders, the Board of Directors, or under state law, to effect the liquidation.

3. Applicant's investment objective was to provide a high level of current income and to return $10 per Trust share (the initial offering price per Trust share) to investors. The planned and

orderly liquidation of securities began in October 1994 and such securities were sold in the ordinary course of business at their then current market values. The proceeds of such liquidations then were invested in short-term securities which matured on or before April 17, 1995.

4. In connection with its scheduled liquidation, on April 17, 1995 applicant distributed approximately $105,800,000, which represented approximately 10,828,926 shares at $9.76922 net asset value, to its security holders. There are 15 security holders to whom payment has not been made because they have not yet submitted their stock certificates. This represents approximately 7,274 shares with a value of $68,314.52 which is being held in a non-interest bearing bank account at the transfer agent. Letters requesting the certificates have been mailed to each such security holder and payment will be made as soon as practicable after the submission of the certificates. The distribution to shareholders was based on net asset value.

5. Applicant has retained $126,575 in cash to pay estimated expenses for transfer agent fees, tax reporting, auditing, accounting and legal expenses. If expenses are greater than the amount retained, the Adviser will pay the excess amount.

6. Applicant is not a party to any litigation or administrative proceeding.

7. 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22066 Filed 9–5–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21325; No. 812–9506]

IDS Life Insurance Company, et al.

August 29, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: IDS Life Insurance Company (''IDS'') and IDS Life Variable Life Separate Account (''Separate Account'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4) thereunder.

SUMMARY OF APPLICATION: Applicants request an order that will permit the Separate Account, and any future separate accounts established by IDS (''Future Accounts''), to deduct from premium payments of certain flexible premium variable life insurance policies, an amount that is reasonably related to the IDS's increased Federal tax burden resulting from the receipt of those premium payments pursuant to the application of Section 848 of the Internal Revenue Code of 1986, as amended.

FILING DATE: The application was filed on March 1, 1995, and was amended on July 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 1995, and should be lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants: Mary Ellyn Minenko, Counsel, IDS Life Insurance Company, IDS Tower 10, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. IDS is a stock life insurance company, organized in Minnesota, and is an indirect subsidiary of American Express Company.

2. The Separate Account is a separate account established by IDS and registered under the 1940 Act as a unit investment trust. Currently, the Separate Account has 6 subaccounts each of which invests in a corresponding portfolio of IDS Life Series Fund, Inc., a registered open-end management investment company. The Separate Account is used to fund: (1) Certain individual flexible premium variable life insurance contracts (''Existing Policies''); (2) certain flexible survivorship variable life insurance policies (''Current Policies'') for which a registration statement has been filed recently with the Commission to register interests in the Current Policies under the Securities Act of 1933; and (3) certain flexible variable life insurance policies developed by IDS Life in the future (''Future Policies'') (Current Policies, together with Future Policies, ''Policies'').

3. IDS is the principal underwriter for the Policies. IDS is a registered broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

4. Applicants propose to deduct a charge to reimburse IDS for the increase in its Federal income taxes resulting from the application of Section 848 of the Internal Revenue Code of 1986 (''Code''), as amended. The charge will be reasonably related to IDS's increased Federal tax burden, and will be deducted from premiums received.

5. The Omnibus Budget Reconciliation Act of 1990 (''OBRA 1990''), amending Section 848 of the Code, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848, as amended, effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the Policies.

6. The amount of deductions subject to Section 848 equals a percentage of the current year's net premiums received (*i.e.,* gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Policies will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

7. The increased tax burden on every $10,000 of net premiums received under the Policies is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, IDS

must capitalize $770 (i.e., 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.02 (.35% × $731.50) more in taxes for the current year than IDS otherwise would have owed prior to OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

8. It is IDS's business judgment that it is appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions for the following reasons. Capital that IDS must use to pay its increased federal tax burden under Section 848 will be unavailable for investment. The cost of capital used to satisfy this increased tax burden essentially will be IDS's after-tax rate of return (i.e., the return sought on invested capital), which is in excess of 10%. Accordingly, Applicants submit that the targeted rate of return is appropriate for use in this present value calculation.

9. In determining the rate of return used in arriving at the discount rate, IDS considered a number of factors. These factors include current market rates, inflation, and expected future interest rate trends.

10. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the increased tax burden resulting from Section 848 on each $10,000 of net premium is $95.62.

11. IDS does not incur incremental federal income tax when it passes on state premium taxes to Policy owners because state premium taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing IDS's federal income taxes. To compensate IDS fully for the impact of Section 848, IDS must impose an additional charge to make it whole for the $95.62 additional tax burden attributable to Section 848, as well as the tax on the additional $95.62 itself, which can be determined by dividing $95.62 by the complement of 35% federal corporate income tax rate (i.e., 65%), resulting in an additional charge of $147.11 for each $10,000 of net premiums, or 1.47%.

12. Based on its prior experience, IDS reasonably expects to fully take almost all future deductions. It is IDS's judgment that a 1.25% charge would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.25% charge will be reasonably related to IDS's increased federal income tax burden under Section 848. This representation takes into account the benefit to IDS of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to IDS's targeted rate of return) in computing the future deductions resulting from such amortization. IDS also may add this 1.25% charge to the Existing Policies, but only with respect to sales of new policies, not on additional premiums paid to currently-held policies. (SEC File Nos. 811–4298/33–11165).[1]

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act granting exemptions from Sections 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) to allow the deduction of a charge from premiums to compensate IDS for its increased federal tax burden based on receipt of these premiums under the Policies, and under the Existing Policies. The charge will be in an amount that is reasonably related to IDS's increased federal tax burden. Applicants assert that it is appropriate to deduct a charge for an insurer's increased tax burden attributable to premiums received, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses.

2. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is ''necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act].''

3. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, and IDS (as depositor and principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

4. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for ''sales load'') must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

5. ''Sales load'' is defined under Section 2(a)(35), in relevant part, as:

> The difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments.

6. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief. Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

7. Applicants state that paragraph (b)(13)(iii)(E) of Rule 6e–3(T) provides exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of Rule 6e–3(T). Applicants note, however, that the language of paragraph (c)(4) of the Rule appears to require that deductions for federal tax obligations from receipt of premium payments be treated as ''sales load.''

8. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of Rule 6e–3(T) provides an exemption from the Section 2(a)(35) definition of ''sales load'' by substituting a new definition to be used for the purposes of the Rule. Rule 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rule, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions,

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

arguably causing the deduction to be treated as part of ''sales load.''

9. Applicants state that the public policy that underlies paragraph (b)(13) of Rule 6e–3(T), and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses.

10. Applicants assert that the standards of Section 6(c) are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. The exemptive relief would eliminate the need for IDS to file additional exemptive applications for each Policy or Future Policy to be issued through a Future Account with respect to the same issues under the 1940 Act that have been addressed in this application, and thus would promote competitiveness in the variable life insurance market by avoiding delay, reducing administrative expenses, and maximizing efficient use of resources. Applicants further assert that the exemptive relief would enhance IDS's ability to effectively take advantage of business opportunities as they arise. If IDS were required to repeatedly seek exemptive relief with respect to the same issues addressed in the application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses.

Conditions for Relief

1. IDS will monitor the reasonableness of the 1.25% charge.

2. The registration statement for each Policy under which the 1.25% charge is deducted will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to IDS's increased federal tax burden under Section 848 of the Code.

3. The registration statement for each Policy providing for the 1.25% deduction will contain as an exhibit an actuarial opinion as to: (a) The reasonableness of the charge in relation to IDS's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by IDS in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions to permit IDS to deduct 1.25% of premium payments under the Policies are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22067 Filed 9–5–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21323; International Series Release No. 846; 812–9640]

Societe Generale; Notice of Application

August 29, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Societe Generale.

RELEVANT ACT SECTIONS: Order under section 6(c) of the Act for an exemption from section 17(f) of the Act.

SUMMARY OF APPLICATION: Societe Generale requests an order that would permit United States registered investment companies other than investment companies registered under section 7(d) (a ''U.S. Investment Company''), for which Societe Generales serve as custodian or subcustodian, to maintain foreign securities and other assets in the Ivory Coast with Societe General de Banques en Cote d'Ivoire (''SGBCI''), in Morocco with Societe Generale Marocaine de Banques (''SGMB''), and in South Africa with Societe Generale South Africa Limited (''SGSA''), subsidiaries of Societe Generale (collectively, the ''Foreign Subsidiaries'').

FILING DATES: The application was filed on June 23, 1995 and amended on August 28, 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 September 25, 1995, and should be accompanied by proof of service on the 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 Fifth Street, N.W., Washington, D.C. 20549. Applicant: Societe Generale, Securities Operations, 32, rue du Champ de Tir, 44300 Nantes, France; cc: Bruce E. Clubb, Esq., Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C., 20006–4078.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. Societe Generale requests an order to permit Societe Generale, the Foreign Subsidiaries, any U.S. Investment Company, and any custodian for a U.S. Investment Company to maintain foreign securities, cash, and cash equivalents (collectively, ''Assets'') in the custody of the Foreign Subsidiaries. For the purposes of this application, ''foreign securities'' includes: (a) Securities issued and sold primarily outside the United States by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country; and (b) securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the United States or of any state thereof which have been issued and sold primarily outside the United States.

2. Societe Generale is a bank organized and existing under the laws of France. Societe Generale is regulated in France by the Ministere de l'Economie at des Finances and is subject to law No. 8846 of June 24, 1984 Relating to the Activities and Regulation of Credit Institutions. Societe Generale is one of the leading financial services institutions in France and currently

provides worldwide custody services that include holding Assets of U.S. Investment Companies or their custodians. In the United States, Societe Generale has branch banking operations, representative offices, and as a result, is subject to the Bank Holding Company Act of 1956 and the International Banking Act of 1978. As of December 31, 1994, Societe Generale had consolidated shareholders' equity in excess of the equivalent of $10,000,000,000.

3. SGBCI was incorporated in Abidjan in 1962. It is a 37% owned direct subsidiary of Societe Generale. Other major shareholders include the Ivory Coast government and Credit Suisse. SGBCI is regulated by the Ministry of the Economy, Finance and Planning of the Ivory Coast under law No. 90–589 of July 25, 1990 Regarding Bank Regulation. The Ivory Coast is a member of the West African Monetary Union (''WAMU'') and, as a result, SGBCI is supervised by the WAMU central bank.

4. Societe Generale commenced banking operations in Morocco in 1913, which operations it incorporated into a subsidiary in 1962. After acquiring another bank in 1965, the merged entity was renamed SGMB. SGMB is a 35% owned direct subsidiary of Societe Generale. Other major shareholders include Societe Marseillaise de Credit and Credit Suisse. SGMB is regulated by the Ministry of Finance of Morocco and Bank al-Maghrib, the Moroccan central bank, under Law No. 93–147 of June 7, 1993 Relating to the Activities and Regulation of Credit Institutions.

5. SGSA is a bank incorporated in South Africa in 1981. SGSA was acquired by Societe Generale in 1991. It is a wholly owned subsidiary of Societe Generale. SGSA is regulated by the Registrar of Banks of South Africa and the Reserve Bank of South Africa under Banks Act No. 94 of 1990.

6. Societe Generale requests relief to permit Societe Generale, as custodian or subcustodian for a U.S. Investment Company, when custody services are required in the Ivory Coast, Morocco, or South Africa, to deposit, or cause or permit the U.S. Investment Company to deposit, its Assets with the appropriate Foreign Subsidiary as delegate for Societe Generale.

Applicant's Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank having at all times aggregate capital, surplus, and undivided profits of at least $500,000. A ''bank'', as that term is defined in section 2(a)(5) of the Act, includes: (a) a banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; and (c) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks, which is supervised or examined by state or federal authority having supervision over banks, and which is not operated for the purposes of evading the Act.

2. The only entities located outside the United States that section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of qualified U.S. banks. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(i) defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 or its equivalent. Societe Generale is an Eligible Foreign Custodian under the rule.

3. The Foreign Subsidiaries satisfy the requirements of rule 17f–5, with the exception of meeting the minimum shareholders' equity requirement. Accordingly, they are not Eligible Foreign Custodians and, absent exemptive relief, could not serve as a custodian for U.S. Investment Company Assets.

4. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Societe Generale submits that its request satisfies this standard.

Applicant's Conditions

Applicant agrees that any order of the SEC granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements proposed regarding each Foreign Subsidiary satisfy the requirements of rule 17f–5 in all respects other than the Foreign Subsidiary's level of shareholder equity.

2. Societe Generale, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit Assets with a Foreign Subsidiary only in accordance with one of the two contractual arrangements described below, which arrangement will remain in effect at all times (during which the Foreign Subsidiary fails to satisfy the requirements of rule 17f–5 and during which such Assets remain deposited with the Foreign Subsidiary).

a. *The Three-Party Agreement Arrangement.* Under this arrangement, the agreement will be a three-party agreement (the ''Three-Party Agreement'') among (i) Societe Generale, (ii) the Foreign Subsidiary and (iii) the U.S. Investment Company, or the custodian for a U.S. Investment Company pursuant to which Societe Generale will undertake to provide specified custody services, and will delegate to the Foreign Subsidiary such of the duties and obligations of Societe Generale as will be necessary to permit the Foreign Subsidiary to hold in custody the U.S. Investment Company's Assets. The Three-Party Agreement further will provide that Societe Generale will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the Three-Party Agreement to the same extent as if Societe Generale had itself been required to provide custody services under the Three-Party Agreement.

b. *The Custody Agreement/ Subcustody Agreement Arrangement.* Societe Generale will deposit Assets with a Foreign Subsidiary in accordance with the Custody Agreement and Subcustody Agreement described below.

i. The Custody Agreement will be between Societe Generale and the U.S. Investment Company or any custodian for a U.S. Investment Company. In that agreement, Societe Generale will undertake to provide specified custody or subcustody services, and the U.S. Investment Company (or its custodian) will authorize Societe Generale to delegate to the Foreign Subsidiary such of Societe Generale's duties and obligations as will be necessary to permit the Foreign Subsidiary to hold in custody the assets of U.S. Investment Companies. The Custody Agreement further will provide that Societe Generale will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary

of its responsibilities to the same extent as if Societe Generale had itself been required to provide custody services under the Custody Agreement.

ii. A Subcustody Agreement will be executed by Societe Generale and the Foreign Subsidiary. Pursuant to this agreement, Societe Generale will delegate to the Foreign Subsidiary such of Societe Generale's duties and obligations as will be necessary to permit the Foreign Subsidiary to hold Assets in custody in the country in which it operates. The Subcustody Agreement will explicitly provide that (i) the Foreign Subsidiary is acting as a foreign custodian for Assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC and (ii) the U.S. Investment Company or its custodian (as the case may be) that has entered into a Custody Agreement will be entitled to enforce the terms of the Subcustody Agreement and can seek relief directly against the Foreign Subsidiary. Further, the Subcustody Agreement will be governed either by New York law or French law, or by Ivory Coast law for SGBCI, Moroccan law for SGMB, or South African law for SGSA. If it is governed by French, Ivory Coast, Moroccan, or South African law, Societe Generale shall obtain an opinion of counsel in France, the Ivory Coast, Morocco, or South Africa, as the case may be, opining as to the enforceability of the rights of a third party beneficiary under the laws of such country.

3. Societe Generale currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22065 Filed 9–5–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2807]

Texas; Declaration of Disaster Loan Area

Gray County and the contiguous counties of Armstrong, Carson, Collingsworth, Donley, Hemphill, Hutchinson, Roberts, and Wheeler in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on June 8, 1995. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 30, 1995, and for economic injury until the close of business on May 30, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

For Physical Damage:	Percent
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	8.000
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 280712 and for economic injury the number is 863200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 30, 1995.

John T. Spotila,

Acting Administrator.

[FR Doc. 95–22063 Filed 9–5–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 25, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–418.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 15, 1995.

Description: Application of Florida West International Airways, Inc., pursuant to 49 U.S.C. Section 41105, and Subpart Q of the Regulations, requests the transfer to FWIA of Florida West Gateway, Inc.'s existing certificate and exemption authority as well as the scheduled and charter all-cargo service allocations relating to U.S. South American markets.

Docket Number: OST–95–423.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1995

Description: Application of USAir, Inc., pursuant to 49 U.S.C. Sections 41101 and 41108, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between the terminal point Philadelphia, Pennsylvania and the coterminal points Rome and Milan, Italy.

Docket Number: OST–95–427.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1995.

Description: Application of Skyjet, Inc. dba Skyjet Antigua & Barbuda, pursuant to U.S.C. and Subpart Q of the Regulations, requests a foreign air carrier permit authorizing Skyjet Antigua to perform passenger, property and mail charter service between Antigua and Barbuda and the United States.

Docket Number: OST–95–431.

Date filed: August 21, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1995.

Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing scheduled service of persons, property and mail between Los Angeles, California, and Guadalajara, Mexico.

Docket Number: OST–95–449.

Date filed: August 22, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 19, 1995.

Description: Amendment to the Application of Balkan Bulgarian Airlines, pursuant to Subpart Q of the Regulations, request that it be allowed

to provide foreign scheduled air transportation of persons property and mail between a point or points in Bulgaria and the coterminal points New York, New York, and Detroit, Michigan, United States of America, via Malta, with local traffic rights between Malta, on the one hand, and Detroit and New York, on the other hand.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–22061 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended August 25, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–432.

Date filed: August 21, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/P 0456 dated August 18, 1995.

Expedited TC1 Longhaul Resos r-1 to r-12.

Proposed Effective Date: Expedited October 15, 1995.

Docket Number: OST–95–433.

Date filed: August 21, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/P 0457 dated August 18, 1995.

Within South America Expedited Reso 002e.

Proposed Effective Date: Expedited October 15, 1995.

Docket Number: OST–95–434.

Date filed: August 21, 1995.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/P 1058 dated August 18, 1995.

Composite Expedited Resolutions r-1 to r-8.

Effective Date: Expedited October 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–22062 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 95–064]

National Environmental Policy Act: Agency Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of agency policy.

SUMMARY: The Coast Guard is announcing a change to its policy concerning agency actions that are categorically excluded from additional environmental analysis under the National Environmental Policy Act (NEPA). The change concerns operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Environmental Compliance and Restoration Branch, (202) 267–1942.

SUPPLEMENTARY INFORMATION:

Background

Under regulations implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500 through 1508), each Federal agency is required to adopt procedures to supplement those regulations (40 CFR 1507.3). The Coast Guard's procedures and policies are published as a Commandant instruction entitled, ''National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts'' (COMDTINST M16475.1B). On July 29, 1994, the Coast Guard published a notice in the **Federal Register** (59 FR 38654) announcing the revision of section 2.B.2 of the instruction. Section 2.B.2 lists the proposed agency actions that are categorically excluded from the requirement that the actions undergo the analysis that accompanies preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Discussion of Change

The Coast Guard is amending section 2.B.2.e.(22) (the section) of COMDTINST M16475.1B, which categorically excludes operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs that have been the subject of a programmatic NEPA analysis and documentation. It is being amended to remove the phase ''that have been the subject of a programmatic NEPA analysis and documentation.''

A review of the implementation of the section disclosed that the phrase ''that have been the subject of a programmatic NEPA analysis and documentation'' imposes a requirement for a specific level of NEPA analysis and documentation (i.e., a programmatic level) that may not be necessary or appropriate for the actions included in the section. By removing the phrase, the Coast Guard can eliminate unnecessary documentation and provide itself flexibility in determining the appropriate means of complying with NEPA for the listed activities. By removing the phrase, the Coast Guard will have the flexibility to use the section, a programmatic EA or EIS, or an EA or EIS for the specific activity, depending on the nature of the activity being planned. This change also brings the section more in line with the stated purpose and intent of NEPA and the Council on Environmental Quality regulations, which include the requirement in 40 CFR part 1500.4(p) to reduce excessive paperwork by using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment. This change does not effect the Coast Guard's responsibility to comply fully with NEPA before engaging in an activity listed in the section. It can be applied only if there are no extraordinary circumstances, as described in section 2.B.2.b., that would limit its use.

For the reasons set out in the preamble, the Coast Guard announces the following amendment to section 2.B.2.e.(22) of COMDTINST M16475.1B:

2.B.2.e. Categorical Exclusion List

* * * * *

(22) Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

* * * * *

Dated: August 30, 1995.

RADM Edward J. Barrett,

Chief, Office of Engineering Logistics and Development.

[FR Doc. 95–22026 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenues From a Passenger Facility Charge (PFC) at Baltimore Washington International Airport, Baltimore, MD

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 Baltimore Washington International Airport under the

provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports 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. Theodore E. Mathison, Administrator of the Maryland Aviation Administration at the following address: P.O. Box 8766, BWI Airport, Baltimore, Maryland 21240–0766.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Maryland Aviation Administration 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 Baltimore Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 1995, the FAA determined that the application to use the revenue from a PFC submitted by Maryland Aviation Administration 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 November 11, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: April 31, 2009.

Total estimated PFC revenue: $286,057,383.

Brief description of proposed project(s): This application requests the authority to use the PFC revenues previously authorized to impose for the design and construction of a new ARFF facility to be located southwest of the intersection of Runways 10–28 and 15R–33L.

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.

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 Maryland Aviation Administration.

Issued in Jamaica, New York on August 28, 1995.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 95–22069 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–13–M

FAA Approval of Noise Compatibility Program; Fort Worth Spinks Airport; Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 13, 1995, the FAA determined that the noise exposure maps submitted by the city of Fort Worth under Part 150 were in compliance with applicable requirements. On August 11, 1995, the Administrator approved the Fort Worth Spinks Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to mandatory new or revised flight procedures for noise abatement were proposed by the city of Fort Worth.

EFFECTIVE DATE: The effective date of the FAA's approval of the Fort Worth Spinks Airport noise compatibility program is August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, DOT/FAA, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0653, (817) 222–5606. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Spinks Airport, effective August 11, 1995

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable

airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the Federal Aviation Administration, Texas Airport Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The city of Fort Worth submitted to the FAA on February 3, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from November 1991 through January 1995. The Fort Worth Spinks Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on February 13, 1995. Notice of this determination was published in the **Federal Register** on March 6, 1995.

The Fort Worth Spinks Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1998. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 13, 1995, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained seven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective August 11, 1995.

Outright approval was granted for all of the specific program elements. The following is a listing of the approved actions on and off the airport:

a. Modify arrival and departure flight tracks (approved as voluntary);

b. Voluntary use of noise abatement departure and arrival procedures for aircraft weighing over 12,500 Pounds (approved as voluntary);

c. Maintain current zoning ordinance;

d. Amend and expand the land use plan for noise compatibility;

e. Assign a noise abatement officer for noise program management for all three city of Fort Worth airports;

f. Continue public involvement program;

g. Conduct noise review and update as required.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on August 11, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Fort Worth Department of Aviation Offices.

Issued in Fort Worth, Texas on August 22, 1995.

Otis T. Welch,

Manager, Texas Airport Development Office.

[FR Doc. 95–22070 Filed 9–5–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. (95–67)]

Crystallinity of Ceramic Tile

AGENCY: Customs Service, Department of the Treasury.

ACTION: Request for comments on the percent of crystallinity necessary to satisfy the Harmonized Tariff Schedules of the United States criteria that a ''*ceramic article*'' be a shaped product ''of crystalline or substantially crystalline structure.''

SUMMARY: Customs is attempting to identify the amount of crystallinity necessary to satisfy the aforementioned phrase ''substantially crystalline'' as it applies to ceramic floor and wall tile. Ceramic articles of this nature are normally imported under Subheading numbers covered by U.S. Note 1 to Chapter 69 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: Comments must be received on or before October 1, 1995.

COMMENTS: Written comments (preferably in triplicate) may be addressed to and inspected at the offices of Laboratories and Scientific Services, room 7113, 1301 Constitution Ave., NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (202) 927–1060.

SUPPLEMENTARY INFORMATION:

Background

U.S. Note 1 to Chapter 69 reads in pertinent part ''For the purposes of this chapter, a ''*ceramic article*'' is a shaped article having a glazed or unglazed body of crystalline or substantially crystalline structure * * *''. The U.S. Customs Service wishes to define the concept of ''substantially crystalline'' in scientific terms based on state-of-the-art ceramic technology. In this request for comments, Customs is limiting the scope in defining the phrase to floor and wall tile. For this purpose Customs is soliciting comments from any interested party.

In a recent study of nearly 300 floor and wall tiles, Customs has found that the percent crystallinity for this group of tiles was never less than 30 percent as determined by x-ray diffraction. Furthermore, over 90 percent of the tiles studied demonstrated a crystallinity in the range of 50 to 90 percent.

The scientific literature indicates that the degree of crystallinity a ceramic attains is critically dependent on the raw materials used to make the tile and the heat treatment to which these materials are subjected. Often ceramic materials are engineered to meet the physical requirements for an intended use. Again in the case at hand, Customs is interested in ceramic floor and wall tiles. Two issues that Customs would consider in making the final determination of the degree of crystallinity include: the percent crystallinity necessary to impart resiliency to the tile for its intended use; the percent crystallinity at which a ceramic becomes a glass or a glass-ceramic. Customs does not wish to limit discussions to these two issues. All information provided will be given full consideration.

A.W. Tennant,

Director, Laboratories and Scientific Services.

[FR Doc. 95–22078 Filed 9–5–95; 8:45 am]

BILLING CODE 4820–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

1995–96 Allocation of the Tariff-rate Quota for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative; 600 17th Street, N.W., Washington, D.C. 20508.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the in-quota quantity of the tariff-rate quota for imported raw cane sugar for the period that begins October 1, 1995, and ends September 30, 1996.

EFFECTIVE DATE: October 1, 1995.

ADDRESSES: Inquiries may be mailed or delivered to Tom Perkins, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Tom Perkins, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw sugar. The in-quota quantity of the tariff-rate quota for the period October 1, 1995-September 30, 1996, has been established by the Secretary of Agriculture at 1,117,195 metric tons, raw value (1,231,496 short tons).

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

Accordingly, the 1,117,195 metric tons for raw cane sugar are being allocated to the following countries in metric tons, raw value:

Country	FY 1996 allocation
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,583
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	15,796
Dominican Republic	185,335
Eucador	11,583
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,583
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad-Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636
Total	1,117,195

The allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Mexico, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

Michael Kantor,

United States Trade Representative.

[FR Doc. 95–22031 Filed 9–5–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 172

Wednesday, September 6, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 11, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–2225 Filed 9–1–95; 3:47 pm]

BILLING CODE 6210–01–P

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 28, 1995.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the North Smithfield Municipal Annex, 575 Smithfield Road, North Smithfield, Rhode Island, for the following reasons:

1. Presentation from Town of North Smithfield, Rhode Island.
2. Annual Report.
3. Commission Business.
4. Other.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to:

James R. Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from James R. Pepper, Executive Director of the Commission at the aforementioned address.

James R. Pepper,

Executive Director, BRVNHCC.

[FR Doc. 95–22224 Filed 9–1–95; 3:56 pm]

BILLING CODE 4310–70–P

NUCLEAR REGULATORY COMMISSION

DATE: Week of September 4, 11, 18, and 25, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 4

There are no meetings scheduled for the Week of September 4.

Week of September 11—Tentative

Monday, September 11

1:30 p.m.
Briefing on Status of Watts Bar Licensing (Public Meeting)
(Contact: Steve Varga, 301–415–1403)

3:30 p.m.
Affirmation Session (Public Meeting)
(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)

a. Revisions to Regulatory Requirements for Reactor Pressure Vessel Integrity in 10 CFR Part 50 (Tentative)
b. Final Amendment to 10 CFR Part 50, Appendix J. ''Containment Leakage Testing,'' to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)

(Contact: Andrew Bates, 301–415–1963)

Tuesday, September 12

10:30 a.m. and 1:30 p.m.
All Employees Meetings (Public Meetings) on ''The Green'' Plaza Area between buildings at White Flint
(Contact: Beth Hayden, 301–415–8200)

Week of September 18—Tentative

There are no meetings scheduled for the Week of September 18.

Week of September 25—Tentative

There are no meetings scheduled for the Week of September 25.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is 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 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.

Dated: August 31, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–22177 Filed 9–1–95; 2:34 pm]

BILLING CODE 7590–01–M

federal register

Wednesday
September 6, 1995

Part II

Department of the Treasury

Customs Service

19 CFR Parts 10, 12, 24, et al.

North American Free Trade Agreement (NAFTA): Implementation of Interim Amendments; Final Rule

Regulatory Standards For Implementation of the North American Free Trade Agreement; Notice

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178, 181 and 191

[T.D. 95–68]

RIN 1515–AB33

North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the Customs Regulations which were published in the **Federal Register** on December 30, 1993, as T.D. 94–1 to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement entered into by the United States, Canada and Mexico.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Joyce Metzger, Office of Field Operations (202–927–0792).

Audit Aspects: William Inch, Office of Strategic Trade (202–927–1100).

Legal Aspects: Myles Harmon, Office of Regulations and Rulings (202–482–7000).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico (the ''Parties'') entered into an agreement, the North American Free Trade Agreement (NAFTA). The stated objectives of the NAFTA are to: Eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties; promote conditions of fair competition in the free trade area; increase substantially investment opportunities in the territories of the Parties; provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory; create effective procedures for the implementation and application of the NAFTA, for its joint administration and for the resolution of disputes; and establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of the NAFTA.

The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act (the ''Act''), Pub. L. 103–182, 107 Stat. 2057.

The principal role of the U.S. Customs Service is to administer the provisions of the NAFTA and the Act which relate to the importation of goods into the United States from Canada and Mexico. Those Customs-related NAFTA provisions which require implementation through regulation include certain tariff and non-tariff provisions within Chapter Three (National Treatment and Market Access for Goods) and the provisions of Chapter Four (Rules of Origin) and Chapter Five (Customs Procedures).

The tariff-related provisions within NAFTA Chapter Three which require regulatory action by Customs are Article 303 (Restriction on Drawback and Duty Deferral Programs), Article 305 (Temporary Admission of Goods), Article 306 (Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials) and Article 307 (Goods Re-Entered after Repair or Alteration). The non-tariff provisions of Chapter Three requiring Customs regulatory action are Article 310 (Customs User Fees), Article 311 (Country of Origin Marking) and Annex 300–B (Textile and Apparel Goods).

Chapter Four of the NAFTA sets forth the rules for determining whether an imported good qualifies as an originating good of the United States, Canada or Mexico (NAFTA country) and, as such, is therefore eligible for preferential tariff (duty-free or reduced duty) treatment as provided for under Article 302(2) and Annex 302.2 of the NAFTA. Under Article 401 within that Chapter, originating goods may be grouped in two broad categories: (1) Goods which are wholly obtained or produced entirely in one or more NAFTA countries; and (2) goods which are produced entirely in one or more NAFTA countries exclusively from materials that originate in those countries, or goods which are produced entirely in those countries and which satisfy the specific rules of origin in NAFTA Annex 401 (change in tariff classification requirement and/or regional value-content requirement). Article 402 sets forth the methods for calculating the regional value content of a good and the rules for determining the value of materials used in the production of a good. Article 403 sets forth special rules for calculating the regional value content in the case of automotive goods. Article 404 provides for accumulation of production by two or more producers. Article 405 provides a de minimis criterion. The remaining Articles within Chapter Four consist of additional sub-rules, applicable to the originating good concept, involving fungible materials, packaging materials, packing materials, transshipment, and non-qualifying operations.

Chapter Five sets forth the procedural and other customs requirements which apply under the NAFTA, in particular with regard to claims for preferential tariff treatment. Articles 501–506 of this Chapter provide for use of a Certificate of Origin for purposes of certifying that an exported good qualifies as an originating good under the Chapter Four origin rules, set forth the rights and obligations of importers regarding imported goods and of exporters and producers regarding exported goods, and set forth the rights and obligations of the customs administration of the importing country when conducting a verification of the origin of a good and when denying a claim for preferential tariff treatment. Article 507 sets forth confidentiality principles regarding business information collected pursuant to Chapter Five. Article 508 requires each Party to maintain penalties for violations of its laws and regulations relating to Chapter Five. Article 509 sets forth the obligations for the issuance and application of advance rulings by the customs administration of the importing country regarding whether a good meets the country of origin marking requirements of Article 311 or the origin rules of Chapter Four or other NAFTA requirements that apply to certain goods at the time of importation. Article 510 extends to exporters and producers of goods substantially the same rights of review and appeal accorded to importers regarding advance rulings or marking determinations of origin or country of origin determinations for purposes of preferential tariff treatment. Article 511 requires the Parties to establish, and implement through their respective laws or regulations, Uniform Regulations regarding the interpretation, application and administration of Chapter Four, Chapter Five and any other matter as agreed by the Parties. Finally, Articles 512 and 513 set forth procedures for cooperation between the Parties regarding the implementation and administration of the customs-related aspects of the NAFTA.

Pursuant to Article 511 of the NAFTA, representatives of the Parties engaged in a series of trilateral discussions for the purpose of formulating uniform regulatory texts or principles in respect of Chapters Four and Five and in respect of certain provisions within Chapter Three. As regards Chapter Three, agreement was reached on certain principles to be applied for purposes of implementing

the drawback provisions of Article 303. With regard to the remaining Chapter Three provisions, including the country of origin marking provisions of Article 311 and its companion Annex 311 (which provide for the establishment of ''Marking Rules'' for purposes of determining whether a good constitutes, and thus may be marked as, a good of a Party and which set forth disciplines on the methods and procedures for the country of origin marking of goods), those provisions were to be implemented by each Party independently and as appropriate within each Party's statutory and regulatory structure; the U.S. Marking Rules, contained in Part 102 of the Customs Regulations, were adopted on an interim basis in T.D. 94–4 which was published in the **Federal Register** on January 3, 1994 (59 FR 110). As concerns Chapter Four, the Parties agreed, by an exchange of letters dated December 30, 1993, to implement substantively verbatim texts of interim regulations covering all of the provisions of that Chapter. Finally, in recognition of the different existing customs legal and procedural requirements in the three countries, in the case of Chapter Five and some provisions of Chapter Three the Parties agreed, by an exchange of letters dated December 30, 1993, to use a standards approach whereby agreement was reached on certain minimum principles to be reflected in each Party's regulations, with each Party being left free to implement those principles, and any other requirements not inconsistent therewith, in accordance with the needs of the Party's particular statutory and regulatory framework. The trilaterally-agreed standards are set forth in a document entitled ''Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement''; the text of that standards document is reproduced for the information of the public in a general notice also appearing in this issue of the **Federal Register**.

On December 30, 1993, Customs published T.D. 94–1 in the **Federal Register** (58 FR 69460) setting forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the NAFTA in accordance with the implementation principles agreed to by the Parties as discussed above. In order to provide transparency and facilitate their use, the majority of the NAFTA implementing regulations set forth in T.D. 94–1 were included within one new Part 181. However, in those cases in which NAFTA implementation was more appropriate in the context of an existing regulatory provision, the NAFTA regulatory text was incorporated in an existing Part within the Customs Regulations. T.D. 94–1 also set forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the NAFTA implementing regulations. Although the interim regulatory amendments were promulgated pursuant to the foreign affairs function exception to the general notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 and took effect on January 1, 1994, in order to coincide with the entry into force of the NAFTA, T.D. 94–1 nevertheless provided for the submission of public comments thereon which would be considered before adoption of the interim regulations as a final rule, and the prescribed public comment period closed on March 30, 1994. In addition, two correction documents pertaining to T.D. 94–1 were published in the **Federal Register**, one on February 24, 1994 (59 FR 8852) and the other on March 31, 1994 (59 FR 15047).

Discussion of Comments

A total of 15 commenters responded to the solicitation of comments on the interim regulations set forth in T.D. 94–1. The comments submitted, and the Customs responses thereto, are set forth below.

Part 12, § 12.132 (Textile and Apparel Goods Under the NAFTA)

Comment: One commenter noted that whereas paragraph (b) of this section provides only for preparation of the country of origin declaration by the manufacturer or producer of the textile or apparel goods, in the case of non-NAFTA goods the declaration may also be prepared by the exporter or importer under § 12.130(f). Since the NAFTA provision imposes a more strict requirement, this commenter suggested that the NAFTA text be aligned on § 12.130(f) so as to provide for preparation by the manufacturer, producer, exporter or importer.

Customs response: The U.S. importer should not be allowed to prepare the declaration in this context because the importer often lacks sufficient knowledge of the actual production and origin of the goods. However, when the importer cannot obtain a declaration from the manufacturer or producer, Customs would be willing to accept a declaration prepared by the exporter, and paragraph (b) (redesignated in this document as paragraph (a)(2) as explained below) has been modified accordingly.

Part 134, § 134.22 (General Rules for Marking of Containers or Holders)

Comment: One commenter expressed approval of the approach taken in new § 134.22(d) regarding the country of origin marking of usual containers, in particular with reference to paragraph (d)(2) which, in the case of a good of a NAFTA country, removes from consideration the additional issue of whether a particular container is capable of reuse in determining whether a container must be marked. Notwithstanding the fact that this NAFTA rule was specifically intended to implement Annex 311(7) of the NAFTA, this commenter stated that this approach should not be limited to NAFTA goods but rather should be applied universally. In support of this suggestion the commenter argued that: (1) The standards applicable to usual containers are regulatory rather than specifically required by the marking statute (19 U.S.C. 1304) and thus can be changed; (2) the NAFTA does not require that its provisions be limited to NAFTA trade; and (3) no public policy purpose is served by having different usual container marking rules because they create confusion for importers and may mislead the consumer regarding the origin of the product packaged in the container when it has a different marking than that of the container.

Customs response: The definition of ''usual container'' provided in § 134.22(d)(1) applies to all containers, whether they are goods of a non-NAFTA country or goods of a NAFTA country. However, different regulatory requirements are provided in Part 134 of the Customs Regulations for determining whether a usual container is excepted from country of origin marking.

Section 304(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), states in part that:

> . . . Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

Thus, although a container may not be a good of a NAFTA country, if it is a ''usual container'' as defined in § 134.22(d)(1) of the Customs Regulations it may be excepted from marking pursuant to 19 U.S.C. 1304(b) provided that the conditions of that statutory provision are satisfied, as

Customs has ruled in HQ 735548 dated February 14, 1995.

The Part 134 regulations relating to marking of containers from non-NAFTA countries (§§ 134.23 and 134.24) generally draw a distinction between reusable and disposable containers in determining whether they must be marked to indicate their own country of origin. If the containers are determined to be reusable, they are treated as separate articles of commerce and are required to be individually marked with their country of origin. However, if the containers are determined to be disposable, they are not treated as separate articles of commerce and are excepted from country of origin marking.

However, for containers which are determined to be ''goods of a NAFTA country'', the distinction between reusable and disposable is not applicable in determining the marking requirements for the containers. The country of origin marking requirements for containers which are ''goods of a NAFTA country'' are based primarily on whether the container is considered to be a ''usual container''. If it is determined to be a ''usual container'', as defined in § 134.22(d)(1) of the regulations, the container is not required to be marked with its own origin. The fact that a container is capable of repeated use does not preclude it from being considered a ''usual container''.

Section 134.22(d) was included in the interim regulations solely to implement Annex 311(7) of the NAFTA, which applies to containers which are goods of NAFTA countries. Customs does not believe that the NAFTA implementing regulations are the proper vehicle for effecting a change in the marking requirements for containers which are goods of non-NAFTA countries. Such a change (applying to imports from non-NAFTA countries the § 134.22(d)(2) NAFTA ''usual container'' marking exception) should be the subject of a separate notice of proposed rulemaking to amend §§ 134.23 and 134.24, so as to give affected parties an opportunity to submit any comments they may have.

Part 181, Subpart B (Export Requirements)

Section 181.11

Comment: With regard to the preparation and use of Certificates of Origin in general, one commenter noted that the instructions for field 6 (Harmonized System tariff classification number) specify use of the 8-digit number of the country into which the good is imported if the good is subject to a specific rule of origin that requires eight digits. This commenter suggested that this creates an unnecessary burden on exporters because it requires them to cross-reference and cross-document the seventh and eighth digits of tariff numbers for each NAFTA country and may mean in some cases that three separate Certificates would have to be prepared for one part number. Since the tariff numbers in field 6 simply identify the rule of origin that the exporter used to certify the goods and because the seventh and eighth digits in all three countries identify the same goods and the same rule of origin, this commenter suggested the following alternative solutions: (1) The three governments could publish a single conversion list of the tariff numbers for each country for distribution to customs officials and the public; or (2) the exporter could be allowed to indicate with a ''U'', ''C'' or ''M'' prefix the country of the tariff number used in field 6.

Customs response: Customs does not agree with the proposal of allowing classification to be reported at the 6-digit level. Many of the specific rules of origin were written at the 7th and 8th digit level to capture a desired processing condition. Where this is the case, a NAFTA claimant must indicate that the processing it performed accomplished the required tariff shift. Reporting a classification number at a lesser level would not satisfy this requirement.

The proposal for publishing a list of all of the rules together with references to the 8-digit item numbers may have some merit. It should be noted that the tariff items in these rules are reflected either in the rules themselves or in the Appendix to Annex 401 of the NAFTA. Currently, the NAFTA Parties are exploring within the trilateral working groups created under the NAFTA the most appropriate means to keep the trading public aware of the changes to the rules, including those that involve changes at the 8-digit level. The commenter's suggestion will be kept in mind in that context.

Finally, Customs is of the opinion that the suggestion of utilizing a letter prefix to a 6-digit classification number to designate which country's tariff schedule is being applied would not be workable. An enterprise wishing to take advantage of NAFTA in any one of the NAFTA countries must classify according to the actual tariff schedule of the importing country at the 7th or 8th digit level as shown in that tariff in any case in which the specific origin rule requires a change at that level.

Comment: One commenter raised two issues regarding paragraph (d) which provides that if a U.S. exporter or producer has reason to believe that a Certificate of Origin completed and signed by him contains incorrect information affecting its validity or accuracy, he shall within 30 calendar days so notify in writing all persons to whom the Certificate was given. First, this commenter suggested a problem with the ''within 30 calendar days'' language in that significant controversy could arise in trying to pin down exactly on which day the exporter or producer had the requisite ''reason to believe''. Second, the commenter expressed some confusion as to whether a Certificate could be deemed to be incorrect if the information provided thereon was accurate when the Certificate was signed, and in this regard the commenter questioned whether the notice had to be provided in the following circumstances: (1) Whenever there is a change in the product, even if a recipient of the Certificate no longer receives the product; and (2) where the exporter or producer is uncertain as to which of its products the recipient intends to apply the Certificate. Stating that the duty to ascertain inaccuracies and search for all Certificate recipients is unrealistic and fraught with pitfalls for well-intentioned exporters or producers, this commenter suggested that paragraph (d) be redrafted to more specifically define the obligations of Certificate creators.

Customs response: The comment with regard to the commencement of the 30-day period appears to have merit. Accordingly, paragraph (d) of § 181.11, as set forth below, has been modified by inserting the phrase ''after the date of discovery of the error'' immediately after the phrase ''30 calendar days''. This additional language would encompass the discovery of an error by any involved party: the exporter, producer or verifying customs administration. The condition that no formal investigation be begun should be unaffected by the addition of this phrase. For purposes of consistency and based on the same considerations, a similar modification has been made to the text of § 181.21(b) regarding the correction of a declaration.

With regard to the issue of the specific circumstances in which notice of an incorrect Certificate of Origin must be provided, Customs would first point out that where information believed by the preparer of the Certificate to be accurate is found to be incorrect by a verifying customs administration, such information constitutes incorrect information which might affect the granting of preferential tariff treatment. Accordingly, all recipients of the

Certificate must be notified of the incorrect information so that a NAFTA claim is not made based on erroneous information.

Where there is a change to a product and the recipient of the Certificate covering that product no longer receives the product, it is the position of Customs that if the product change affects the eligibility of the product retroactively and if the recipient based its claim of NAFTA treatment for that product on an incorrect Certificate, the recipient must be sent a corrected Certificate so that it might correct its entry. Prospective shipments of the product should be covered by a new Certificate given to current importers of the product.

Finally, as regards a case in which the exporter or producer is uncertain as to the specific products to which the recipient intends to apply the Certificate, it is the position of Customs that an exporter or producer must assume that each recipient of its Certificate intends to utilize it for all products listed thereon and thus must be notified of any incorrect information appearing on the Certificate.

Section 181.12

A commenter stated that this section imposes overly broad and burdensome recordkeeping requirements on U.S. exporters and producers whose goods qualify as originating goods under an origin criterion that does not involve a regional value-content requirement. Since in such a case data as to cost, value and payment are irrelevant in qualifying as an originating good, this commenter states that § 181.12 should be written so as to require only that recordkeeping which is necessary to demonstrate the correctness of the basis upon which originating status is claimed.

Customs response: The recordkeeping requirements contained in paragraph (a) of this section, including the specific types of records to be maintained, reflect the provisions of Article 505 of the Agreement which was implemented by an amendment to 19 U.S.C. 1508 effected by section 205 of the Act. Moreover, this comment fails to recognize a basic problem that could arise from use of the suggested minimalist approach: a customs administration may have no choice but to deny a claim for preferential tariff treatment if the claimed basis for originating status is not valid and no records have been maintained to support an applicable alternative basis involving a regional value-content requirement.

Part 181, Subpart C (Import Requirements)

Section 181.21

Comment: With regard to the requirement under paragraph (a) that the claim for preferential tariff treatment be based on a Certificate of Origin in the possession of the importer, one commenter stated that the regulatory provision is unclear as to whether possession of a copy of the Certificate would satisfy this requirement. This commenter stated that permitting use of copies of a Certificate is necessary where there are multiple importer customers, where goods are exported to two NAFTA countries, and where a supplier provides a Certificate to a central location of a producer which has subsidiaries operating in more than one NAFTA country.

Customs response: Customs believes that this commenter makes a valid point. Accordingly, paragraph (a) of § 181.21, as set forth below, has been modified to provide for possession of a copy of a Certificate of Origin.

Comment: With regard to the written declaration under paragraph (a) and the written correction of a declaration under paragraph (b), a commenter suggested that additional provision should be made for effecting both actions by electronic means in order to reflect the Customs Modernization provisions of the Act.

Customs response: Although the suggestion has some merit in principle, Customs believes that it would be premature at this time to revise these paragraphs to provide for electronic means for complying with their provisions. As Customs implements the Customs Modernization provisions of the Act, it will identify which regulatory activities may be performed electronically and will amend the regulations accordingly. At that time, these NAFTA provisions will be reviewed and, if necessary, brought into line with whatever changes are made elsewhere in the Customs Regulations with respect to the electronic filing of entry information.

Comment: One commenter stated that paragraph (b) should require that Customs send to the importer's surety a copy of the importer's corrected declaration because, if the importer fails to pay the required duties, the surety will not be aware of this circumstance until the entry is liquidated and demand is made upon the surety.

Customs response: Customs does not now notify sureties during the entry process, and that policy should continue to be applied in the context mentioned by this commenter.

It should also be noted that the failure to deposit estimated duties when due is a bond breach, and Customs may make an immediate demand in the event of a breach. There is no basis for a different procedure when the bond principal breaches that provision at the time of entry or when the bond principal breaches that provision at the time of filing a corrected declaration.

Section 181.22

Comment: For purposes of submitting a Certificate of Origin to Customs under paragraph (b), one commenter stated that, by referring to a Certificate ''signed by the exporter or producer'', the regulation appears to permit the exporter to simply provide the producer's Certificate to the importer. This commenter suggested that, if this is so and if the producer were allowed to execute a single Certificate and provide copies thereof to its customer exporters who then could provide copies to their customer importers, the following benefits could be realized: (1) A producer Certificate would not have to be re-executed by exporters; (2) a possessor of a Certificate would always know who the producer of the goods was; and (3) administrative effort would be reduced by requiring creation of only a single Certificate.

Customs response: While the commenter's suggestion has some logic and merit under the regulatory text as written, Article 501(3) of the Agreement (and § 181.11(b) in a U.S. export context) are quite clear that an importer's claim for preferential NAFTA tariff treatment can only be based on a Certificate of Origin prepared by the exporter of the good. Moreover, any Certificate completed by a producer is done voluntarily whereas that prepared by the exporter is a requirement for claiming NAFTA treatment. In order to remove any ambiguity and ensure consistency with the terms of the Agreement, paragraph (b)(2) of § 181.22, as set forth below, has been modified by removing the two references to ''or producer''.

Comment: One commenter stated that this section should be modified to require that Customs provide notification to the importer's surety whenever the importer fails to comply with a request for submission of a Certificate of Origin. This would enable a surety to minimize its risk in cases involving a series of related importations which result in denial of preferential tariff treatment and issuance of a claim for increased duty under the surety's bond.

Customs response: The comment response under § 181.21 above regarding

notice to a surety applies equally to this comment. Moreover, the principal may pay the duty so that no bond breach would occur. In any event, the requested change would inject Customs into the contractual relationship between the surety and its bond principal. The submission of document copies is a matter that is best resolved between the principal and its surety.

Part 181, Subpart D (Post-Importation Duty Refund Claims)

Section 181.31

Comment: One commenter stated that this section should be amended to expressly permit sureties to submit post-importation NAFTA claims so that sureties may protect their interests, for example in a case where the importer is out of business and the surety has a liability on the transaction. This commenter argued that this would be a logical and much needed extension of surety rights under the administrative process, noting in this regard that sureties presently can file protests, petitions for relief from liquidated damage claims and petitions under 19 U.S.C. 1520(c).

Customs response: Both Article 502(3) of the Agreement and the U.S. implementing statute specifically provide for the filing of a post-importation claim by the importer. While 19 U.S.C. 1514(c) expressly provides for the filing of a protest by a surety in its own right, no corresponding surety right is reflected in 19 U.S.C. 1520(d) which was added by section 206 of the Act. Of course, a surety or any other party acting as a duly authorized agent may file a post-importation claim on behalf of its importer principal.

Section 181.32

Comment: One commenter complained of the post-importation refund claim documentary requirements in paragraphs (b)(3)–(5) of this section, pointing out that the written statements specified therein constitute added and burdensome requirements that are not applied either in the case of a NAFTA claim made at the time of entry or in the case of any other post-importation claim procedure under Part 173 or 174 of the Customs Regulations. This commenter therefore suggested removal of these requirements.

Customs response: The written statement requirements for post-importation claims are designed to prevent an overpayment of a duty refund such as drawback. Customs notes that there are parallel NAFTA requirements for drawback and duty deferral program participants under Part 181 (see §§ 181.47 (b) and (c) and § 181.53(a)(3)). Accordingly, Customs believes that these requirements must be retained.

Section 181.33

Comment: Two commenters referred to paragraph (d)(3) which provides that where the entry covering the good has been liquidated, whether or not the liquidation has become final, a post-importation refund claim may be denied without reliquidating the entry. One of these commenters stated that this section and Part 174 of the Customs Regulations should include the right to file a protest within 90 days of the denial of the claim whether or not the liquidation has become final. The other commenter stated that the regulations do not, but should, provide for an administrative appeal process in the case of a denial issued more than 90 days after liquidation of the entry.

Customs response: Customs agrees that a claimant has a right to file a protest based on a denial of a NAFTA post-importation claim, including in cases in which the claim is denied more than 90 days after liquidation of the entry and without reliquidation of the entry, and Customs also agrees that the regulations should explicitly reflect this right. Accordingly, § 174.12(e)(2), which specifies when the 90-day time period for filing a protest begins in the case of a protest against a decision not involving a liquidation or reliquidation, has been modified as set forth below by the inclusion of a specific reference to a claim filed under 19 U.S.C. 1520(d).

Customs notes that in the case of a denial of a post-importation claim on the merits (that is, where the denial is based on a negative origin determination rather than on procedural grounds), a person who signed a Certificate of Origin relating to the good at issue has a right to file a protest against the denial (see 19 U.S.C. 1514(c)(2)(E) and interim § 174.12(a)(5) as republished below). In order to reflect current Customs practice, §§ 181.33 (d)(2) and (d)(3), as set forth below, have been modified to provide that the notice of denial of the claim in such cases shall include a statement regarding the right to file a protest against the denial under Part 174 of the regulations.

Part 181, Subpart E (Restrictions on Drawback And Duty-Deferral Programs)

Section 181.41

Comment: Two commenters stated that this section implies that the effective dates of 1996 and 2001 apply only where preferential tariff treatment under NAFTA is claimed. This is not correct and therefore it should be made clear that these effective dates apply to all merchandise whether or not NAFTA preferential treatment is involved.

Customs response: Customs agrees that the subpart covers all exports to Canada or Mexico, whether a claim for preferential tariff treatment is made or not. Accordingly, the second sentence of § 181.41, as set forth below, has been modified by inserting a period after ''January 1, 2001'' and removing the rest of the sentence.

Section 181.44(a)

Comment: A commenter pointed out that it is too difficult for the drawback claimant to ''discover'' the duty paid on the merchandise when it is imported into the United States and when it is imported into Canada and Mexico. As an alternative, this commenter suggested that a NAFTA control number be placed on the commercial invoice when a drawback claim is expected to be filed. Each U.S. exporter could use its tax identification number (from the Certificate of Origin) followed by a date code and a sequential number. This control number should become part of the import records associated with NAFTA claims in Canada or Mexico.

This commenter went on to state that whenever this sequential NAFTA drawback control number appears, Canadian or Mexican Customs should enter the amount of duty from the import entry, together with the control number, into a database which could be downloaded into the U.S. Customs computer system. The data could then be accessed by U.S. Customs through ABI to determine duties paid upon importation into Canada or Mexico. Upon liquidation of the import transaction in Canada or Mexico, the computer record would be updated. The drawback claimant should be allowed to waive the right to claim a refund of the amount equal to the additional duties that would be owed to Canadian or Mexican Customs. This would set the date of entry when duties have been paid in Canada or Mexico for drawback purposes. The commenter suggested that without a link between the three Customs administrations, drawback claims will be delayed.

Customs response: This commenter recognizes that the Agreement and the statute require the amount of duty paid in Canada or Mexico to be reported. The commenter's proposal to require a drawback control number to be placed on the commercial invoice and for the Customs Services of the three countries to monitor that number would be extremely burdensome. In addition,

Customs is aware that many U.S. importers have alleged an inability to obtain the foreign invoice. Such inability can only result from a failure of the commercial participants to address the issues in a timely manner. Drawback claims require that the commercial participants resolve these information issues in the terms of the sale before the export so that the required information on the completed transaction can be presented to Customs to establish any drawback eligibility. Paragraph (c) of § 181.47 lists the required evidence.

Comment: A commenter stated that any claim based on estimates (that is, the NAFTA duty rate multiplied by the invoice value) would not take into account duty exemptions that may be available to Canadian and Mexican importers and that may not be apparent on the face of the commercial documents (for example, articles assembled abroad and returned). If there are no such exemptions and value can be determined on the face of the commercial documents, then the claimant should be allowed to base the duty amount on the appropriate NAFTA duty rate in Canada or Mexico multiplied by the FOB value.

Customs response: Drawback claimants cannot base their claims on estimates; rather, each claim must be based on the liquidated amount of duty paid on the import entry for goods entered into Canada or Mexico.

Section 181.44(b)

Comment: Two commenters stated that this section is unclear as to the calculation of drawback when two or more components are used in the process of manufacture. One of these commenters raised the question of whether the comparison of duty paid must be between the duty paid on each component part and the duty paid on the finished article exported to Canada or Mexico or between the total duty paid on all component parts and the duty paid on the finished article exported to Canada or Mexico. This commenter provided the following example:

Two parts, X and Z, are imported duty-paid into the United States at $2.00 and $4.00, respectively. Assume article Y is manufactured and exported to Canada or Mexico and duty of $5.00 is due. Does the lesser of the two duties apply to X and Z individually (resulting in $6.00 in drawback) or collectively (resulting in $5.00 in drawback)?

Customs response: With respect to the duty comparisons, the comparison should be made on an individual basis regardless of whether two components are used to make one export article or one component, such as a chemical, is split into two export articles. Section 181.44, as set forth below, has been modified by redesignating paragraphs (b)–(e) as (c)–(f) and adding a new paragraph (b) which sets forth the relative value calculation and individual comparison principle and includes the following example:

Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

Section 181.44(c)

Comment: Three commenters expressed concern about the statement in § 181.44(c) (redesignated in this document as § 181.44(d) as discussed above) that ''same kind and quality'' is synonymous with ''identical or similar good''. They stated that this terminology should not restrict or eliminate rulings and court cases related to same kind and quality. Another commenter stated that making the term ''same kind and quality'' synonymous with the terms ''identical'' or ''similar'' seems to eliminate substitution drawback since identical or similar goods are defined in part as ''goods that were produced in the same country as that good''. If this is true, then the example in this section is incorrect because it allows for the substitution of foreign and domestic goods. On a related subject, a commenter raised the point that the statement that the two terms are synonymous leaves the door open for narrowing the scope of the ''same kind and quality'' provision to that of ''identical or similar.'' This commenter was of the view that it should be stated that all rulings, court cases or other determinations pertaining to same kind and quality will be the guiding force in understanding the meaning of ''identical and similar good.''

Customs response: Although it is true that the term ''same kind and quality'' is considered to have the same meaning as the term ''identical or similar'', Customs does not intend to require that the substituted merchandise come from the same country to qualify for manufacturing drawback under the NAFTA. Section 181.44(d), as set forth below, has been modified to clarify these points.

Section 181.45

Comment: With regard to the reference in this section to ''same condition'' instead of ''unused merchandise'', three commenters questioned whether a third unique type of drawback is contemplated by this regulation, that is, same condition drawback for NAFTA countries and unused drawback or manufacturing drawback for all other countries. Otherwise, they stated that the terminology used in the NAFTA and in 19 U.S.C. 1313(j), as amended by section 632 of the Act, must be harmonized. Also on this subject, another commenter stated that, for consistency, the term ''same condition drawback'' should be replaced with ''unused merchandise drawback.''

Customs response: The Agreement was signed by the United States on December 17, 1992. The United States could not, without reopening negotiations with the two other Governments, incorporate changes made to its national laws subsequent to December 17, 1992, in its obligation to implement the Agreement. Consequently, with respect to trade between the three NAFTA parties there will be unavoidable inconsistencies when compared with trade between the United States and countries outside the Agreement. It is simply impossible to eliminate all differences between the provisions of sections 203 and 632 of the Act by regulation. In trade between NAFTA countries the provisions of section 203 of the Act control. Subpart E can do no more than to implement section 203 of the Act.

Section 181.45(b)

Comment: Two commenters stated that the second sentence of the example should be amended to simply read ''X immediately exports the desk to Z in Mexico'' because, whether or not duties are owed in Mexico, the mere fact of exportation will allow X to obtain a refund of 99% of the $25.00 in duty paid upon importation of the desk into the United States. These commenters went on to state that the fact that Z pays duty of $10.00 in Mexico is moot: 19 U.S.C. 1313(j)(1) contains no limitation based upon payment of duties in the NAFTA country of import. Thus, including the $10.00 Mexican duty in

the example rather than a ''whether or not'' phrase regarding payment of duty in Mexico, will be confusing to industry and to Customs personnel. Since the amount of duty is only germane in calculating the ''lesser of two duties'' under a manufacturing scenario, these commenters stated that the suggested modifications of the example would more accurately reflect the law.

Customs response: The sentence which precedes the example, together with the example, illustrates precisely the point made by the comment.

Comment: A commenter stated that the term ''commercially interchangeable'' should be substituted for ''completely fungible'' in subparagraph (2) of this section.

Customs response: In order to avail oneself of full drawback under direct identification, the Agreement and implementing legislation permit identification of the exported good as the imported good by means of a recordkeeping system only if the goods are fungible and commingled. Section 181.45(b)(2)(i), as set forth below, has been modified as explained below in the response to the comments submitted regarding Schedule X of the Appendix to Part 181, and the modified text does not include the superfluous word ''completely'' before ''fungible''.

Section 181.45(c)

Comment: One commenter stated that the statement ''X exports it within 90 days'' in the example under this section should be changed to refer to ''within 3 years''.

Customs response: The period for exportation is clearly stated in § 181.45(c). An example cannot impose a further qualification on either the statute or implementing regulation. So long as the period is less than 3 years the example correctly illustrates the provision.

Section 181.46(b)

Comment: Two commenters stated that the existing exporter's summary procedure and waiver of prior notice provisions and the new provisions for ''unused merchandise drawback'' eliminate the need to inspect the goods prior to export because it would be too difficult for Customs to determine ''unused'' status by visual inspection. These two commenters, after stating that the Office of Trade Operations has indicated that the required 5 days of prior notice may be shortened to 48 hours, suggested that any change to this time period in Part 191 of the Customs Regulations should be reflected in the corresponding provision in Part 181. In addition, one of these commenters pointed out that there never existed a requirement for filing at the port of exportation.

Customs response: Although the exporter's summary procedure and waiver of prior notice provisions are not specifically provided for in the NAFTA, they are not new to the Drawback Program. Therefore, the existence of these two privileges would not be a basis for eliminating the physical inspection of the goods. With respect to shortening the prior notice period from 5 days to 48 hours, this principle already has been considered by Customs in connection with a pending proposed revision of Part 191 of the Customs Regulations. Section 181.46(b), as set forth below, has been modified to specify a prior notice period of 2 working days rather than 5 days.

Comment: One commenter pointed out that the statement in this section that ''[g]enerally, for same condition drawback, the claim would be filed with the Customs port where the examination would take place'' is not practical and not required by law.

Customs response: Because there are currently no requirements that claimants file same condition claims at the port where the examination will take place, Customs agrees that this statement should be replaced by the following: ''To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place''. Section 181.46(b) as set forth below has been modified accordingly.

Comment: A commenter requested that the text of this section be replaced by the appropriate sections from Part 191 of the regulations. The commenter did not explain the basis for this comment.

Customs response: Customs believes that the new language set forth in the preceding response will at least in part address this comment.

Section 181.47(a)

Comment: Two commenters stated that this section places an undue burden on the claimant because it requires the claimant to monitor the enforcement of the Canadian or Mexican Customs regulations. These commenters also argued that the section is also unfair in that it requires the claimant to have access to duty payment information to which it is not privileged, when sometimes the claimant does not even know who the ultimate importer is in Canada or Mexico.

Customs response: The Agreement provides that the amount of the duties paid in the destination NAFTA country must be presented by the person seeking a refund of that duty from the exporting NAFTA country. In order to obtain the refund, the claimant must obtain the cooperation of its customer in Canada or Mexico.

Section 181.47(b)(1)

Comment: Two commenters complained that the Canadian or Mexican Customs entry and the document referred to as the ''certification'', which are required to be submitted under this section, are too difficult for the U.S. exporter to obtain. Two other commenters stated that requiring both documents is redundant and contradictory to the paperless entry concept. Another commenter suggested that the entry documents should not be required but rather should be used only if available and that certification should only be provided in the event of an audit.

Customs response: The provision reflects a basic and necessary component of a proper NAFTA drawback claim and is not redundant since alternative methods may be used to establish that amount as set forth in paragraph (c) of § 181.47. As regards the alleged burden imposed by this provision, and as noted elsewhere, a drawback claimant will need the cooperation of its Mexican or Canadian customer in order to benefit under the agreement.

Section 181.47(b)(2)(i)

Comment: Two commenters believed that the documents required in Part 191 of the regulations satisfy the NAFTA requirements. They stated that commercial invoices, proof of payment of duties and import documents relating to an exportation to a foreign country have never been required with drawback claims under Part 191 and should only be required in the event of an audit. These two commenters also stated that these documents would not be required at the time of filing the claim under the exporter's summary procedure.

Customs response: Paragraph (c) of § 181.47 does not require filing of the Canadian or Mexican Customs entry because, under subparagraph (4), the drawback claimant may file an affidavit in lieu of the Canadian or Mexican entry document provided that certain specified information is also submitted. The requirement for these new documents is a result of the new ''lesser of the two'' system which is part of the NAFTA Agreement. The documents required in Part 191 of the regulations would not enable either the claimant or Customs to have knowledge of the

amount of duties paid upon importation into Canada or Mexico.

Section 181.47(b)(2)(ii)(G) provides an alternative means for a drawback claimant under 19 U.S.C. 1313(j)(1) to show exportation.

Section 181.47(b)(2)(i)(A)

Comment: Four commenters stated that it is unclear why the tariff classification number of the imported merchandise is needed when the drawback is based upon the duty paid (regardless of the tariff number). These commenters further stated that tariff numbers have never played a significant role in drawback before.

Customs response: The tariff classification number will facilitate processing drawback claims by Customs. The use of a number rather than a textual description is better adapted to automated processing procedures. In the near future, tariff numbers will be required for all drawback claims, not just for NAFTA claims. These numbers are needed for compiling profiles as part of the planned selectivity system for drawback.

Because drawback claims under the Agreement require a comparison on an individual basis, as noted by these same commenters, with respect to § 181.45, the line item information is needed in order to process a claim under the Agreement.

Section 181.47(b)(2)(i)(B)

Comment: An objection was raised by three commenters regarding the requirement of submission of the commercial invoice because many importers do not have a hard copy of this document. These commenters argued that submission of the commercial invoice is contrary to the Customs modernization provisions of the Act and to the principles of automation, and they further stated that the commercial invoice is difficult to obtain because it contains proprietary information. Two of these commenters also pointed out that Customs will not have sufficient staff to review all of this documentation.

Customs response: Customs agrees that claimants should not be required to submit Customs Form 7501 and copies of commercial invoices with their claims unless they are requested by Customs. Accordingly, § 181.47(b)(2)(i)(B), as set forth below, has been modified to specify only ''Customs Form 7501 or the import entry number''. It should be noted, however, that claimants (and other parties who provide information on which a claim is based) must continue to maintain records to support the claim and make them available upon request. This includes records of importation and invoice-level information.

Section 181.47(b)(2)(i)(C)

Comment: Three commenters objected to the inclusion of the Canadian and Mexican entry numbers on the exporter's summary procedure because: (1) These numbers are not available to the exporter; (2) the exporter's summary procedure was not intended for this purpose; and (3) the courts have ruled that when information such as this is impossible to obtain the ''best evidence available'' must be accepted.

Customs response: These numbers are needed in order for the NAFTA countries to implement a data exchange system which will be used to verify the requested amount of drawback based on the ''lesser of the two'' system. The NAFTA parties will provide each with a tape of entry numbers and corresponding duty payments so that claimed amounts may be verified on a spot-check basis. Entry numbers are needed for this system to work.

Section 181.47(b)(2)(i)(D)

Comment: Three commenters stated that the NAFTA regulations should require only ''evidence of exportation'', as is required in Part 191 of the regulations, rather than the ''proof of exportation'' provided for in this section and in other sections of these NAFTA regulations.

Customs response: Customs agrees that the term ''evidence'' should be substituted for the term ''proof'' in each such context in order to be consistent with Part 191 of the regulations, and the Subpart E texts, as set forth below, have been appropriately modified throughout.

Section 181.47(b)(2)(i)(E)

Comment: Three commenters stated that waivers of rights to drawback are already available in the form of certificates of delivery and certificates of manufacture, and therefore any additional waiver requirement is redundant.

Customs response: The certificate of delivery does not waive any right to drawback particularly in light of the right to transfer substitute merchandise. This certificate makes it absolutely clear to the certifier that it may not claim any drawback with respect to the merchandise covered by the waiver.

Comment: A commenter questioned the validity of the waiver of the right to drawback by the importer in favor of the exporter when § 181.48(a) clearly states that the exporter is entitled to drawback.

Customs response: A waiver is needed from the importer who transfers any merchandise to a manufacturer and issues a certificate of delivery. A manufacturer who transfers merchandise to an exporter and issues a certificate of manufacture and delivery also needs to issue a waiver.

Section 181.47(b)(2)(i)(F)

Comment: Three commenters stated that the requirement that the drawback claimant provide a certification that he has not issued a Certificate of Origin for the goods to another party, or that he will notify Customs if he does so, is not valid because there is no NAFTA provision that precludes drawback when NAFTA preference is taken. One commenter stated that the separate certification or affidavit is not needed because it is well known that double dipping is illegal.

Customs response: The requirement is necessary since it is far from obvious that providing a Certificate of Origin which enables a Mexican or Canadian importer to obtain a duty reduction or refund from Mexico or Canada would be considered illegal double-dipping by a United States drawback claimant since that claimant would not necessarily benefit directly from the actions of its customers.

Comment: Another commenter took issue with the requirement for an affidavit by a manufacturing claimant certifying that no other claim has been filed on the goods. This commenter stated that once the claimant receives either a certificate of delivery or a certificate of manufacture and delivery, he can only certify that he has not made any other claim on the goods. The manufacturing claimant will not know whether the importer or any other party makes a claim on the goods.

Customs response: The commenter appears to compare the requirements of § 181.47(b)(2)(i)(F) and § 181.51(b). The Customs recordkeeping statute, 19 U.S.C. 1508, as amended by section 205 of the Act, does not prohibit a drawback claimant from providing an affidavit on the preparation of a Certificate of Origin with the drawback claim. It does require a drawback claimant to report such facts within 30 days of filing a drawback claim if that claimant has not already done so.

Informed compliance means that the Government is under an obligation to inform persons who deal with it which acts are proscribed. The regulation which requires a certification that the same import entry for the same designation of goods has not been used in more than one claim fulfills that obligation.

Section 181.47(b)(2)(ii)(A)

Comment: Two commenters stated that the requirement for the tariff classification at entry is superfluous.

Customs response: As already pointed out, in the near future tariff numbers will be required for all drawback claims, not just for NAFTA claims. These numbers are needed for compiling profiles as part of the planned selectivity system for drawback.

Section 181.47(b)(2)(ii)(B)

Comment: Four commenters stated that the requirement regarding submission of commercial invoices is in conflict with the requirements of the Customs modernization provisions of the Act and is a step backwards in the automation process. These commenters further argued that these documents are impossible to obtain when the claimant is not the importer. One of these commenters suggested requiring a pro forma invoice instead for same condition claims in order to resolve the latter problem. Another of these commenters stated that the detail required in this section may not be available due to automation and paperless entries and that it should be changed to refer to Customs Form 7501 and any appropriate documentation which identifies the subject goods. Another commenter stated that the entry documents (such as Customs Form 7501) may not be available because of confidentiality considerations.

Customs response: Again, Customs agrees that claimants should not be required to submit commercial invoices with their claims. Accordingly, § 181.47(b)(2)(ii)(B), as set forth below, has been modified by removing the two references to commercial invoices, and § 181.47(b)(2)(iii)(B), as set forth below, has been similarly modified for purposes of consistency. However, Customs would again point out that claimants (and other parties who provide information on which a claim is based) must possess and maintain records to support the claim and make them available upon request. This includes records of importation and invoice-level information.

Section 181.47(b)(2)(ii)(G)

Comment: Two commenters stated that this section should begin with the words ''If exporter summary procedures are not in force''. In addition, two commenters stated that the words ''* * * and signed in ink'' should be deleted because obtaining an original ink signature on a nonnegotiable copy of a document is an unnecessary burden. Finally, one commenter stated that this section does not take into account claimants using procedures under § 191.51 of the regulations and that it should be amended to reflect that fact.

Customs response: Customs agrees that where the exporter's summary procedure is approved for the claimant, the requirement in § 181.47(b)(2)(ii)(G) is not applicable; accordingly, this section as set forth below has been modified by adding at the beginning of the first sentence the words ''If a claimant is not approved for the exporter's summary procedure,''. In addition, while the evidence of export document must be signed, Customs agrees that the signature need not be in ink; accordingly, the section as set forth below has been modified by removing the words ''and signed in ink'' from the first sentence. Finally, Customs agrees that this section should reflect that evidence of exportation may also be established in accordance with the provisions of § 191.51; accordingly, § 181.47(b)(2)(ii)(G), as set forth below, has been modified by adding at the end of the first sentence the words '', or any other evidence of exportation provided for in § 191.51 of this chapter''.

Section 181.47(b)(2)(ii)(H)

Comment: Three commenters stated that providing a waiver from the importer is redundant since a certificate of delivery already serves the same purpose. One of these commenters suggested that if Customs must have it, it should be provided for directly on the certificate of delivery.

Customs response: A certificate of delivery does not in itself constitute a waiver of the right to claim drawback. Thus, an explicit waiver is necessary.

Customs agrees in principle that the waiver could be incorporated into the certificate of delivery form. However, until that form is revised to include the waiver, a separate waiver is needed.

Section 181.47(b)(2)(ii)(I)

Comment: One commenter recommended that the affidavit be incorporated onto the ''J'' side of Customs Form 7539, but with reference to ''designated goods'' changed to ''identified goods''. Another commenter stated that the affidavit is unnecessary but that if Customs must have it, it should be included on the drawback entry form instead.

Customs response: So long as the affidavit is included with the drawback entry, the legal requirement will be satisfied.

Section 181.47(b)(2)(iii)(B)

Comment: One commenter objected to the requirement of submission of the commercial invoice because it will not be available in hard copy. This commenter stated that a pro forma invoice would solve this problem.

Customs response: Customs took the position in promulgating 19 CFR 191.142(b)(6) that drawback under 19 U.S.C. 1313(c) is payable to an exporter claimant who is the importer of record or the actual owner named in the import entry. There is nothing in section 203 or 632 of the Act which would require a change to that position. As such, it is unclear why the person who ordered the merchandise and who determined that the merchandise did not meet the order specifications would not have the original invoice issued by the foreign supplier.

Section 181.47(b)(2)(iii)(C)

Comment: It was pointed out by a commenter that import documents for foreign countries are not available to the U.S. seller and that it is virtually impossible for the U.S. seller to obtain proof of payment and final duty determination notices.

Customs response: The commenter has misread the section. Subparagraph (C) states the evidence needed to show that the specifications were not met.

Section 181.47(c)

Comment: Two commenters stated that the phrase ''for purposes of evidence of duties paid'' is confusing in that § 181.47(a) also refers to ''evidence of exportation''. They also suggested that Customs may want to consider a single definition for ''evidence of exportation'' as has always been done under Part 191 of the regulations and introduce specific requirements only for 19 U.S.C. 1313 (a) or (b) drawback for ''evidence of duties paid'' since this information is germane only to manufacturing drawback when calculating the ''lesser of the two duties''.

Customs response: It would be quite difficult for Customs to draft an affidavit for the parties. The language needed to demonstrate that the claimant's goods were received by its Mexican or Canadian customer and the amount of duty paid to Canada or Mexico by that customer would depend on that customer's statement.

There is a difference between the provision on exportation in § 181.47(b)(2)(ii)(G) (which has specific reference to 19 U.S.C. 1313(j)(1)) and the provision in § 181.47(c). Because in the former case there is full drawback available without a comparison between the duty that was paid in the United States and the duty paid in Canada or Mexico, the provisions necessarily

differ. The provisions of § 181.47(c) also apply in a NAFTA context to other duty reduction programs such as temporary importations under bond, bonded warehouses, and foreign trade zones (*see* § 181.53(a)(3)).

Section 181.48

Comment: With regard to paragraphs (b) and (c), two commenters pointed out that the wording is confusing and not consistent with ''mainline'' drawback in that, under Part 191 of the regulations and under the Customs modernization provisions of the Act, it is always the exporter of record who is entitled to drawback. One of these commenters suggested the following alternative language: ''The exporter of record is entitled to the drawback unless the exporter directs in writing that another entity receive the drawback refund.''

Customs response: The provision in § 181.48(b) follows the position set forth in 19 CFR 191.142(b)(6). Section 181.48(c) is consistent with current law regarding the identity of the claimant for same condition drawback. The Customs modernization provisions of the Act followed this interpretation with respect to the identity of the claimant for unused merchandise drawback.

Section 181.49

Comment: One commenter stated that this section does not specify which records are required to be kept by the exporter, importer, manufacturer or producer. This commenter argued that Customs recordkeeping requirements are strictly limited to those records which are referenced in the statute and that this is consistent with Congressional intent under H.R. 3450. This commenter also suggested that Customs review the commentary in the House Report with regard to section 632 of the Act and that Customs also compare § 181.49 to § 181.53(g).

Customs response: The types of records are set forth in § 181.47(b); this section simply sets the retention period. Since payment occurs in most instances under the accelerated payment program before liquidation takes place, the period starts and ends earlier. In any event, § 181.49 follows the existing policy set forth in 19 CFR 191.5. Customs notes that 19 U.S.C. 1313(t), which was added by section 632 of the Act, makes the general recordkeeping requirements set forth in 19 U.S.C. 1508(c) applicable in the context of drawback certificates and provides that the retention period starts on the date the certificate is issued in the case of a person who issues a certificate relating to another person's drawback claim. Accordingly, § 181.49, as set forth below, has been modified by adding at the end the following sentence: ''However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.''

Section 181.50(a)

Comment: A commenter raised the issue that whereas the regulations require that the amount of duties paid to Canada or Mexico be ''established'' as a prerequisite to the completion of the claim, they do not provide instructions as to how these duty amounts will be established and they do not prescribe a time frame in which the duty amounts will be settled for the purpose of finalizing the claim.

Customs response: This section describes generally the process by which Customs will determine the amount of drawback to be paid. A directive for the guidance of Customs officers will address the internal Customs procedures that will implement the process in detail. With regard to the time frame issue, see the discussion of § 181.50(b) below.

Section 181.50(b)

Comment: Two commenters stated that requiring liquidation of entries made in Mexico and Canada before a drawback claim is liquidated eliminates most drawback claims from the Customs modernization act bypass system. In a related comment, another commenter stated that this section is in conflict with the Customs modernization provisions of the Act in a bypass (selectivity) system context because the liquidation of all designated import entries is no longer required for drawback liquidation. This commenter argued that requiring that there be prior liquidation of the import entry in Canada or Mexico undermines the process and conflicts with the requirement for fair and reasonable procedures as described in the legislative history accompanying the Customs modernization provisions of the Act.

Customs response: Customs will not be able to determine the ''lesser of'' the two duties unless the final amount of duties paid upon entry to Canada or Mexico is available. See also the response to the next comment.

Comment: A commenter stated that a time limit for liquidations is needed and that the current indefinite time period is in conflict with the intent expressed by Congress in the new drawback provisions contained in section 632 of the Act. In this regard this commenter referred to the accompanying House Report in which it was stated that ''the Committee expects that Customs should issue drawback regulations which take into consideration the various time limitations for recordkeeping, filing claims, amendments and clarifications and for auditing and liquidating drawback claims.''

Customs response: There is no requirement under the law that provides for a specific time period for liquidation of drawback claims, and practical considerations (including differences in the entry laws of the three NAFTA Parties) militate against imposing a strict time limit for liquidation of a drawback claim.

On a related subject, the United States and Canada have agreed that each import transaction involving goods subject to a NAFTA drawback claim in the exporting country should be monitored for a period of 3 years so that appropriate information may be provided to the exporting country for purposes of applying the ''lesser of'' rule; this 3-year period was chosen because it represents in most cases the time during which all factors affecting ultimate finalization of the import entry (including changes to the entry made by the importer after importation) would be set. Accordingly, § 181.50(b) as set forth below has been modified to provide that a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico.

Comment: A commenter made the following suggestion with respect to the policy that liquidation of the drawback claim not occur until the liquidation of the Canadian or Mexican customs entry has become final: In order to avoid a long waiting period, a waiver of the right to challenge the amount of estimated Canadian or Mexican duties should be established. Under this procedure, the claimant would agree to waive the right to claim any additional duties owed to Canadian or Mexican Customs.

Customs response: The commenter alleges that liquidation of a drawback claim can be done more quickly if the right to challenge the amount of duties assessed by Canada or Mexico is waived. However, a U.S. drawback claimant, unless it is also the importer into Mexico or Canada, has no right to waive the amount of duty paid by the Mexican or Canadian importer. Also, a system involving payment of drawback claims based upon the waiving of rights to challenge the Canadian or Mexican duty amounts could result in the United

States issuing an overpayment to the drawback claimant each time the import entry was liquidated for a lower amount of duties. The change to § 181.50(b) discussed in the response to the preceding comment represents Customs view regarding the proper time period during which liquidation of a drawback claim should not take place.

Section 181.50(c)

Comment: With respect to the requirement that a person who receives a drawback refund through accelerated payment must repay the duties if a NAFTA claim is adversely affected thereafter, a commenter stated that this should be amended to state that repayment is not required until the adverse decision has been made final by the courts and/or by operation of law.

Customs response: The suggestion that a claimant who receives an accelerated payment before liquidation need not repay it until the adverse action which makes that accelerated payment erroneous would be acceptable if the bond required the recipient to repay the principal sum with interest running from the date that Customs made the accelerated payment and until repaid. Since that process could take years, the bond amounts would have to be increased accordingly to protect the revenue. Accordingly, Customs concludes that the obligation to repay arises whenever an administrative action occurs which affects the NAFTA drawback claim.

Section 181.51(a)

Comment: Three commenters noted that certifying that an entry was not designated and paid on a prior drawback claim is unnecessary because a claimant that knowingly does this is guilty of fraud, and the Compliance Program and the civil penalties should offer sufficient protection against fraudulent claims.

Customs response: Customs believes that the regulation serves a useful purpose in reminding the claimant to exercise care to make certain that double claims are not made.

Section 181.51(b)

Comment: A commenter stated that the requirement for the claimant to state that no Certificate of Origin has been provided for the goods should be changed to a statement that no other ''NAFTA'' Certificate of Origin has been provided for the goods. This is because sometimes exporters may use Certificates of Origin for other purposes (for example, for enforcement of trade sanctions).

Customs response: The first sentence under § 181.51(b) refers to a Certificate of Origin ''provided for under § 181.11(a)'', and the second sentence refers to ''any such'' Certificate of Origin; as such the Certificate of Origin cannot be mistaken for any other certificate of origin that may apply to other laws. Therefore, use of ''NAFTA'' as suggested would be redundant and thus inappropriate.

Comment: A commenter referred specifically to the requirement that the claimant provide notice of whether another person has prepared a NAFTA Certificate of Origin for those goods. This commenter stated that this is in conflict with the new regulation that the claimant provide an affidavit that no Certificate of Origin has been provided for those goods.

Customs response: Section 181.47(b)(2)(i)(F) requires a claimant to affirm that no NAFTA Certificate of Origin was provided ''except as stated on the drawback claim''. Section 181.51(b) supplements that provision and makes it clear that a claimant who provides a NAFTA Certificate of Origin must report that fact to Customs.

Comment: A commenter stated that new subsection (t) of 19 U.S.C. 1313 provides that ''any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued'' and that the interim regulations are deficient in that they do not implement the language of this statutory provision. This commenter stated that subsection (t) would be helpful because it would establish a retention period beginning on the date the certificate was issued, instead of the date of payment.

Customs response: The NAFTA Certificate of Origin record retention period is set forth in § 181.12. *See* 19 U.S.C. 1508(c). The NAFTA Certificate of Origin is not a certificate that would enable another person to claim drawback. The certificates covered by 19 U.S.C. 1313(t) are the certificate of delivery and the certificate of manufacture and delivery.

Comment: A commenter stated that should this regulation remain as is, the 30-day window for filing the Certificate of Origin after filing the claim will create another administrative nightmare for Customs because all of the affidavits regarding Certificates issued (which may come in at various times after submission of the drawback entry) will have to be matched with previously filed drawback entries. This commenter stated that some adjustment should be made in the regulatory text to meet this problem.

Customs response: This comment is unclear because there is no ''30-day window for filing the Certificate of Origin.'' There are, however, two 30-day windows established in this section which involve notifying Customs of the existence of a Certificate of Origin for goods on which drawback has been paid. These two notification periods are necessary because if a drawback claimant prepares a Certificate of Origin for its Canadian or Mexican customer, it could result in a reduction of duty paid to Canada or Mexico on the goods for which the claimant is basing its drawback claim. Therefore, it must be reported to Customs so that Customs will be able to track and adjust that drawback claim. A drawback claimant who makes a drawback claim and then provides a Certificate of Origin to its customer jeopardizes its drawback claim.

Section 181.52

Comment: Two commenters stated that this provision creates contingent liabilities on every claim filed that could go on for a significant amount of time and that, therefore, the time frames allowed under NAFTA Article 502(3) for duty refunds in Canada and Mexico should be clearly indicated. These two commenters also stated that Customs will not be able to comply with this requirement without automation, or without recording the Canadian or Mexican entry number at the time the drawback claim is filed. In this regard, they referred to language pertaining to Title VI of H.R. 3450 which states that monitoring of drawback information can only be carried out effectively through exchange of electronic information.

Customs response: The commenters are correct. The very nature of the Agreement creates that contingent liability because of the differences in national laws and the right of an importer to make a post-entry NAFTA claim that is expressly provided in the Agreement. The alternative that was considered by the three Governments was to prohibit all refunds on goods moving from one NAFTA party to another NAFTA party. Permitting limited refunds necessarily increases uncertainty.

Section 181.53

General comments: The following general comments were made with regard to the operation of this section:

1. A commenter requested that the effective dates of this section be stated at the beginning of the section.

2. One commenter stated that the regulations should address the importation of goods from NAFTA countries covered by U.S. duty deferral programs, even though there will be some duties which could be deferred under these programs until all of the staged duty reductions and eliminations under NAFTA have been completed. This commenter also asked, if a claim for preferential tariff treatment is filed upon importation, whether an importer may file a warehouse entry or application for admission to a foreign trade zone and, if the claim is valid, whether it will be honored upon warehouse withdrawal or foreign trade zone entry for consumption.

3. A commenter asked whether the ''lesser of the two'' method will apply when zero payment of duties is an issue.

4. A commenter stated that this section does not address originating goods which are entered into a bonded warehouse, manipulated to the point where they are deemed produced in the bonded warehouse, and subsequently withdrawn for consumption in the United States.

5. Three commenters stated that the 60-day allowance for obtaining proof of exportation and duty payment in Canada or Mexico should be extended to a longer period, and one of these commenters suggested a 120-day period.

Customs response: The effective dates are already stated at the beginning of Subpart E.

The comment dealing with imports from NAFTA countries is beyond the scope of Subpart E.

Zero payment of duty into Canada or Mexico will be considered in making the comparison. If no duty is paid into Canada or Mexico, there will be no duty refund or deferral. Under the agreement, Canada and Mexico are required to provide reciprocal treatment of goods sent to the United States.

The treatment of originating goods entered into a warehouse and withdrawn for consumption is beyond the scope of Subpart E.

The 60-day time period was set by Article 303(5) of the Agreement. Knowing of the time frame, there is no reason why the beneficiary of the refund cannot structure its transfer to ensure that it can comply with the time period.

Section 181.53(a)(1)

Comment: One commenter took issue with the definition of ''duty deferral'' provided in this section, stating that Class 2 and 3 customs bonded warehouses are excluded from this list, whereas their counterparts, ''warehousing/distribution foreign-trade zones'' are not excluded. This commenter stated that the initial sentence in § 181.53(e) provides a better definition of ''a good that is manufactured or otherwise changed in condition in a foreign-trade zone * * *''

Customs response: The comment seems to state that a class 2/8 warehouse or a class 3/8 warehouse is excluded from coverage of § 181.53. Such warehouses are included under § 181.53(b).

Section 181.53(a)(2)

Comment: A commenter suggested adding to this section the following phrase: ''except for a good eligible for full drawback as provided for by section 181.45 of this Subpart''. In this regard, this commenter stated that NAFTA Article 303(6) provides for several import transactions that are unaffected by any limitations on drawback refunds or duty-deferral programs. This commenter also stated that § 181.45 captures these Article 303(6) transactions for drawback refund purposes. This commenter also stated that the regulations should clearly state that a good departing a foreign-trade zone for export to Mexico or Canada under circumstances included in Article 303(6) and/or § 181.45 shall not be subject to treatment ''* * * as if it had been entered or withdrawn for domestic consumption, and thus subject to duty.''

Customs response: Customs agrees that goods entitled to full drawback under § 181.45 should be excluded from this provision. Accordingly, § 181.53(a)(2), as set forth below, has been modified by the addition of the following sentence: ''However, the provisions of this paragraph shall not apply to goods covered by § 181.45.''

Comment: A commenter questioned the meaning of the phrase ''treatment as withdrawn for consumption.'' This commenter stated that, from an operations standpoint in the case of merchandise shipments from foreign trade zones, a ''pro-forma'' Customs Form 3461 and/or Customs Form 7501 must be prepared. Since there is no legal provision for a pro-forma version of these two forms, this commenter stated that the exact methodology of how to do this should be provided in the regulations.

Customs response: With respect to the meaning of ''treatment as withdrawn for consumption'' the provision informs the person who withdraws that it will be liable for duties on a good withdrawn for exportation to Canada or Mexico unless it is exempted by the Agreement or statute. As regards documentation requirements, Customs agrees that the regulations should incorporate specific provisions setting forth the procedural (including documentary) requirements that would apply for purposes of § 181.53. However, Customs believes that it would be preferable to deal with this matter in a separate **Federal Register** document rather than include such provisions in this final rule document. Accordingly, Customs intends to publish in the near future a separate document amending § 181.53 to address these procedural issues with a view to having appropriate regulations in place on January 1, 1996, when the Subpart E provisions go into effect.

Section 181.53(a)(3)

Comment: A commenter posed several questions about the process of ''waiver or reduction'' as provided for in this section. Will a pro forma Customs entry be prepared and held or will it be filed in some manner with Customs? How will the structure of the paperwork be organized? Because merchandise that is the subject of the pro forma entry will also be the subject of a Customs Form 7512 and Customs Form 7525, how will the Census reporting structure be organized?

Customs response: The section sets the legal requirement for Customs to waive or reduce the duties paid or owed on goods sent to Canada or Mexico. As indicated in the response to the preceding comment, the documentary and other procedural aspects of § 181.53 will be addressed in a separate document.

Section 181.53(e)

General comments: The following general comments were made with regard to the operation of this section:

1. One commenter stated that, by requiring actual payment of duties to Mexico or Canada, these regulations defeat the purpose for which this 60-day hiatus was created for foreign trade zones. This purpose was to address the paperwork and procedural burden the proposed ''NAFTA Drawback'' would impose on Customs and on companies that use foreign trade zones and export to Canada and/or Mexico. This commenter saw the burden as follows:

Step One—Merchandise shipped from a zone to Mexico and/or Canada with an appropriate tariff payment to U.S. Customs.

Step Two—Merchandise arrives in Mexico or Canada with appropriate tariff payments made.

Step Three—The U.S. exporter files for NAFTA Drawback with the evidence of payment(s) made in Canada or Mexico.

This commenter went on to state that, originally, the 60-day hiatus was

expected to provide an opportunity to combine steps one and three but that, by requiring payments to be made, this section forces a return back to the three-step procedure. As it is, the potential for this situation already exists when a Mexican or Canadian importer decides to use a deferral program that extends his payment of duties owed beyond the 60-day schedule imposed on the U.S. exporter. The regulations and H.R. 3450 provide adequate anti-fraud provisions to protect against the opportunity for any abuses that the suggested modifications might otherwise provide. Moreover, § 181.52 provides for the adjustment of drawback payments pursuant to a NAFTA preference claim made subsequent to the payment of a NAFTA drawback refund. This commenter therefore suggested that in similar fashion such a protection could become part of the § 181.53(e) procedures so that evidence of duty paid could be based on the duty owed (but not yet paid) in Mexico or Canada.

2. The same commenter requested that the phrase ''as calculated under paragraph (e)(1) or (e)(2)'' in the introductory paragraph of this section be replaced by the phrase ''as calculated consistent with the provisions of 19 CFR 146 Section 146.65''.

3. Another commenter stated that this section does not take into account that the Customs modernization provisions of the Act allow for periodic entry procedures for goods transferred from foreign trade zones to be expanded to a monthly timeframe instead of submission of entry-by-entry paperwork.

4. Two commenters stated that the examples provided in this section are convoluted and should be replaced. One commenter suggested that the examples should set forth the following facts: The imported products HTSUS classification; the rate of duty in the United States and in Mexico or Canada; dutiable value; and total value. Moreover, it was suggested that there should also be an example illustrating NAFTA treatment for a good departing a foreign trade zone for Mexico or Canada that combines both privileged and non-privileged foreign components and/or materials.

5. A commenter pointed out that there is no provision for mixed status merchandise (privileged and nonprivileged). This commenter also stated that there is no provision for zone restricted status merchandise. Since no production can occur in zone restricted status, if storage distribution were not included in the special actions under § 181.53, new special provisions for this status would not be necessary but should be mentioned.

6. Two commenters stated that the provision under section 202(a)(2)(A) of H.R. 3450 should be included in this section or it will be misinterpreted. These commenters believed that it should be interpreted only to mean that a foreign trade zone cannot be used to create a NAFTA originating good qualifying for NAFTA duty reduction. On a related subject, another commenter stated that this section does not address goods which are processed but not produced in a foreign trade zone (processed with non-originating materials). This commenter asked whether privileged foreign status would be permitted to ''lock in'' NAFTA preferential tariff treatment.

7. A commenter requested further clarification of the valuation methodology included in this section. This commenter further believed that weight should not be a factor other than when it is a factor for HTSUS purposes and therefore suggested using the language ''in its condition and HTSUS quantity.''

8. A commenter asked what the date of exportation is for NAFTA purposes.

9. A commenter requested that a definition of ''assessed'' be provided.

10. A commenter believed that the requirement for proof of exportation in this section is an unnecessary paperwork burden and suggested that a summary procedure similar to the one used in drawback should be established.

Customs response: The requirement for the collection of duties is set forth in Article 303(5)(a) of the Agreement.

The inclusion of paragraphs (e)(1) and (2) facilitate having the zone withdrawal NAFTA requirements in one part.

Whether a good is removed under the current weekly entry procedure or some other periodic entry procedure will not change the concepts set forth in the provision.

Creating complex examples will tend to obscure the principles sought to be illustrated: That is, which duty amounts are to be compared? The use of oil is appropriate since the principle is illustrated when privileged foreign status is claimed. There is no need for a separate example of merchandise consisting of nonprivileged and privileged status merchandise since the principles set in both examples would apply to such merchandise.

Export to Canada or Mexico of zone restricted status merchandise will not require an entry for consumption. It will require the goods so exported to be treated as a withdrawal for consumption for the sole purpose of computing whether there should be a reduction or waiver of duty.

The comment on section 202(a)(2) of the Act is beyond the scope of Subpart E. It deals with goods that are entered for consumption from a zone.

With respect to the use of weight as part of the valuation methodology, Customs does not concur with the suggested change because the provisions of this section follow the provisions of the Foreign Trade Zones Act (*see* 19 U.S.C. 81c(a)).

In the case of a shipment from the United States to Canada or Mexico, the date of exportation would be the date on which the goods leave the United States with evidence that the person sending those goods to Canada or Mexico intends to join them to the commerce of Canada or Mexico (*see* 19 CFR 101.1(k)).

The common meaning of the term ''assessed'' applies. As such, there is no need to provide for a separate definition that repeats the common meaning.

With respect to the proof of export burden under NAFTA, the comment fails to recognize that unlike drawback for shipments to non-NAFTA countries, the basis for entitlement to a refund, waiver or reduction in duty there depends entirely on the article and the amount of duty paid to Canada or Mexico. Also, the comment confuses the distinction between one drawback claim which may involve many exportations of merchandise on which duty was previously paid and specific withdrawals on which potential duty liability starts when that merchandise is withdrawn from a zone.

Section 181.53(e)(1)

Comment: A commenter stated that there are imported goods in foreign trade zones destined for Canada and/or Mexico under zone restricted status (19 CFR 146.44). This commenter stated that a general exemption from 19 CFR 146.63(b) should be provided for these goods because, for these goods to be entered or withdrawn for domestic consumption from an FTZ, § 146.63(b) provides that merchandise in zone restricted status may be entered for consumption only when the Foreign Trade Zone Board has ruled that the merchandise can be entered for consumption. To require rulings on such a routine matter will impose an unnecessary procedural burden on the Foreign Trade Zone Board, zone users and on Customs.

Customs response: The issue of goods in a zone restricted status will be addressed in the separate document regarding § 181.53 procedures to be published in the near future as mentioned above.

Section 181.53(e)(2)

Comment: A commenter took issue with the implication of this section that payments may be refunded only up to the limits established by § 181.44. Specifically, this commenter stated that under these regulations the exporter is required to make payments to U.S. Customs that might otherwise be unnecessary or larger in amount than is legally required for reasons of failure to meet the 60-day deadline. There should be an explicit provision that provides for the refund of these unnecessary or excessive payments in whole or in part when the evidence required by § 181.53 becomes available.

Customs response: There is no allowance for a time extension or a reconsideration of the initial determination in the NAFTA legislation. As regards available remedies for any ''unnecessary or excessive'' payments referred to by this commenter, this issue will be addressed in the separate § 181.53 document to be published as mentioned above.

Comment: A commenter stated that the 60-day period should be defined on a business month basis, not on a daily basis.

Customs response: As previously stated, the 60-day period was set by the three Governments in the Agreement. The purpose of the 60-day requirement was to enable the refund claimant to provide the Canadian or Mexican entry information so that the appropriate duty comparison could be made.

Comment: A commenter pointed out that separately defining duty calculations when treating exports from foreign trade zones as domestic entries provides for many questions and potentially disparate procedures. To diminish the likelihood for both these questions and procedures, this commenter suggested that this section be amended to reflect current FTZ regulations that cover entries for consumption.

Customs response: These procedural issues will be addressed in the separate § 181.53 document to be published as mentioned above.

Comment: A commenter alleged that there is a conflict in this section in that the section states that duty is assessed on privileged foreign status goods at the time of admission to the zone but in the example refers to duty assessed one month after admission.

Customs response: The commenter is correct. Accordingly, § 181.53(e)(2), as set forth below, has been modified by replacing the words ''at the time of its admission to'' with the words ''at the time privileged status is granted in''.

Section 181.53(g)

Comment: A commenter stated that the recordkeeping period is unclear, and therefore this commenter assumed that the normal recordkeeping periods apply to drawback claims and to import entries. Two other commenters stated that the 3-year period for record retention should be stated to avoid confusion.

Customs response: Under 19 U.S.C. 1508(c) and the regulations thereunder, the periods for record retention vary according to the type of transaction involved. With respect to warehouse withdrawals, foreign trade zone entries, and temporary importation bond transactions, the period is five years from the date of entry. With respect to drawback, the period is three years from the payment of drawback to the claimant.

Section 181.53(i)

Comment: A commenter stated that if this section relates to waiver or reduction of duty under duty deferral programs, it is inappropriate to state that ''* * * Customs shall reliquidate the NAFTA drawback claim'' because that issue already is addressed in § 181.52.

Customs response: The reference in this section is necessary because, while § 181.52 is limited to traditional drawback, § 181.53 includes all of the other contexts which are included in the term ''NAFTA drawback'' as defined in § 181.1(o) of the regulations.

Section 181.54

Comment: A commenter stated that the open-ended time period for U.S. Customs to verify Canadian and Mexican documentation creates indefinite contingent liabilities. This commenter suggested that a definite time period should be clearly indicated.

Customs response: Because the national laws differ and because the Agreement expressly provides for post-entry claims to be filed up to one year after entry, it is impossible to fix one time limit that will cover all situations.

Appendix to Part 181

Additional comments were submitted regarding the relationship between the Subpart E provisions and the provisions of Schedule X of the Appendix to Part 181. Those comments are addressed below in connection with the discussion of the Appendix comments.

Part 181, Subpart G (Origin Verifications and Determinations)

Section 181.72

Comment: In order to enable sureties to better protect their interests, one commenter stated that the regulations should be modified to require Customs to provide notice to the surety: (1) When Customs commences an origin verification under paragraph (a) involving the bond principal's goods; (2) when Customs makes an inquiry of the importer under paragraph (c); and (3) whenever the foreign producer or exporter or the U.S. importer fails to cooperate during an origin verification.

Customs response: Requiring such notices to sureties would impose an unnecessary burden on Customs. Accordingly, this is a matter more appropriate for the surety and its principal to resolve in the context of their contractual relationship.

Section 181.75

Comment: One commenter stated that the regulations should be modified to require Customs to provide notice to a surety when a negative origin determination is issued to the surety's bond principal under paragraph (b).

Customs response: A negative determination of origin does not necessarily result in a bond breach. Consequently, no useful purpose under these regulations would be served by obligating Customs to provide such notice to the surety. This is a matter that is best left to the private parties to resolve as a part of their contractual relationship.

Part 181, Appendix (Rules of Origin Regulations)

Section 2

Comment: The following comments were submitted on the definitions and interpretation set forth in section 2:

1. With regard to the definition of ''direct labor costs'', one commenter noted that many companies include direct labor fringe benefits as part of their burden, not as part of their direct labor costs. Thus, it would be more correct to indicate that the defined term ''may'' include fringe benefits in costs that are associated with employees who are directly involved in the production of a good.

2. In the definition of ''light-duty vehicle'', a commenter stated that the second reference to ''8702.10.60'' should read ''8702.90.60''.

3. One commenter noted that the definitions and interpretation of ''similar goods'' and ''similar materials'' are important parts in determining

eligibility for averaging costs over time where goods are produced in the same facility. Given this purpose, this commenter argued that these definitions and interpretation are unduly restrictive because goods and materials should qualify as ''similar'' for purposes of averaging if they simply serve identical functions. For example, if both automatic and manual transmissions are otherwise eligible for averaging, the fact that these two transmissions may not meet the ''similar characteristics and component materials'' definitional standard should not disqualify them from averaging. To accomplish this result this commenter suggested (1) that the two definitions should be revised to encompass goods and materials that ''although not alike in all respects, serve the same function'' and (2) that the interpretation should be eliminated because it suggests that only identical goods or materials qualify as ''similar''.

Customs response: With regard to the first comment, the commenter is correct that some companies may include direct labor ''fringe benefits'' as part of their overhead. However, for purposes of allocating direct labor, the United States, Canada and Mexico agreed that the cost of fringe benefits for direct labor must be included in the ''direct labor costs''. Salaries and fringe benefits for other than direct labor employees may be included as overhead and would be allocated according to the methods for overhead in Schedule VII.

Customs agrees that the second reference to ''8702.10.60'' should read ''8702.90.60'' in the definition for ''light-duty vehicle'', and the definition, as set forth below, has been modified accordingly.

Customs disagrees with the statement that goods should be considered ''similar'' if they merely serve identical functions. Averaging in section 6(15) for regional value content purposes is allowed so that a producer would not have to segregate the value of its materials and its production costs when there is very little difference in the materials and the production costs that would be allocated to goods for which NAFTA preference is to be claimed and to goods which are to be consumed in a domestic or non-NAFTA market. The use of the term ''similar'' provides the necessary balance between the intended benefit and the need for assurance that the averaged costs will have a real relationship to the goods. For example, although an electric motor and a gasoline motor may serve the same function in a model toy, averaged costs for non-originating materials and for net costs for these two motors would not provide a meaningful measure of the regional value content for each type of motor. When this issue was discussed trilaterally, it was agreed that the current reference to ''similar'' should not be changed.

Section 4

Comment: With regard to section 4(4) which sets forth exceptions to the change in tariff classification requirement for originating goods, one commenter stated that subparagraph (b)(iii) should be removed because it imposes a further qualification that is not reflected in the NAFTA provisions as set forth in General Note 12(b)(iv)(B), HTSUS. Specifically, whereas the NAFTA text simply refers to a case where the undivided tariff headings or the tariff subheadings for the goods ''provide for and specifically describe both the goods themselves and their parts'', the Appendix text at issue adds a further requirement that the non-originating materials and the good ''are not both classified as parts of goods under the heading or subheading'' under consideration. This commenter suggested that this limiting Appendix text is not required by either the language or the purpose of the NAFTA provision and that the ''specifically describe'' language of the NAFTA text could reasonably apply where the tariff provision is a ''parts'' provision because the minimum regional value content requirement would still apply.

Customs response: Customs disagrees. Note 22 to the NAFTA clearly states that the phrase ''specifically describes'' in Article 401(d) was intended to exclude situations in which both the good and the non-originating material are classifiable as ''parts'' in the heading or subheading under consideration.

Section 6

Comment: The following comments were submitted on the regional value content provisions of section 6:

1. With regard to subsection (14) which concerns non-allowable interest costs, one commenter agreed that the ''700 basis points'' standard (above which interest would not be countable toward total cost) was appropriately high. However, this commenter stated that, by referring to the yield on debt obligations of comparable maturities issued by the federal government of ''the country in which the producer is located'', this provision could result in disparate treatment of similarly situated companies located in different NAFTA countries. In order to avoid the possibility that two companies with similar interest costs on a debt of the same denomination may face different interest caps because their production occurs in different NAFTA countries, this commenter stated that subsection (14) should be modified to reflect linkage of the interest rate on a debt to the interest rate on government debt obligations of the country that issues the debt, so that the amount of allowable interest costs would depend on the denomination of the debt rather than the location of the company.

2. One commenter pointed out that in subsection (18) the reference to the period chosen in ''subsection (14)(a)'' should properly refer to ''subsection 15(a)''.

3. With regard to the examples contained in subsection (20), a commenter stated that Example 9 would be more clear if it explained that the tooling expensed on the books of Producer A is considered as non-originating because the material that the tooling produced is non-originating.

Customs response: With regard to the first comment, Customs agrees that disparate treatment may arise because the interest caps in the NAFTA countries may be different. However, in order to provide certainty and stability in this area, the United States, Canada and Mexico agreed to apply the interest cap of the NAFTA country in which the producer is located.

Customs agrees that the reference to ''subsection (14)(a)'' should properly read ''subsection (15)(a)'' in subsection (18) which, as set forth below, has been modified accordingly.

Although Customs agrees that Example 9 in section 6(20) could be more illustrative by addressing the treatment of the cost of tooling as a ''non-originating cost'' because it is included in the cost of the non-originating material produced by the tooling, Customs also notes that this example was merely intended to illustrate how the cost must be captured and that it cannot be counted twice. This commenter's suggestion, however, has been incorporated as a new Example 8 which has been added to section 7(18) (renumbered from 7(17)) as set forth below.

Section 7

Comment: With regard to section 7(17), one commenter pointed out that in the first paragraph of Example 4 the reference to ''Material A'' should read ''Material X''.

Customs response: This typographical error was corrected in a document published in the **Federal Register** on March 31, 1994 (59 FR 15047).

Section 9

Comment: With regard to Example 6 under section 9(10), one commenter

noted that although the example states that the producer designates the short block as an intermediate material, the example does not explain why this designation is made or what its effect might be on the origin of the part or the traced value in the vehicle.

Customs response: The purpose of Example 6 in section 9(10) is to illustrate section 9(9)(a) which provides that the designation of a self-produced material as an intermediate material is only effective with regard to the calculation of the net cost of the light-duty automotive good and, therefore, does not permit the producer to ignore the value of the traced materials for purposes of the calculation of the value of non-originating materials in the light duty automotive good. Customs agrees that, in this case, it may be clearer to state that the intermediate material qualifies as an originating material. Accordingly, Example 6, as set forth below, has been modified as follows: (1) By adding a sentence immediately after the second sentence in the first paragraph to read ''The intermediate material qualifies as an originating material''; and (2) by changing the last clause in the first sentence of the second paragraph to read ''even though the intermediate material is an originating material.''

Section 10

Comment: One commenter alleged that the language of section 10, and in particular the language of sections 10(1) and 10(2), is contrary to the wording of Article 403(2) of the NAFTA in that the Appendix language appears to require only tracing of the value of non-originating listed materials of the producer of the engine and transmission (the components), with two different results depending on the factual circumstances: (1) If the producer of the components is also the producer of the vehicle, then the tracing must be made through to the vehicle; or (2) if the producer of the components and vehicle are different, then the tracing stops at the production of the components. In other words, where the producer of the vehicle is not the producer of the component, that vehicle producer simply applies the normal rules of NAFTA Annex 401 to his product because he by definition does not ''use'' any material listed in NAFTA Annex 403(2) within the meaning of Article 403(2)(a) (it is the component producer who uses the listed material, that is, to produce the component, while the vehicle producer uses that component to produce the vehicle): thus, the component, not being a listed material, becomes the ''other material'' referred to in Article 403(2)(b) and is either originating or non-originating as far as calculation of the regional value content of the vehicle is concerned. This commenter, apparently concerned by the appearance of a narrower tracing rule under the Appendix text, stated that section 10 should be revised to reflect the correct, broader rule under the NAFTA text, that is, that the value of non-originating listed materials must be traced to the original-equipment engine and transmission and through them to the vehicle for purposes of calculating the regional value content of the vehicle.

In the event that the revision suggested above is not done, this commenter made the following additional recommendations regarding section 10:

1. As regards subsection (4) concerning the option of using the light-duty tracing rules for heavy-duty components, three suggestions were made. First, the materials covered by the subsection should be expanded to include listed materials and subcomponents. Second, if light-duty and heavy-duty vehicles are produced in the same plant, the producer should have the option of using the light-duty rules for calculating regional value content. Third, paragraph (b) should be removed because even if a producer knows the final use of the component, he should still have the option of using the light-duty rules.

2. As regards subsection (9)(c) which provides that section 10 does not apply to a subcomponent for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good, this commenter questioned the authority for this subsection and stated that, if there is no authority for it, then Situation 1 of Example 6 under subsection (10) is incorrect. Furthermore, this commenter suggested that if there is authority for subsection (9)(c), then there is a basis for setting up separate manufacturing companies to convert non-originating cost to originating for determining the regional value content of a subcomponent that crosses a border, because the tracing requirement is eliminated.

Customs response: Customs disagrees with the commenter's conclusion that the text of section 10 does not reflect Article 403(2) of the NAFTA which requires that the value of a listed non-originating material be ''traced'' through to any heavy-duty automotive good in which it is used. The rules in section 10(1) are cumulative. If a producer of a heavy-duty automotive good ''uses'' a listed non-originating material, then paragraph (a), (b) or (c) would apply, depending, of course, on the specific facts. If a producer uses an automotive component assembly, automotive component or subcomponent, then paragraph (d) or (e) would apply, resulting in the ''tracing'' of either the values of all non-originating materials that were incorporated into that material acquired and used by the producer or the entire value of that material acquired and used by the producer. The structure of section 10(1) eliminates any doubt that, regardless of the stage in which a listed non-originating material is used, the value of that listed material must always be included in the value of non-originating materials when calculating the regional value content of any heavy-duty automotive good into which the listed material is subsequently incorporated.

Customs disagrees with this commenter's proposals for redrafting section 10(4) because the regulation reflects the relevant NAFTA provisions and the intent of the Parties. First, Article 403(2), which provides the rule for determining the value of non-originating materials in heavy-duty automotive goods, does not apply to listed materials or to subcomponents. Second, Article 403 is very clear in that it provides a specific rule for light-duty vehicles and a specific rule for heavy-duty vehicles. Third, with the exception of the situation in which averaging is permitted under Article 403(4) (see section 12 of the Appendix), Article 403(2) does not provide for the alternative use of the light-duty tracing rule for heavy-duty automotive components. In view of the fact that it may be impossible to identify interchangeable heavy-duty components and light-duty components that are produced in the same plant, the United States, Canada and Mexico agreed that the regulations should specifically address this situation.

With regard to the comment on section 10(9)(c) that there is no authority to exclude subcomponents from the regional value content calculation in section 10, Customs simply notes that the special rule set out in Article 403(2) of the NAFTA is for vehicles and components. Furthermore, the use of a listed non-originating material in the production of a subcomponent does not defeat the ''tracing'' requirement applicable to heavy-duty automotive goods. The regulations set out in section 10(1) make it clear that the value of a listed non-originating material will always be traced through to any heavy-duty automotive good into which it is incorporated. For example, section

10(1)(d) requires the ''tracing'' of a listed non-originating material even if it was used in the production of an originating subcomponent.

Section 13

Comment: The following comments were submitted on the special regional value-content requirements contained in section 13:

1. Two commenters referred to subsection (4) which concerns the averaging period for calculation of regional value content for vehicles of a new plant or a refit plant.

One of these commenters noted that paragraph (a)(i) would allow a producer to use launch and start-up cost for a period up to 23 months as originating content in computing the regional value content. This commenter suggested that the cost incurred from the first prototype date to the end of the fiscal year in which the first prototype was produced should be used for the regional value content calculation for the vehicles produced in the first fiscal year.

The second commenter concluded that subsection (4) allows a motor vehicle producer to elect one of the following three periods over which regional value content is calculated by averaging: (1) Paragraph (a)(i) allows averaging from the date of the production of a prototype through the end of the first fiscal year that begins after that date, thus allowing the producer to roll the first partial year into the first full fiscal year for averaging purposes; (2) paragraph (a)(ii) allows averaging over any fiscal year that begins after production of a prototype and ends before the end of the special regional value content period (the 5-year or 2-year period specified in section 13(2)); and (3) paragraph (a)(iii) allows averaging over part of a fiscal year up to the last day of that 5-year or 2-year special regional value content period. However, this commenter stated that the exact time periods covered by these three alternative averaging periods are not clear in the Appendix text as written. In addition, this commenter suggested that the end of an averaging period involving a special regional value content period should coincide with the end of the producer's fiscal year because significant accounting problems will arise if the averaging period cuts off before the fiscal year end. Thus, for example, a 5-year period under section 13(2) would allow averaging for full five fiscal years plus that portion of a year beginning with the date of production of the first qualifying prototype.

2. One commenter noted that subsection (5)(h) requires that the document in which the election to average is made must be filed at least 10 days before the first day of the producer's fiscal year, or such other shorter period that the concerned customs administration may accept. This commenter recommended that this provision be amended to specify ''10 days before the shipment of the first vehicle intended for sale''.

Customs response: Customs agrees that section 13(4)(a)(i) would permit a producer to average over a period of up to 23 months. In the interest of aligning the averaging period with the period for which the special RVC is effective for production from a new plant or a refit plant, it was considered to be more practical to combine the initial ''stub'' period with the first full fiscal year. Paragraphs (a)(ii) and (a)(iii) provide for the subsequent full fiscal years and for the final stub period, if any.

Concerning the second comment on section 13(4)(a), Customs first notes that the commenter has referred to subparagraphs (i), (ii) and (iii) as ''alternative averaging periods''. This is not correct. One, two or all three of these subparagraphs could apply in any given situation, depending on the length of the special RVC period and the relationship of the first year of that period to the beginning of the producer's fiscal year.

In response to the remainder of this commenter's remarks, Customs notes that under Article 403(6), the ''years'' in the periods for which a special RVC applies to vehicles of a new plant or vehicles of a refit plant are not necessarily coterminous with the fiscal year of a producer. Under Article 403(6) the ''year'' in the special RVC period begins when the first prototype motor vehicle is produced in the new or refit plant. Under Article 403(3), the ''year'' in the averaging period for the RVC calculation is the fiscal year of a producer. It was the intent of the drafters of the regulations to align the averaging period with the special RVC period in order to allow a producer to obtain the maximum benefit from the statutory 5-year or 2-year special RVC period. Customs has no authority to extend or reduce these NAFTA periods which are also reflected in section 202(c)(6) of the Act.

As regards the comment on section 13(5), Customs does not disagree entirely with the idea behind the commenter's proposal. Inasmuch as the first averaging period would not include the full fiscal year (if the first prototype of a motor vehicle is produced in a plant on a date after the beginning of the producer's fiscal year), it would appear reasonable to allow the producer to file at least 10 days before the beginning of the period which will constitute the first period in which the producer must average. However, the United States, Canada and Mexico agreed that the election should be filed at the same time that other elections to average under section 11 must be filed. The requirement does not impose an unnecessary hardship on a producer because the producer will have the requisite knowledge as to when such prototypes will be produced.

Section 15

Comment: One commenter made the following observations regarding section 15 which concerns the inability of a supplier, exporter or producer to provide sufficient information during a verification of the origin of a good:

1. Whereas section 15 sets forth alternative means to verify the origin or value of a material used in the production of a good when the person from whom the producer obtained the material is unable to provide sufficient verifying information, when a producer supplies verifying information the relevant customs administration should accept it. Moreover, the customs administration should have the obligation to explain in writing any refusal to accept the offered information supporting the origin of the material.

2. While section 15 properly provides that the customs administration shall take into consideration whether the customs administration of the importing country issued an advance ruling under Article 509 of the NAFTA which concluded that the material is an originating material, a provision should be added to authorize a ''retroactive ruling'' that a material is an originating material (for U.S. purposes, this could be done as a request for internal advice as provided for in Part 177 of the Customs Regulations). A producer often learns of a supplier's financial weakness in advance of problems that would make it impossible to obtain the information necessary to verify the origin of a material, and a ''retroactive ruling'' provision would allow the producer to obtain a ruling that would cover prior periods. The procedure for obtaining such a ruling should be consistent with the advance ruling provisions, except that the supplier of the material should provide exact historical data, including exporter's certificates of origin, rather than projected costs. Addition of a retroactive ruling provision would also reduce the need to rely on the other section 15

alternative means to verify the origin of a material.

Customs response: With regard to the first comment, Customs notes that subsection (1) of section 15 provides for factors to be considered by a customs administration where, during a verification of a good, a *producer of a material* is unable to supply sufficient verifying information for reasons beyond that person's control. The regulation thus contemplates the situation in which a verification requires information from the producer of the material, perhaps, for example, in the form of that person's books or records. It is unclear what the commenter's reference is to accepting the information offered. Of course, nothing in section 15 precludes the customs administration from considering information from the producer of the good or from any other source; rather, the section enumerates certain sources of information which may provide relevant information. Normally, of course, the verification process proceeds by seeking information from the producer of that good and, if necessary, from the producer of a material. If the customs administration is satisfied with respect to the origin of a material by virtue of information provided by the producer of the good, then presumably the situation identified in section 15 will not occur. The NAFTA countries did not perceive the need to provide for an obligation to accept proffered information or to explain any unwillingness to do so. Customs does not believe that any amendment in this regard is necessary or appropriate.

As regards the second comment, the commenter accurately observes that section 15(1)(a) provides that, among the factors to be considered, is whether an advance ruling under Article 509 of the NAFTA has been issued with respect to the material. The commenter appears to be seeking a separate procedure through which the producer of the good could obtain a decision with respect to the origin of a material which would presumably affect the origin determination with respect to the good. Such a procedure is intrinsic to the verification process. Thus, if the outcome of the verification depends on the origin of the material, it would be expected that the producer of the good would provide such information in its possession to demonstrate where the material originated. The customs adminstration would then apply the conclusion to the goods subject to the verification. Accordingly, it does not appear that there is any need for the regulations to be amended in order to meet the concern identified by the commenter.

Schedule III

Comment: One commenter stated that the valuation provisions of the interim regulations should be reviewed and revised to more accurately reflect the terms of General Note 12(c), HTSUS, which specifically refers to the legal standards set forth in section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a). This commenter cited the following specific examples in this regard:

1. Under section 3 of Schedule III, subsection (4) provides for the acceptance of transaction value between related parties when the producer demonstrates ''that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).'' However, the ''test value'' referred to in subsection (5) is limited to ''the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.'' This commenter stated that this is much more limited than the comparable statutory provision (19 U.S.C. 1401a(b)(2)(B)) that applies under General Note 12(c), HTSUS, which includes other ''test values'' that can be used to demonstrate the acceptability of the transaction value between related parties.

2. Also under section 3 of Schedule III, subsection (8) appears to require that the ''test value'' has been ''previously accepted by the customs administration''. This commenter stated that this requirement is not contained in the U.S. valuation statute referred to in General Note 12(c), HTSUS.

Customs response: Schedules II, III and VIII of the Appendix to Part 181 of the interim NAFTA regulations were based on the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the ''Customs Valuation Code,'' or ''Code''), rather than on the U.S. valuation statute (19 U.S.C. 1401a), or the valuation statutes of Canada or Mexico. Since the Code is a neutral document common to all three NAFTA parties, it was therefore decided that the Code should form the basis of that part of the regulations that is concerned with how to determine regional value content under the transaction value method.

In regard to the specific points raised by the commenter, the test value referred to in Schedule III, section 3(5), is based on the transaction value of identical or similar goods since the purpose of the test value is to establish whether a transaction value between a related producer and seller, determined in accordance with Schedule II, is acceptable. Since transaction value is the only method of determining the value of a good under Schedule II, there is no justification for any alternative bases of determining test values as there is under the Code. Just as test values under the Code must be based on a value previously accepted by a customs administration, so too NAFTA requires that a test value shall have been previously accepted.

Schedule VII

Comment: The following comments were submitted in regard to the reasonable allocation of costs provisions contained in Schedule VII:

1. Two commenters referred specifically to sections 3(1)–(3) which concern methods used for internal management purposes by a producer of a good to reasonably allocate to that good direct material costs, direct labor costs or overhead.

One of these commenters noted that although the text in each case sets forth the criterion of ''benefit, cause or ability to bear'' for purposes of determining the reasonableness of the method used, the elements of this criterion are neither defined anywhere in the Appendix nor further explained in the examples under Schedule VII. This commenter suggested that: (1) This criterion should be eliminated, on the theory that a cost allocation method used for a (true) internal management purpose (that is, as stated in section 7 of Schedule VII, not solely for the purpose of qualifying a good as an originating good) should satisfy the reasonableness requirement; or (2) at the least, a definition or explanation of ''benefit, cause or ability to bear'' should be included in the final Appendix texts.

The second commenter expressed similar views and stated that the following interpretation of section 3 should be expressly affirmed in the final Appendix text: (1) That section 3 requires a customs administration to accept an allocation method that is used by the producer of a good for an internal management purpose, unless the allocation method is determined to be manifestly unreasonable; and (2) that a customs administration bears a heavy burden to disqualify any allocation method based on lack of relation to the criterion of benefit, cause or ability to bear because an allocation method that is used for internal management purposes is presumptively reasonable since a company is unlikely to rely on an allocation method for internal

decision-making if it does not meet the benefit, cause or ability to bear criterion. Consistent with this interpretation, this commenter further suggested that section 3 should be revised to reflect a pure internal use test because the ''reasonableness'' requirement, based on the benefit, cause or ability to bear criterion, does not add meaningfully to the rule, injects an unnecessary degree of subjectivity into the cost allocation approval process, and is adequately provided for by the terms of section 7 of Schedule VII. Finally, this commenter recommended that, at a minimum, the following definitions be added to the Appendix to clarify the meaning of the ''benefit, cause or ability to bear'' criterion:

Benefit or benefits received: This criterion identifies the beneficiaries of the outputs of the cost pool and allocates the costs in proportion to the benefits received.

Cause or cause and effect: This criterion identifies the outputs of the cost pool (any grouping of individual costs) and allocates the costs in proportion to the services provided.

Ability to bear: This criterion advocates allocating costs in proportion to the cost objective's ability to bear.

2. With regard to section 6, one commenter stated that paragraph (d) should be eliminated so as to permit allocation of a gain or loss from the sale of a capital asset consistent with Generally Accepted Accounting Principles (GAAP) because, under GAAP, a gain or loss from the disposal of an asset constitutes a legitimate element of the total cost of the asset. Thus, a gain or loss on depreciation does not represent an extraordinary cost, and any write-off on sale or disposal of an asset should be reflected in total cost.

3. One commenter argued that section 7 should be eliminated for several reasons. First, section 7 is ambiguous when taken in context with section 4, which applies when an allocation method does not satisfy section 3 and which requires use of an allocation method that is reasonable based on the criterion of benefit, cause or ability to bear. The ambiguity exists because, if an internally used allocation method is deemed not to satisfy the reasonableness requirement in section 3 by virtue of the restriction in section 7, section 4 requires the producer of a good to use an alternative allocation method that does meet the benefit, cause or ability to bear reasonableness criterion. Given the rejection of the internally used allocation method under section 3, the only solution under section 4 is to use an allocation method that is solely for the purpose of qualifying a good as an originating good. This is precisely what section 7 is designed to prevent. Second, section 7 is unnecessary because, so long as an allocation method meets the reasonableness test under the benefit, cause or ability to bear criterion, the purpose of the allocation method is irrelevant. Finally, section 7 is redundant given the non-qualifying operations provision in section 17 of the Appendix as regards any production or pricing practice the object of which is to circumvent the Appendix. This commenter also suggested that if section 7 is to be retained, it should, at a minimum, provide specific and objective criteria for determining whether a cost allocation method is used solely to qualify a good as an originating good.

Customs response: Customs disagrees with the commenters' suggestions that the criteria of ''benefit, cause or ability to bear'' are not necessary in section 3, or, in the alternative, that the terms should be defined. The terms are recognized principles used in the cost accounting industry. They are broad principles that provide a measure by which Customs can determine the reasonableness of a cost allocation method for an internal management purpose. Customs does not dispute the fact that most producers, for one or more internal management purposes, are likely to rely on allocation methods that satisfy one of these criteria. The regulation, however, is intended to capture all situations and, therefore, must necessarily identify criteria against which the regulatory requirement is to be measured.

Concerning the comment on section 6(d), Customs agrees with the commenter's analysis of the treatment, for cost accounting purposes, of the gain or loss from the sale of a capital asset. However, in this case the Parties agreed that, for purposes of a ''reasonable'' allocation of costs in the calculation of total cost, such gains or losses are not reasonably allocated to a good.

The commenter's remarks concerning section 7 are understandable because the criteria of ''benefit, cause or ability to bear'' are used in both sections 3 and 4 to determine whether a cost allocation is reasonable. Nevertheless, Customs does not agree that section 7 should be eliminated. The structure of Schedule VII requires that, under section 3, an allocation method for an internal management purpose is to be used if it is a reasonable allocation. However, section 7 states that any allocation method for an internal management purpose will, on its face, not be accepted as ''reasonable'' if it is solely for the purpose of qualifying a good as an originating good. If costs are not reasonably allocated under section 3, then the producer is required to comply with section 4. Section 4 provides for the use of a method set out in the addenda to Schedule VII and/or any method based on one of the criteria of benefit, cause or ability to bear.

Schedule VIII

Comment: With regard to Schedule VIII (value of materials), one commenter raised an issue concerning section 3 which operates as an exception to the general rule that the transaction value of a material is unacceptable if, among other things, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material. Referring specifically to the first sentence of subsection (7) which states that ''[s]ubsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1)'', the commenter suggested the following interpretation thereof: the customs administration of the NAFTA country into which a good is imported is required to accept (and thus may not audit) the transaction value of a material used in the production of the good if the customs administration of the country into which the material was imported (and where the material was incorporated into the exported good) approved that transaction value during a valuation audit performed on the material when it was imported. This commenter stated that because section 3 is ambiguous, the provision should be clarified to reflect this interpretation. In addition, this commenter recommended that section 3 be modified to expressly state that the customs administration attempting to verify the value of a good that incorporates a material must accept any pre-approval or advance ruling concerning the value of the material by the customs administration of the country into which the material was first imported.

Customs response: For the purposes of Schedule VIII, unless otherwise stated, the term ''customs administration'' is defined as ''the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported.'' Section 3 sets forth the basis for

determining whether the transaction value of a material determined under section 2(1) is acceptable. One basis under section 3 for validating a transaction value of a material is for a seller or producer to demonstrate to a customs administration (that is, a customs administration as defined above) that the transaction value determined in accordance with section 2(1) closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located. Accordingly, the regulations permit the customs administration of one NAFTA country to accept the transaction value of a material if it closely approximates a test value determined by the customs administration of another NAFTA country. However, this must be demonstrated to the satisfaction of the customs administration (as defined for purposes of Schedule VIII), and there is no requirement that a customs administration must accept any test value put forward by a particular seller or producer.

Schedule X

Comment: The following comments were submitted regarding Schedule X, principally in the context of the drawback and duty-deferral program provisions of Subpart E of Part 181:

1. With respect to the commingling of fungible goods and the inventory methods that are allowable to determine the origin of materials, one commenter stated that Schedule X excludes identification procedures (inventory methods) that have been allowed in drawback such as ''lower to higher'', ''higher to lower'' and blanket identification. This commenter also stated that FIFO is administratively unworkable and economically unfeasible for most companies, in part because the association of entry numbers with imported part numbers which is needed under FIFO is too detailed. On this same subject, two commenters stated that Schedule X is unworkable and not consistent with the intent of Congress which, as stated in Ways and Means Report 103–361, was ''* * * to provide sufficient flexibility in the inventory accounting methods for such goods to make them administratively workable for industry.'' Another commenter stated that the words ''completely fungible'' should be changed to ''commercially interchangeable'' because of the redefinition of the term ''fungible'' in the Customs modernization provisions of the Act.

2. Three commenters raised the issue of commingled fungible goods that are 100 percent imported, two of them stating that, in such a case, entries for goods (within the appropriate time period) may be designated under the inventory averaging procedure and that this is supported by the legislative history relating to the Customs modernization provisions of the Act. These commenters also stated that, in such circumstances, the ''high-to-low'' method or any other Customs approved accounting method may be used.

3. Another commenter stated that the Appendix should not be used for the purposes of determining inventory methods because the Appendix is generally for rules of origin purposes. This commenter also stated that the inventory methods used to support a same condition drawback claim should be set forth separately because Article 303 of the NAFTA is not subject to the uniform regulations requirement of Chapter 5 of the NAFTA.

4. Two commenters pointed out that Customs should give some thought to companies that must keep extremely detailed records such as those dealing in footwear, eye wear, finished clothing and other articles that are produced in a wide variety of styles, sizes and colors. This commenter stated that the requirements of Schedule X are so onerous that companies that produce or distribute these types of articles will not be able to export to Canada and Mexico for lack of ability to comply with these requirements. This commenter also suggested that Customs should address the area of former 19 U.S.C. 1313(j)(2) substitution drawback claimants in a NAFTA context. In this regard, the commenter stated that, assuming such claimants meet the requirements for drawback under 19 U.S.C. 1313(j)(1), Customs should recognize that they do not need to resubmit any applications for purposes of obtaining drawback under 19 U.S.C. 1313(j)(1) in a NAFTA context but rather would simply file the claims in accordance with the applicable regulations. This commenter, after stating that Customs officials from the Office of Trade Operations have indicated that the Schedule X inventory procedures will be applied to all 19 U.S.C. 1313(j)(1) drawback claims, expressed the view that Schedule X should apply only in the context of Part 181.

5. A commenter pointed out that §§ 191.141(e) and 191.22, taken together, also provide for storage and identification methods and provide more options for approved accounting methods than Schedule X does. For example, these sections allow use of ''high-to-low'', but Schedule X does not. This commenter therefore suggested that the provisions of § 191.22 should be used instead of Schedule X.

6. Two commenters stated that the inventory methods authorized for foreign trade zone procedures (§ 146.23) should be included in Schedule X in order to avoid the need for multiple inventory systems as the price for using both trade programs. These commenters cited, as an example that these two provisions are not in agreement (at least with respect to terminology), the fact that Schedule X calls for a specific identification method whereas § 146.23 requires a unique identification number. If these two requirements are the same, these commenters suggested that the regulatory text should state that this is the case.

7. Another commenter asked whether LIFO and average methods are acceptable for drawback and, if so, whether they can be used on exports to non-NAFTA countries. If not, this commenter asked whether claimants must switch to FIFO or maintain different accounting methods for the same goods.

Customs response: These comments principally address an allegedly impractical and unworkable application of the inventory management methods of Schedule X as required under § 181.45(b)(2)(i). In sum, the commenters argue that the Customs-approved methods in §§ 191.121(e) and 191.22 (drawback) and in § 146.23 (foreign trade zones) of the Customs Regulations should be allowed in place of the methods set forth in Schedule X.

Customs disagrees with these comments to the extent that they propose an expansion of the allowable methods for determining which commingled goods are eligible for full drawback under § 181.45(b). Schedule X was promulgated under NAFTA Article 511 and applies, by operation of NAFTA Article 303(6)(b), to imported goods which have been commingled with fungible goods and which are exported to Canada or Mexico in the same condition as when imported into the United States.

Nevertheless, the number of comments submitted on this point suggests that the text of § 181.45(b)(2)(i) could be improved. Accordingly, § 181.45(b)(2)(i), as set forth below, has been modified to more clearly reflect the intended effect of Article 303(6)(b), that is, as a narrow exception to the broad operation of Article 303 which restricts drawback to the amount determined under the ''lesser of'' rule. Beginning in 1996 (for exports to Canada) and in 2001 (for exports to Mexico), same condition substitution drawback will be prohibited altogether. The only

exceptions are for the goods described in Article 303(6). Thus, ''same condition'' drawback for imported goods commingled with fungible goods is allowed, but only to the extent that the identity of the imported goods is determined by use of one of the approved inventory management methods set forth in Schedule X.

Additional Changes to the Regulations

In addition to the changes to the interim regulatory texts discussed above, this document modifies the interim texts to set forth changes that are necessary (1) to reflect subsequent trilateral discussion and agreement regarding regulatory standards pursuant to Article 511 of the NAFTA or (2) based on an independent review of the interim texts within Customs. These changes are discussed below.

Changes Pursuant to Trilateral Discussions

Subsequent to the publication of the interim regulations in T.D. 94–1, and in keeping with the principle of ongoing cooperation in the implementation and administration of the NAFTA as provided for in Section F of Chapter Five of the NAFTA, representatives of the United States, Canada and Mexico held further meetings which resulted in agreement regarding (1) use of the definition of ''conspicuous'' as set forth in Annex 311 of the NAFTA, (2) the adoption of an additional standard covering denial of preferential tariff treatment based on a failure to provide certain documentation in transshipment cases, (3) the adoption of additional standards for origin verifications, (4) the adoption of additional standards to be applied with regard to requests for advance rulings under Article 509 of the NAFTA, and (5) the modification of the substantively verbatim texts implementing the rules of origin provisions of Chapter Four of the NAFTA. The agreed changes, as reflected in the final regulatory texts set forth in this document, are summarized below.

Definition of ''Conspicuous''

During the trilateral discussions it was pointed out that the interim amendments to Part 134 did not set forth the definition of ''conspicuous'' contained in the country of origin marking provisions of Annex 311 of the NAFTA. Accordingly, § 134.1 has been modified, as set forth below, by the addition of that definition as a new paragraph (k). Customs believes that this definition is appropriate for both NAFTA and non-NAFTA contexts since the NAFTA definition reflects existing Customs practice and regulatory standards (see, for example, the last sentence of § 134.41(b)).

Failure to Provide Documents in Transshipment Cases

The new standard regarding shipping documents provides that preferential tariff treatment may be denied to an originating good if the good is shipped through or transshipped in a non-NAFTA country and the importer does not provide, upon request, copies of the customs control documents showing that the good remained under customs control while in that non-NAFTA country. Section 181.23, as set forth below, has been modified by the addition of a new paragraph (b) to reflect this new standard, and § 181.31 (regarding post-importation claims) and § 181.71 (regarding origin verifications), as set forth below, have been appropriately modified as a consequence of the adoption of this new standard.

Origin Verifications

The Parties agreed to a new standard for origin verifications that permits verification of the applicable rate of duty applied to an originating good in accordance with NAFTA Annex 302.2 and determination of whether a good is a qualifying good for purposes of NAFTA Annex 703.2. Accordingly, § 181.72 as set forth below has been modified by the addition of a new paragraph (a)(2) to reflect this standard.

In addition, the new standard for origin verifications provides that a questionnaire may be completed, at the option of the exporter or producer, either in the language of the importing country or in the language of the country in which the exporter or producer is located. Paragraph (a)(3)(ii) (paragraph (a)(2)(ii) in the interim texts) of § 181.72, as set forth below, has been modified accordingly.

Requests for Advance Rulings

The new trilaterally-agreed standards regarding advance ruling requests concern the information required to be submitted with the request and therefore only affect § 181.93 of the interim regulations. The substantive changes reflected in § 181.93, as set forth below, are as follows:

1. In paragraph (b)(1), which concerns general information to be included in the request, the following requirements have been added: identification of the specific subject matter of the request; inclusion of a statement regarding the accuracy and completeness of the information submitted; inclusion of the name and address of the exporter and producer of the good where the importer is the requesting party; inclusion of the name and address of the producer and importer of the good where the exporter is the requesting party; inclusion of the name and address of the exporter and importer of the good where the producer is the requesting party; submission of copies of advance rulings or other rulings issued to the requesting party by Customs regarding the tariff classification of the good, if relevant to the issue in the advance ruling request; and, if no ruling on tariff classification was issued to the requesting party, sufficient information to enable Customs to classify the good if relevant to the issue in the advance ruling request.

2. Paragraph (b)(2)(ii), which concerns tariff change rulings, has been changed by designating the interim text as subparagraph (A) in order to facilitate the addition of a new subparagraph (B) setting forth information that must be in an advance ruling request which involves an origin issue requiring an assessment of whether materials undergo an applicable change in tariff classification.

3. In paragraph (b)(2)(iii), which concerns rulings on regional value content, the following changes have been made: in the first sentence, the words ''or under both methods'' have been added to reflect the fact that satisfaction of a regional value content requirement may involve use of both the transaction value method and the net cost method as well as the fact that a ruling on both issues may be sought; the second sentence, which sets forth the information to be submitted for purposes of the transaction value method, has been changed by inserting specific references to relevant provisions of the Appendix to Part 181, by adding a requirement for information sufficient to calculate the value of each material for which the origin is unknown and that is used in the production of the good, by adding a requirement for specific information regarding each material that is claimed to be an originating material and is used in the production of the good, and by adding a requirement specifying information to be submitted where the advance ruling request involves an issue as to whether the transaction value is acceptable with respect to the good; the third sentence, which sets forth the information to be submitted for purposes of the net cost method, has been changed by inserting specific references to relevant provisions of the Appendix to Part 181, by adding references to lists of all ''product, period and other'' costs and of all ''excluded''

costs, by limiting the required materials value information to non-originating materials or materials for which the origin is unknown and that are used in the production of the good, and by requiring a statement regarding the period over which the net cost calculation is to be made; and a new sentence has been added at the end to limit the information required to be submitted where the advance ruling request concerns only the calculation of an element of a regional value content formula.

4. A new paragraph (b)(2)(iv), with the heading ''NAFTA rulings on producer materials'', has been added to specify information that must be submitted where the advance ruling request either involves an issue with respect to an intermediate material or is submitted by a Canadian or Mexican producer of a material and concerns only the origin of such material.

5. Paragraph (b)(5), which requires the submission of information regarding prior or current transactions, has been reconfigured to facilitate the addition of references to information regarding the following: judicial or quasi-judicial review in Canada or Mexico; a verification of origin performed in the United States, Canada or Mexico; an administrative appeal in the United States, Canada or Mexico; a request for an advance ruling in the United States, Canada or Mexico; and the status or disposition of any current or prior judicial or quasi-judicial review, verification of origin, administrative appeal, or advance ruling request.

Chapter Four Rules of Origin

With regard to the substantively verbatim regulatory texts covering the rules of origin provisions of Chapter Four of the NAFTA, which were set forth in the interim regulations in the Appendix to Part 181, the trilaterally-agreed changes thereto concern clarifications of ambiguous provisions, corrections in grammar or punctuation and, in certain cases, textual additions to remedy instances in which the original trilateral text was incomplete or the intent of the Parties was not adequately expressed. These changes, which are incorporated in the text of the Appendix to Part 181 as set forth below, are as follows:

Calculation of Total Cost

Calculation of total cost is required for purposes of the *de minimis* rule in section 5, the net cost method in section 6 and the valuation of intermediate materials in sections 7 and 10. However, references in the original trilateral texts to the calculation of total cost were incomplete in sections 5, 7 and 10. Therefore, in order to make it clear as to what costs are included in the ''total cost'' as that term is used in the trilateral texts, new subsection (6) has been added to section 2, new sections 5(10), 7(7) and 10(9)(f) have been added, and consequential changes have been made to the following provisions in sections 5, 6 and 7: sections 5(9) (a) and (b) (sections 5(8) (a) and (b) in the interim texts); section 6(12); and sections 7(6)(a) and (b).

Effect of Choice to Average

Throughout the trilateral texts there are references to ''averaging'' for purposes of determining the net cost of goods, the value of materials or the value of traced materials. Whenever a producer makes the choice to average, the period over which that producer averages cannot be changed, and the duration of the choice to average must extend to the end of the fiscal year of that producer. Although these requirements were implicit in the original trilateral texts, it became apparent that it was necessary to state them explicitly. Therefore, new subsections (7) through (10) have been added to section 2, and the following changes have been made to the related provisions in sections 6 and 12 and in Schedule X: revision of section 6(15)(a)(ii); addition of new sections 6(18) and 6(19) and redesignation of interim sections 6(18) and 6(19) as 6(20) and 6(21); in sections 12(5) (a) and (b), addition of the words ''that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period''; addition of new sections 12(6) through 12(9) and redesignation of interim sections 12(6) and 12(7) as 12(10) and 12(11); and revision of sections 3 and 12 of Schedule X.

Averaging For De Minimis and Accumulation

The original trilateral texts failed to provide specifically for the use of averaging in determining the value of the non-originating materials in subsections (1) and (5) of section 5 (*de minimis*), and in determining the net cost and value of non-originating materials in subsection (2) of section 14 (accumulation). To provide guidance on the use of averaging in situations involving *de minimis* or accumulation, new subsections (11) and (12) have been added to section 5 and new subsection (3) has been added to section 14. Consequential amendments, such as redesignation of subsections and internal references, have also been made.

Section 4

Section 7(10) provides for the situation in which a self-produced material may be designated as an intermediate material if it is used in the production of a good that is subject to a regional value content requirement. It was not clear under the original trilateral texts that a self-produced material, used in a good which is not subject to a regional value content requirement, could be considered as a material for purposes of the NAFTA rules of origin. Accordingly, a new subsection (8) has been added to section 4 in order to make it clear that a self-produced material may be considered as a material used in the production of a good even if the good is not subject to a regional value content requirement. Such a self-produced material must have either originating or non-originating status under the NAFTA rules of origin, and that status will influence the application of a particular NAFTA rule of origin to the good produced from that material. In addition, a new subsection (9) has been added to section 4 setting forth an example to illustrate such a situation.

Section 6

Article 403 of the NAFTA specifically provides a producer with the option to use an averaging method for calculating the net cost for automotive goods, and sections 11, 12 and 13 of the trilateral regulations implement the specific provisions of Article 403 for automotive goods. The NAFTA does not specifically provide for averaging with respect to any other goods. However, because it was recognized that in many situations non-automotive producers will have to use standard or projected costs to calculate the net cost and the value of non-originating materials in their goods, an averaging method was included in section 6(15) of the trilateral texts in order to permit, in a commercially practicable manner, averaging of the values required under the net cost method for non-automotive goods. The introductory text of section 6(15) as set forth in this document has been amended to more clearly state the intent of the Parties, that is, that the regional value content calculation for certain automotive goods may not be calculated by the ''averaging'' permitted under section 6(15). Although this exclusion of automotive goods from the application of section 6(15) appears to be a limitation, this is not the case. The category of goods for which averaging may be chosen under section 6(15) is restricted to goods which are ''identical or similar'' as defined in section 2,

whereas the various categories of automotive goods for which averaging may be chosen under section 11, 12 or 13 are not so restricted. Thus, this amendment will provide greater textual clarity but will have minimal adverse effect on producers of automotive goods for which averaging may be chosen under section 11, 12 or 13.

Section 7

Under Article 402(9) of the NAFTA, the value of materials is either the transaction value (as defined in Article 415) or, if there is no transaction value or the transaction value is unacceptable, the value determined in accordance with the Articles 2 through 7 of the Customs Valuation Code. Section 7(1) and Schedule VIII of the trilateral regulations implement the NAFTA with respect to the valuation of materials. Section 7(1) states that, if the producer of the good is the importer of a material, the value of that material for NAFTA purposes is the customs value. However, ''transaction value'' or other value used as the basis for the customs value may not, in fact, reflect the transaction value ''of the producer'' or other applicable value as defined in the NAFTA. Section 7(2) as set forth in this document has been revised to make it clear that if the customs value for the materials referred to in section 7(1) was not determined in a manner consistent with Schedule VIII, then the customs value may not be used as the value of the material: in such a case the value of the material must be determined according to Schedule VIII. In addition, in order to illustrate this principle, a new Example 1 has been added in section 7(20) (section 7(17) in the interim texts) and interim Examples 1 through 6 have been renumbered as Examples 2 through 7. For the same reasons, similar references to the use of ''customs value'' as the value of a material have been clarified by revising sections 9(3) and 10(3) and section 1(2) of Schedule VIII.

Paragraph (b) of section 7(12) in the original trilateral texts (renumbered in this document as section 7(13)) could have been incorrectly interpreted as requiring that self-produced packaging materials or containers be valued under subparagraphs (i) or (ii). Under such an interpretation, the value of a self-produced material would always have to be treated as a non-originating value if the self-produced material were a non-originating material. However, under the NAFTA a producer is not required to treat a self-produced material as a material or to designate a self-produced material as an intermediate material. Therefore, this unnecessary and potentially confusing paragraph (b) has been removed. This change does not affect a producer's option to designate self-produced packaging materials as intermediate materials if it is in the producer's interest to do so, and this point has been clarified by the addition of a new section 7(14). Similarly, a new section 7(19) has been added to cover accessories, spare parts and tools that are self-produced. Consequential amendments have also been made by renumbering the subsections which follow these new provisions.

A new Example 8 has also been added to section 7(20) (section 7(17) in the interim texts) in order to illustrate the effects of section 7(1) and section 7(11) (section 7(10) in the interim texts) on a situation in which a producer of a good provides an indirect material, which is also an assist in this example, to a material producer for use in the production of a material that is subsequently used in the production of the good. If the indirect material is provided free of charge and the cost of the indirect material is not recorded on the books of that material producer, section 7(11) provides that the value of the indirect material is not included in the regional value content calculation under the net cost method for the material when determining whether or not the material is originating. However, if, as in this example, the indirect material is also an assist and the material that is made with benefit of the indirect material is subsequently used in the production of a good by the producer who supplied the indirect material, section 7(1) provides that the value of the indirect material (assist) is included in the value of that material (whether or not originating) when calculating the regional value content of the good.

Section 9

If a traced material has been incorporated into an originating material that is then acquired by the producer of a light duty automotive good, the value of that traced material may be determined by one of the methods set out in section 9(2)(e) or 9(2)(f) of the trilateral regulations. Paragraph (e) requires information on the actual value of a traced material. Paragraph (f) provides an alternative which will always result in a value that represents the maximum value of a traced material allowable in the originating acquired material.

In order to provide the supplier of an acquired material with an option to pass forward a value that is closer to the actual value of the traced material, but which does not require revealing the actual value as required in paragraph (e), it was determined that a third option should be allowed. Accordingly, a new paragraph (f) has been added to provide that the value of the traced material may be an amount that is based on the actual regional value content (RVC) of the acquired material (rather than the regional value content requirement, or RVCR), the amount being represented by the formula $VM \times (1 - RVC)$. As a consequence of the addition of this new paragraph (f), interim paragraphs (f) through (h) have been redesignated as (g) through (i), the internal cross-references in these paragraphs have been revised to reflect these changes, and, in section 9(10), Example 9 has been amended and Examples 12 and 13 have been added in order to reflect the new option for determining the value of a traced material which has been incorporated into an originating material acquired by a producer of a light duty automotive good.

Section 10

A new section 10(1)(d)(ii) has been added to provide, as in the case of new section 9(2)(f), for a third alternative method to determine the value of a listed non-originating material incorporated into an originating material that is acquired for use in the production of a heavy duty automotive good. Necessary consequential changes have also been made involving renumbering interim subparagraphs (ii) and (iii) as (iii) and (iv), changing the affected internal cross-references in the texts, and making changes in Examples 1, 2 and 4 under section 10(10) to reflect the new method.

A new text of Example 10 replaces the interim text in section 10(10) in order to illustrate the application of section 10(8) which allows the use of averaging under the principles of section 12(3) in order to determine the value of a non-originating material for purposes of the statement required in section 10(1)(b)(ii), section 10(1)(d)(i) or section 10(1)(e)(i). The value of a non-originating material, in such a case, would not be the value of the acquired material which is a listed non-originating material; it would be the value of the non-originating material incorporated into the listed non-originating material by the producer of that listed material.

Section 11

A new subsection (11) has been added to section 11 setting forth an Example to illustrate the options available under section 11(9)(b) in the event that a producer of a motor vehicle chooses to

average only those motor vehicles to be exported to the territory of only one NAFTA country or to the territories of more than one NAFTA country.

Section 12

Section 12(1) has been amended in order to remove an ambiguous reference to the averaging of the regional value content for automotive component assemblies, automotive components, sub-components or listed materials and thereby avoid any misunderstanding with respect to the goods that may be averaged together if produced in the same plant. Specifically, the words ''any or all automotive component assemblies, automotive components, sub-components or listed materials'' have been replaced by the words ''an automotive component assembly, an automotive component, a subcomponent or a listed material''. The text as amended more closely follows the language of NAFTA Article 403(4) (which refers to ''a component'' or ''a listed material'' of Annex 403.2) and thus makes it clear, for example, that engines and transmissions may not be grouped together for purposes of averaging regional value content.

Section 16

Section 16(1) has been revised in order to provide a clearer interpretation with respect to the nature of operations that, when performed on an originating good during transshipment through a non-NAFTA country, do not cause the good to lose its status as an originating good. The revised text in subsection (1)(a) further makes it clear that, except for goods covered by section 16(3), a good is considered *not* to be an originating good if it is removed from customs control when outside the territories of the NAFTA countries.

Schedule VII

The definition of ''discontinued operations'' in section 1 has been revised in both scope and meaning in order to link the term, when used with respect to a producer's operations that are located in a NAFTA country, to the meaning set out in that NAFTA country's Generally Accepted Accounting Principles. This maintains the consistent treatment given in the NAFTA to issues related to allocation of costs.

For similar reasons, the reference in section 6(c) to ''cumulative effect of accounting changes'' has been amended to reflect that such changes are those reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles.

Schedule VIII

The texts of sections 10(1)(c) and 10(3) have been revised in order to resolve an ambiguity with respect to which word is modified by the phrase ''in the country in which the material is produced''. These changes reflect the understanding that the determination of the amount added for profit and general expenses depends on whether the material is imported by the producer or acquired from another person in the territory in which the producer is located. In both cases the amount added should be based on sales of materials of the same class or kind as that being valued. However, in regard to the former, the determination should be based on sales of such materials by producers located in the country in which the imported material was produced, whereas in the latter, the determination should be based on sales by producers located in the same country as the producer of the material being valued.

Schedule X

During the trilateral discussions, it was noted that the first table in Addendum A as set forth in the interim Appendix was incomplete in that the trilaterally-agreed table included a third column ''Total Value'' under the heading ''Materials inventory sales (Receipts of material A)''. Accordingly, the first table in Addendum A has been corrected to reflect the trilateral text.

Technical Amendments

Many additional amendments reflected in the texts set forth in this document concern simply technical changes relating to matters such as punctuation, cross references, typographical format and consequential renumbering of provisions. These changes are not intended to have any effect on the substance or content of the texts.

Section 181.131

In light of certain of the trilaterally-agreed changes to the Appendix texts as discussed above, the Parties also agreed that it would be necessary to have a rule covering the transition from the interim Appendix texts to the new Appendix texts in the case of producers for whom an averaging period started prior to, and would extend beyond, the agreed October 1, 1995, effective date of the new Appendix texts. Accordingly, § 181.131 as set forth below has been modified by designating the interim text as paragraph (a) and by adding new paragraphs (b) and (c) to reflect the agreed-upon transitional rules.

Other Changes

Based on further internal review of the interim regulatory texts, Customs has determined that the following additional changes thereto should be made.

Section 10.8(a)

The interim regulatory amendments in T.D. 94–1 included the addition of a new paragraph (a) to § 10.8 of the Customs Regulations (19 CFR 10.8) to clarify that the provisions of that section do not apply in the case of goods returned to the United States after exportation for repairs or alterations in Canada or Mexico, for which separate provisions were set forth in interim § 181.64. Subsequently, on May 17, 1994, Customs published in the **Federal Register** (59 FR 25563) as T.D. 94–47 a final rule document which included a complete revision of § 10.8. However, the text of this revised § 10.8 did not carry forward the substance of the interim NAFTA amendment. Accordingly, this document amends the introductory text of § 10.8(a) as published in T.D. 94–47 to incorporate the substance of that NAFTA provision.

Section 12.132

The interim regulatory amendments in T.D. 94–1 included the addition of a new § 12.132 to clarify the use of country of origin declarations, which were provided for in § 12.130(f) of the Customs Regulations (19 CFR 12.130(f)), in the case of textile and apparel goods which are subject to the provisions of Annex 300–B of the NAFTA. Subsequently, on June 20, 1994, Customs published in the **Federal Register** (59 FR 31519) as T.D. 94–52 an interim rule document which amended interim § 12.132 by adding thereto a new paragraph (b) requiring submission of a Certificate of Eligibility in connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300–B of the NAFTA. In order to ensure that this document accurately reflects current regulatory requirements, the text of § 12.132 is republished below to incorporate the interim amendment effected by T.D. 94–52. Customs intends to publish a separate final rule document in the near future which will specifically address T.D. 94–52, including any public comments submitted in response thereto.

Section 181.22(a)

Interim § 181.22(a) provided that the importer must maintain documentation relating to an imported good for five

years after the date of ''importation'' of the good. In order to reflect the requirements of U.S. law (19 U.S.C. 1508(c), as amended by section 614 of the Act), § 181.22(a) as set forth below has been modified to refer to five years after the date of ''entry'' of the good.

Section 181.22(b)(2)

In addition to the removal of the references to a ''producer'' as discussed above, § 181.22(b)(2), as set forth below, has been modified to refer to signature of the Certificate of Origin by the exporter's authorized agent ''having knowledge of the relevant facts''. Customs believes that this change is appropriate to ensure that the signature has substantive relevance that goes beyond that of a mere agency relationship.

Section 181.22(d)

The following changes have been made to § 181.22(d) which specifies circumstances in which a Certificate of Origin is not required:

1. For editorial and citation purposes, the text as set forth below has been rearranged and divided into paragraph (d)(1) (which sets forth the general rules for when a Certificate is not required) and paragraph (d)(2) (which covers the exception regarding a series of importations).

2. The introductory text of newly designated paragraph (d)(1) has been modified as set forth below by replacing the words ''a Certificate of Origin shall not be required for'' with the words ''an importer shall not be required to have a Certificate of Origin in his possession''. Customs believes that this change is necessary to clarify the intent which relates to the basic requirement for possession of a Certificate when a claim for preferential tariff treatment is made (see the last sentence of § 181.21(a)) rather than to the requirement for submission of the Certificate to Customs when requested under § 181.21(b).

3. In order to provide for proper notification and related procedural safeguards in a case where a Certificate is required because the importation is determined to be part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement, the text of newly designated paragraph (d)(2), as set forth below, has been modified (1) to require written notice to the importer that possession of a Certificate covering the importation at issue is required, (2) to allow the importer 30 calendar days to obtain a valid Certificate, and (3) to specify the consequence of a failure to timely obtain the Certificate (denial of the claim for preferential tariff treatment).

Section 181.41

In § 181.41, which prescribes the applicability of the Subpart E ''NAFTA drawback'' (as defined in § 181.1(o)) provisions, the first sentence has been changed as set forth below by the addition of a reference to ''any good that is a 'good subject to NAFTA drawback' within the meaning of 19 U.S.C. 3333'' in order to (1) incorporate by reference the terms of NAFTA Article 303(6) as implemented in U.S. law and (2) clarify that those NAFTA Article 303 and U.S. statutory standards are applicable under Subpart E both for drawback purposes and for purposes of the § 181.53 duty-deferral provisions. In addition, for similar clarification purposes, the first sentence of § 181.53(a)(2) as set forth below has been changed to refer to a '''good subject to NAFTA drawback' within the meaning of 19 U.S.C. 3333''.

Section 181.44

In § 181.44, which specifies the circumstances in which drawback is calculated under the NAFTA ''lesser of the two'' rule, a new paragraph (g) has been added as set forth below to cover goods that are ''unused'' within the meaning of 19 U.S.C. 1313(j)(1) but have changed in condition after importation into the United States so as not to be eligible for full drawback under § 181.45(b).

Section 181.47

In order to facilitate Customs processing of NAFTA drawback claims, the following changes have been made to the text of interim § 181.47 which concerns the completion of claims for drawback under Subpart E: (1) In paragraph (a), language has been added at the end of the second sentence to provide that claims under Subpart E must be filed separately from non-NAFTA claims filed under Part 191; and (2) a sentence has been added at the end of paragraph (b)(1) to provide for inclusion of the word ''NAFTA'' at the top of each drawback entry form filed under Subpart E.

Section 181.50

In § 181.50, which concerns payment and liquidation of drawback claims, paragraph (b) as set forth below has been modified (1) to refer to when a drawback claim is to be liquidated (rather than when it becomes ''final'') and (2) by the addition of a sentence at the end to refer to adjustments of drawback claims under 19 U.S.C. 1508(b)(2)(B)(iii).

Section 181.62

With regard to interim § 181.62 which concerns duty-free treatment of commercial samples of negligible value imported from Canada or Mexico, Customs notes that paragraphs (b)(3) and (c) thereof, which specifically addressed textile samples, did not devolve from a specific statutory provision whereas the remainder of the section did reflect the terms of an underlying U.S. statutory provision (subheading 9811.00.60, HTSUS). Since implementation of the commercial sample provision in Article 306 of the NAFTA is a function of what is permissible or required under applicable U.S. law (in this case, subheading 9811.00.60, HTSUS), § 181.62 as set forth below has been modified by the removal of paragraphs (b)(3) and (c).

Section 181.63

Interim § 181.63, which concerned duty-free treatment of printed advertising materials imported from Canada or Mexico, reflected both the terms of Article 306 of the NAFTA and the definition of ''printed advertising materials'' in Article 318 of the NAFTA; thus, the regulatory text referred generically to ''goods classified in Chapter 49, HTSUS'', which chapter covers some goods for which duty-free treatment is not provided. Since U.S. duty treatment of goods covered by NAFTA Article 306 is controlled by the terms of the HTSUS, Customs has determined that § 181.63 serves no effective purpose and therefore should be removed and reserved until such time as appropriate changes are made to the HTSUS to reflect the terms of NAFTA Article 306.

Section 181.64(c)(1)(ii)

With regard to interim § 181.64 which concerns goods returned after repair or alteration in Canada or Mexico, Customs notes that paragraph (c)(1)(ii) thereof provides for a declaration by the owner, importer, consignee, or agent stating that, among other things, ''the goods were not previously imported in bond or admitted into a foreign trade zone or imported in similar status''. This statement was included in the declaration to address the exception for ''goods subject to NAFTA drawback'' in U.S. Note 1 to Subchapter II of Chapter 98, HTSUS. That note, which applies to the whole subchapter and thus pertains, *inter alia,* to all articles returned after repair or alteration abroad (including those goods repaired or altered in Canada or Mexico and covered by § 181.64), sets forth four circumstances

in which articles may not be classified and thus receive the duty treatment prescribed in the subchapter (under subheading 9802.00.40 or 9802.00.50 in the case of repaired or altered goods). The note, which prior to the NAFTA did not contain the ''NAFTA drawback'' exception language, was intended to ensure that goods imported into the United States in certain circumstances in which duty is not paid or is later refunded (for example, duty-free under a temporary importation bond or with subsequent drawback of duties upon exportation), and which are subsequently exported (for example, for repair or alteration) and then returned, do not re-enter the commerce of the United States and again escape full duty assessment by virtue of their classification in a reduced-duty provision under Subchapter II. The exception in the note for ''goods subject to NAFTA drawback'' was added in connection with the adoption of the NAFTA in consideration of the fact that the NAFTA drawback and duty-deferral provisions (see Subpart E of Part 181 below) render the note unnecessary in a NAFTA context because assessment of duty is required prior to exportation to Canada or Mexico under the NAFTA drawback provisions (see the definition of ''NAFTA drawback'' in § 181.1(o) below).

On further review, Customs believes that the language in the declaration quoted above does not adequately address the basic issue under U.S. Note 1 to Subchapter II of Chapter 98, HTSUS, that is, whether the imported goods were subject to NAFTA drawback. In other words, if the goods were subject to NAFTA drawback, then none of the restrictions in the note would apply and the note would not be a bar to classification of the repaired or altered goods in the subchapter. On the other hand, if the goods were not subject to NAFTA drawback and one of the restrictions in the note applied to the goods, then the note would operate as a bar to classification of the repaired or altered goods in the subchapter. Accordingly, the declaration in § 181.64(c)(1)(ii), as set forth below, has been modified in this regard to more accurately reflect the minimum information that Customs must have to ensure compliance with the applicable statutory standard.

Section 181.72(a)(2)(i)

In order to provide necessary flexibility to Customs and at the same time reflect the method most often employed by Customs, § 181.72(a)(2)(i), which concerns origin verification letters, has been modified as set forth below to provide that the verification letter ''may be on Customs Form 28 or other appropriate format''.

Section 181.72(d)(2)(ii)

In § 181.72(d)(2)(ii) which concerns the consequences of a failure on the part of the exporter or producer of a good to respond to a follow-up verification letter or questionnaire, the introductory text has been modified as set forth below to provide that Customs may ''consider the good to be non-originating and consequently may'' deny preferential tariff treatment on the good. Customs believes that the reference to non-originating status in this context is necessary if the follow-up letter or questionnaire is to include the ''written determination'' (that is, a determination as to whether the good is an originating good) referred to in paragraphs (d)(1)(i) and (d)(2)(ii)(A).

Section 181.73(a)

Section 181.73(a), which requires written notification prior to conducting a verification visit in Canada or Mexico, has been modified as set forth below by removing from the first sentence the words '', including a follow-up to an earlier visit,''. On further review, Customs has determined that this requirement is neither reflected in the text of the Agreement nor otherwise necessary since the procedural safeguards afforded by the notification requirement are covered by the notification given prior to the initial visit. Moreover, requiring written notification (and, thus, written consent under § 181.74) prior to each follow-up visit would impose an unreasonable administrative burden on Customs and could compromise the overall effectiveness of the verification visit process.

Section 181.75(a)(2)

Section 181.75(a)(2) requires that a written origin determination include a statement setting forth the findings of fact made in connection with the origin verification and upon which the origin determination is based. An exception has been added to this section as set forth below to cover the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire. Customs believes that this change is necessary because, under modified § 181.72(d)(2)(ii) as discussed above, the negative origin determination may result merely from a failure on the part of the exporter or producer of the good to respond to the follow-up letter or questionnaire.

Section 181.75(b)(2)(iv)

Section 181.75(b)(2)(iv) as set forth below has been modified by the addition of language at the end to cover cases where an exporter or producer would protest the negative origin determination itself rather than the liquidation of an entry (for example, where the importer's NAFTA claim was made in a protest rather than as part of the entry process).

Section 181.76(a)

Section 181.76(a) has been modified as set forth below to provide that an origin determination ''may be applied'' (rather than ''shall be effective'') upon issuance of the determination, and the provisions regarding the negative origin determination exception to this general rule have been set forth as a new paragraph (b). Customs believes that these editorial changes are necessary to align on terminology used elsewhere in § 181.76 and to reflect the fact that a Customs decision regarding a rate of duty takes effect only when actually applied to a transaction (that is, in connection with the liquidation of an entry).

Section 181.76(c)

In § 181.76(c) (§ 181.76(b) in the interim texts), which concerns the application of origin determinations where there is a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good qualifies as an originating good, the first sentence as set forth below has been modified (1) to state that Customs may ''deny subsequent claims for'' (rather than ''withhold'') preferential tariff treatment and (2) by adding at the end the words '', provided that advance written notice of the intent to deny such claims is given to the importer.'' The first change is intended both to conform the text to the legal responsibility of Customs in connection with the entry and liquidation process and to reflect the intent of the underlying NAFTA provision which is prospective in nature. The second change is simply intended to ensure that the importer will receive appropriate notice of the intended action by Customs. In addition, as a consequence of the replacement of the word ''withhold'' in § 181.76(c), § 181.71 as set forth below has been modified by removing the words ''or withhold'' before the words ''preferential tariff treatment''.

Section 181.76(e)

In § 181.76(e) (§ 181.76(d) in the interim texts), which limits the application of negative origin

determinations to prior importations in certain specified circumstances, the first sentence as set forth below has been modified by adding at the end the words ''and on which that person did in fact rely.'' Customs believes that this change is necessary because the underlying NAFTA provision is founded on the principle of equitable relief based on detrimental reliance, and there can be no occasion for equitable relief if no reliance, and thus no detriment, has occurred.

Section 181.76(f)

Section 181.76(f) (§ 181.76(e) in the interim texts) has been modified as set forth below (1) by replacing ''denies'' with ''proposes to deny'', (2) by replacing ''effective date of the denial'' with ''application of the determination'', and (3) and by adding after ''90 calendar days'' the words ''from the date of issuance of the determination''. Customs believes that these changes are appropriate for purposes of precision as regards the procedures discussed in the section.

Section 181.81

Interim § 181.81 concerned the applicability of penalties to NAFTA transactions and consisted of a general statement (paragraph (a)) and a specific provision regarding false certifications by U.S. exporters or producers (paragraph (b)). On further review of this section, Customs believes that interim paragraph (b) is redundant and thus unnecessary because its purpose is already achieved by the general interim paragraph (a) statement. Accordingly, § 181.81 as set forth below has been modified to reflect only the text contained in interim paragraph (a).

Section 181.100(b)(3)

Section 181.100(b)(3) concerns the effective date for a modification or revocation of an advance ruling and provides for a delayed effective date of up to 90 days in some circumstances. In a case where the delay is requested by the party to whom the ruling letter was issued, the text, as set forth below, has been modified to refer to reliance ''in good faith'' rather than to reliance that is ''reasonable''. This change aligns the text on the standard set forth in Article 509(8) of the NAFTA.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the additional considerations discussed above, Customs believes that the interim regulations published in T.D. 94–1 should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. Although this document sets forth the majority of the interim regulatory amendments adopted herein as a final rule and thus both republishes portions of the interim texts without change and amends other portions of the interim texts to incorporate the changes discussed above, it does not republish those unchanged interim amendments, involving the following provisions, which were set forth in T.D. 94–1 within an amendatory instruction rather than in full regulatory text format: §§ 10.36a, 10.66, 10.67, 134.1, 134.22, 134.23, 134.24, 134.32, 134.35, 134.43, 134.44, 174.12, 174.29, 177.0, and 177.1. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Inapplicability of Public Notice and Comment Procedures and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice and comment procedures are inapplicable to these final regulations because they are within the foreign affairs function of the United States. In addition, for the above reason and because the Parties have agreed to promulgate final NAFTA implementing regulations with effect from October 1, 1995, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a 30-day delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations implement obligations of international agreements and statutory requirements relating thereto, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information requirements contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) under control number 1515–0205. The estimated average annual burden associated with this collection is 6.31 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Canada, Customs duties and inspection, Marking, Mexico, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

19 CFR Part 24

Accounting, Canada, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 123

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 134

Canada, Country of origin, Customs duties and inspection, Labeling, Marking, Mexico, Packaging and containers, Trade agreements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 177

Administrative practice and procedure, Courts, Judicial proceedings, Rulings, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free-Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

Accordingly, the interim rule amending Parts 10, 12, 24, 123, 134, 162, 174, 177, 178 and 191 (19 CFR Parts 10, 12, 24, 123, 134, 162, 174, 177, 178 and 191) and adding Part 181, Customs Regulations (19 CFR Part 181), which was published at 58 FR 69460–69565 on December 30, 1993, and which was corrected at 59 FR 8852 on February 24, 1994, and at 59 FR 15047 on March 31, 1994, and the interim rule amending Part 12, Customs Regulations (19 CFR Part 12), which was published at 59 FR 31519–31521 on June 20, 1994, are adopted as a final rule with certain changes set forth below. The final texts, except for those amendments published in T.D. 94–1 which were set forth within an amendatory instruction rather than in full regulatory text format, are either republished below without change or are set forth below with the amendments discussed above under **SUPPLEMENTARY INFORMATION.**

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

2. Section 10.8 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section and except in the case of goods covered by § 181.64 of this chapter, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

* * * * *

3. The last sentence of § 10.31(f) is republished to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) * * * In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada or Mexico and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security shall be required if the entered article is a good originating in Canada or Mexico within the meaning of General Note 12, HTSUS.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

2. Section 12.132 is republished to read as follows:

§ 12.132 Textile and apparel goods under the North American Free Trade Agreement.

(a) *Country of origin declaration*. The provisions of § 12.130(f) of this part regarding submission of a country of origin declaration shall apply to all textile and apparel goods which are subject to the provisions of Annex 300–B of the North American Free Trade Agreement (NAFTA). Although a separate country of origin declaration shall not be required for such goods for NAFTA purposes, the following additional requirements shall apply for purposes of this section:

(1) All commercial importations of textile and apparel goods shall be accompanied by the appropriate declaration;

(2) A declaration by each U.S., Canadian, and/or Mexican manufacturer or producer of the goods, or by the exporter of the goods if a declaration cannot be obtained from the manufacturer or producer, and, if there are multiple manufacturers or producers, a separate declaration by each manufacturer, producer or exporter, shall be furnished by the importer. Packaging operations shall not be considered manufacture or production for purposes of this paragraph; and

(3) If the district director is unable to determine the country of origin of the goods because the information contained in a declaration is incomplete, the shipment to which that declaration pertains shall not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which it would otherwise be eligible.

(b) *Certificate of Eligibility*. In connection with a claim for NAFTA preferential tariff treatment involving non-originating textile and apparel goods subject to the tariff preference level provisions of Appendix 6.B. to Annex 300–B of the NAFTA and Additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States, the importer shall submit to Customs a Certificate of Eligibility covering the goods. The Certificate of Eligibility shall be properly completed and signed by an authorized official of the Canadian or Mexican government and shall be presented to Customs at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter. Failure to timely submit the required Certificate of Eligibility will result in a denial of the claim.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701.

* * * * *

2. In § 24.22, paragraph (g)(1), the introductory text of paragraph (g)(2)(i)(A), and paragraph (g)(2)(iv) are republished to read as follows:

§ 24.22 Fees for certain services.

* * * * *

(g) *Fee for arrival of passengers aboard commercial vessels and commercial aircraft.*

(1) *Fee.* Except as provided in paragraph (g)(2) of this section:

(i) For the period from January 1, 1994 through September 30, 1997, a fee of $6.50 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States; and

(ii) Commencing on October 1, 1997, a fee of $5 shall be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States.

(2) * * *

(i)(A) Except during the period from January 1, 1994 through September 30, 1997, persons whose journey:

* * * * *

(iv) Except during the period from January 1, 1994 through September 30, 1997, persons departing from and returning to the United States without having touched a foreign port or place;

* * * * *

3. Section 24.23(c)(3) is republished to read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(c) * * *

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2)(i) of this section shall not apply either to goods originating in Canada within the meaning of General Note 9, HTSUS, or to goods originating in Canada within the meaning of General Note 12, HTSUS, where such goods qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. Where originating goods as described in the preceding sentence are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees shall apply only to those goods which are not originating goods.

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

2. The last sentence of § 123.0 is republished to read as follows:

§ 123.0 Scope.

* * * Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. The last sentence of § 134.0 is republished to read as follows:

§ 134.0 Scope.

* * * Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

3. In § 134.1, the last sentence of paragraph (d)(2) and paragraphs (g), (h), (i) and (j) are republished, and a new paragraph (k) is added, to read as follows:

§ 134.1 Definitions.

* * * * *

(d) * * *

(2) * * * With respect to a good of a NAFTA country, if the manufacturing process does not result in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

* * * * *

(g) *Good of a NAFTA country.* A ''good of a NAFTA country'' is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA.* ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on December 17, 1992.

(i) *NAFTA country.* ''NAFTA country'' means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules.* The ''NAFTA Marking Rules'' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

(k) *Conspicuous.* ''Conspicuous'' means capable of being easily seen with normal handling of the article or container.

4. Section 134.22(d) is republished to read as follows:

§ 134.22 General rules for marking of containers or holders.

* * * * *

(d) *Usual containers*—(1) *''Usual container'' defined.* For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a camera case or an eyeglass case, or packing, storage and transportation materials.

(2) *A good of a NAFTA country which is a usual container.* A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

* * * * *

5. In § 134.32, paragraphs (p) and (q) are republished to read as follows:

§ 134.32 General exceptions to marking requirements.

* * * * *

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

* * * * *

6. Section 134.35(b) is republished to read as follows:

§ 134.35 Articles substantially changed by manufacture.

* * * * *

(b) *Goods of a NAFTA country.* A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States under the NAFTA Marking Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

7. Section 134.45(a) is republished to read as follows:

§ 134.45 Approved markings of country name.

(a) *Language.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin shall be published in the **Federal Register** and the Customs Bulletin.

(2) A good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish.

* * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for part 162 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

2. The last sentence of § 162.0 is republished to read as follows:

§ 162.0 Scope.

* * * Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the North American Free Trade Agreement are contained in part 181 of this chapter.

PART 174—PROTESTS

1. The authority citation for Part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. The last sentence of § 174.0 is republished to read as follows:

§ 174.0 Scope.

* * * Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking decisions under the North American Free Trade Agreement are contained in part 181 of this chapter.

3. Section 174.12(a)(5) is republished to read as follows:

§ 174.12 Filing of protests.

(a) * * *

(5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in § 181.11(a) of this chapter; or

* * * * *

4. Section 174.12(e)(2) is revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(e) * * *

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws, the date of a refusal to reliquidate under section 520(c)(1) of the Tariff Act of 1930, as amended, or the date of written notice of a denial of a claim filed under section 520(d) of the Tariff Act of 1930, as amended); or

* * * * *

15. Section 174.15 is republished to read as follows:

§ 174.15 Consolidation of protests filed by different parties.

(a) *General.* Subject to paragraph (b) of this section, separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

(b) *NAFTA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under subpart G of part 181 of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the district director in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
	* * * * *	
§ 12.132	Country of origin declaration covering textile and apparel goods under the North American Free Trade Agreement.	1515–0205
	* * * * *	
§ 181.11	Certificate of Origin for purposes of the North American Free Trade Agreement	1515–0205
§§ 181.22 and 181.32	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
§§ 181.47 and 181.53	Claim for refund, waiver or reduction of duty under the drawback and duty deferral provisions of the North American Free Trade Agreement.	1515–0205
§ 181.64	Claim for duty-free or reduced-duty treatment on repaired or altered goods under the North American Free Trade Agreement.	1515–0205
§ 181.72	Submission of information in connection with origin verifications under the North American Free Trade Agreement.	1515–0205
§ 181.82	Statement accompanying corrected declaration or notification of incorrect certification under the North American Free Trade Agreement.	1515–0205
§§ 181.93–181.96 and 181.102	Submission of information in connection with requests for issuance or review of advance rulings under the North American Free Trade Agreement.	1515–0205
§§ 181.113, 181.115 and 181.116	Submission of information in connection with the review and appeal of adverse marking decisions under the North American Free Trade Agreement.	1515–0205
§ 181.131	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
	* * * * *	

1. Part 181 is revised to read as follows:

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

Sec.
181.0 Scope.

Subpart A—General Provisions

181.1 Definitions.

Subpart B—Export Requirements

181.11 Certificate of Origin.
181.12 Maintenance and availability of records.
181.13 Failure to comply with requirements.

Subpart C—Import Requirements

181.21 Filing of claim for preferential tariff treatment upon importation.
181.22 Maintenance of records and submission of Certificate by importer.
181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

Subpart D—Post-Importation Duty Refund Claims

181.31 Right to make post-importation claim and refund duties.
181.32 Filing procedures.
181.33 Customs processing procedures.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

181.41 Applicability.
181.42 Duties and fees not subject to drawback.
181.43 Eligible goods subject to drawback.
181.44 Calculation of drawback.
181.45 Goods eligible for full drawback.
181.46 Time and place for filing drawback claim.
181.47 Completion of claim for drawback.
181.48 Person entitled to receive drawback.
181.49 Retention of records.
181.50 Liquidation and payment of drawback claims.
181.51 Prevention of improper payment of claims.
181.52 Subsequent claims for preferential tariff treatment.
181.53 Waiver or reduction of duty under duty-deferral programs.
181.54 Verification of claim for drawback, waiver or reduction of duties.

Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

181.61 Applicability.
181.62 Commercial samples of negligible value.
181.63 [Reserved]
181.64 Goods re-entered after repair or alteration in Canada or Mexico.

Subpart G—Origin Verifications and Determinations

181.71 Denial of preferential tariff treatment dependent on origin verification and determination.
181.72 Verification scope and method.
181.73 Notification of verification visit.
181.74 Verification visit procedures.
181.75 Issuance of origin determination.
181.76 Application of origin determinations.

Subpart H—Penalties

181.81 Applicability to NAFTA transactions.
181.82 Exceptions to application of penalties.

Subpart I—Advance Ruling Procedures

181.91 Applicability.
181.92 Definitions and general NAFTA advance ruling practice.
181.93 Submission of advance ruling requests.
181.94 Nonconforming requests for advance rulings.
181.95 Oral discussion of issues.
181.96 Change in status of transaction.
181.97 Withdrawal of NAFTA advance ruling requests.
181.98 Situations in which no NAFTA advance ruling may be issued.
181.99 Issuance of NAFTA advance rulings or other advice.
181.100 Effect of NAFTA advance ruling letters; modification and revocation.
181.101 Publication of decisions.
181.102 Administrative and judicial review of advance rulings.

Subpart J—Review and Appeal of Adverse Marking Decisions

181.111 Applicability.
181.112 Definitions.
181.113 Request for Basis of Adverse Marking Decision.
181.114 Customs response to request.
181.115 Intervention in importer's protest.
181.116 Petition regarding adverse marking decision.

Subpart K—Confidentiality of Business Information

181.121 Maintenance of confidentiality.
181.122 Disclosure to government authorities.

Subpart L—Rules of Origin

181.131 Rules of origin.

Appendix to Part 181—Rules of Origin Regulations

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.0 Scope.

This part implements the duty preference and related Customs

provisions applicable to imported goods under the North American Free Trade Agreement (the NAFTA) entered into on December 17, 1992, and under the North American Free Trade Agreement Implementation Act (107 Stat. 2057) (the Act). Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the Customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the NAFTA and the Act are contained in parts 10, 12, 24, 134 and 174 of this chapter.

Subpart A—General Provisions

§ 181.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular subpart, section or other portion of this part:

(a) *Canada. Canada,* when used in a geographical rather than governmental context, means the territory of Canada as defined in Annex 201.1 of the NAFTA.

(b) *Commercial importation. Commercial importation* means the importation of a good into the United States, Canada or Mexico for the purpose of sale, or any commercial, industrial or other like use.

(c) *Customs administration. Customs administration* means the competent authority that is responsible under the law of the United States, Canada or Mexico for the administration of its customs laws and regulations.

(d) *Customs duty. Customs duty* means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, other than any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the General Agreement on Tariffs and Trade, or any equivalent provision of a successor agreement to which the United States, Canada and Mexico are party, in respect of like, directly competitive or substitutable goods of the United States, Canada or Mexico, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to the domestic law of the United States, Canada or Mexico and that is not applied inconsistently with Chapter Nineteen of the NAFTA;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

(5) Fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to the provisions of Chapter Seven of the NAFTA.

(e) *Determination of origin. Determination of origin* means a determination as to whether a good qualifies as a good originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(f) *Exporter. Exporter* means an exporter located, and required under this part to maintain records regarding exportations of a good, in the United States, Canada or Mexico.

(g) *Generally Accepted Accounting Principles. Generally Accepted Accounting Principles* means the recognized consensus or substantial authoritative support in the United States, Canada or Mexico with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally Accepted Accounting Principles under this definition may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

(h) *HTSUS. HTSUS* means the Harmonized Tariff Schedule of the United States.

(i) *Importer. Importer* means an importer located, and required under this part to maintain records regarding importations of a good, in the United States, Canada or Mexico.

(j) *Intermediate material. Intermediate material* means an ''intermediate material'' as defined in the appendix to this part.

(k) *Marking Rules. Marking Rules* means the ''NAFTA Marking Rules'' as defined in § 134.1(j) of this chapter.

(l) *Measure. Measure* means any law, regulation, procedure, requirement or practice.

(m) *Mexico. Mexico,* when used in a geographical rather than governmental context, means the territory of Mexico as defined in Annex 201.1 of the NAFTA.

(n) *NAFTA. NAFTA* means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (107 Stat. 2057).

(o) *NAFTA drawback. NAFTA drawback* means any drawback, waiver or reduction of U.S. customs duty provided for in subpart E of this part.

(p) *Net cost of a good. Net cost of a good* means the ''net cost of a good'' as defined in the appendix to this part.

(q) *Originating. Originating,* when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(r) *Person. Person* means a natural person or an enterprise.

(s) *Preferential tariff treatment. Preferential tariff treatment* means the duty rate applicable to an originating good or to a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies.

(t) *Producer. Producer* means a *producer* as defined in the appendix to this part.

(u) *Production. Production* means *production* as defined in the appendix to this part.

(v) *Transaction value. Transaction value* means transaction value as defined in the appendix to this part.

(w) *United States. United States,* when used in a geographical rather than governmental context, means the territory of the United States as defined in Annex 201.1 of the NAFTA.

(x) *Used. Used* means *used* as defined in the appendix to this part.

(y) *Value. Value* means the value of a good or material for purposes of calculating customs duties or for purposes of applying the provisions of the appendix to this part.

Subpart B—Export Requirements

§ 181.11 Certificate of Origin.

(a) *General.* A Certificate of Origin shall be employed to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

(b) *Preparation of Certificate in the United States.* An exporter in the United States who completes and signs a Certificate of Origin for the purpose set forth in paragraph (a) of this section shall use Customs Form 434 or such other medium or format as approved by the Canadian or Mexican customs administration for that purpose. Where the U.S. exporter is not the producer of the good, that exporter may complete and sign a Certificate on the basis of:

(1) Its knowledge of whether the good qualifies as an originating good;

(2) Its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(3) A completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

(c) *Submission of Certificate to Customs.* An exporter in the United States, and a producer in the United States who has voluntarily provided a copy of a Certificate of Origin to that exporter pursuant to paragraph (b)(3) of this section, shall provide a copy of the Certificate to Customs upon request.

(d) *Notification of errors in Certificate.* An exporter or producer in the United States who has completed and signed a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall within 30 calendar days after the date of discovery of the error notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

§ 181.12 Maintenance and availability of records.

(a) *Maintenance of records*—(1) *General.* An exporter or producer in the United States who completes and signs a Certificate of Origin shall maintain in the United States, for five years after the date on which the Certificate was signed, all records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada or Mexico, including records associated with:

(i) The purchase of, cost of, value of, and payment for, the good that is exported from the United States;

(ii) The purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and

(iii) The production of the good in the form in which the good is exported from the United States.

(2) *Method of maintenance.* The records referred to in paragraph (a) of this section shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained in hard-copy form, on microfilm or microfiche or in automated record storage devices (for example, magnetic discs and tapes) if associated computer programs are available to facilitate retrieval of the data in a usable form.

(b) *Availability of records*—(1) *To Customs.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section shall be made available for examination and inspection by the port director or other appropriate Customs officer in the same manner as provided in § 162.1d of this chapter in the case of U.S. importer records.

(2) *To the Canadian or Mexican customs administration.* If a U.S. exporter or producer receives notification of, and consents to, an origin verification visit by the Canadian or Mexican customs administration under Article 506 of the NAFTA (see § 181.74(e) of this part), such consent shall constitute agreement by the U.S. exporter or producer to make available to an officer of that customs administration all records required to be maintained under this section and to provide facilities for the inspection thereof. If, during the course of an origin verification of a U.S. producer, the Canadian or Mexican customs administration finds that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

§ 181.13 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part.

Subpart C—Import Requirements

§ 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol ''CA'' for a good of Canada, or the symbol ''MX'' for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in § 181.22 of this part and except in the case of a good to which Appendix 6.B. to Annex 300–B of the NAFTA applies (see, however, § 12.132 of this chapter), the declaration shall be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under § 181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

§ 181.22 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of entry of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 162.1a(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to Customs under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on Customs Form 434, including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to Customs Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the

same information and certification set forth on Customs Form 434;

(2) Shall be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the port director, upon request, a written English translation thereof;

(4) Shall be accepted by Customs for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the port director as valid for the purpose set forth in § 181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the port director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of § 181.76(c) of this part, the port director determines that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the port director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer shall not be required to have a Certificate of Origin in his possession for:

(i) An importation of a good for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

(ii) A non-commercial importation of a good; or

(iii) A commercial importation of a good whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement set forth in this part, the port director shall notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer shall have 30 calendar days from the date of the written notice to obtain a valid Certificate, and a failure to timely obtain the Certificate will result in denial of the claim for preferential tariff treatment. For purposes of paragraph (d)(2) of this section, a ''series of importations'' means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

§ 181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this part are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than the United States, Canada or Mexico and the importer of the good does not provide, at the request of the port director, copies of the customs control documents that indicate to the satisfaction of the port director that the good remained under customs control while in such other country.

Subpart D—Post-Importation Duty Refund Claims

§ 181.31 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

§ 181.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

§ 181.33 Customs processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the port director shall determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director shall suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director shall suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim.*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director shall take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director shall reliquidate the entry taking into account the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico.* If any information is provided to Customs pursuant to § 181.32(b) (4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the port director to the customs administration of the country from which the good was exported.

(d) *Denial of claim*—(1) *General.* The port director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under § 181.32(b)(3) of this part cannot be accepted as valid (see § 181.22(c) of this part), or if, following initiation of an origin verification under § 181.72(a) of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 181.72(d), § 181.74(c) or § 181.76(c) of this part.

(2) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

(3) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

§ 181.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333. Except in the case of § 181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

§ 181.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and

(d) Customs duties paid or owed under unused merchandise substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

§ 181.43 Eligible goods subject to drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in § 181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

§ 181.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in § 181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value shall be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section shall be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

Example. Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

Example 1. Upon the importation of Product X to the United States from Japan, Company A paid $2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed the equivalent of US$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the $2.00, or $1.98. The $2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (the equivalent of US$11.00) on Product Y.

Example 2. Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid $5.00 in duties. Company A manufactured Product X into Product Y, sold it to Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term ''same kind and quality'' used in § 1313(b) (see § 191.2(m) of this chapter) shall have the same meaning as the term ''identical or similar good'' used in Article 303 of the NAFTA except that there shall be no requirement that the good be manufactured in the same country.

Example 1. Upon importation of Product X from Japan to the United States, Company A paid $5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of $1.98 (or 99 percent of the US$2.00 equivalent Company B paid in duty to Canada) since that $2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

Example 2. Same facts as above example, but Company B paid the equivalent of US$5.00 to Revenue Canada. Company A is entitled to obtain $4.95 in drawback (a refund of 99 percent of $5.00 paid to the United States). Since the same amount of duty was assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

Example. Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of $200. Upon exportation of the hams to Mexico, Company Z pays the equivalent of US$250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the $200.00 in duties it paid on the importation of the salt into the United States because that $200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

Example. A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which $160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7575–A, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that $160.00 was a lesser amount than the duties paid on the engine to Canada.

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of § 181.45(b)(1) may be eligible for drawback under this section, except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

Example. Upon importation of Product X from Spain to the United States, the U.S. importer pays $10.00 in duties. While in the original package in the importer's warehouse, Product X becomes damaged. A Canadian purchaser buys Product X and imports it into Canada and pays the equivalent of US$5.00 in duties assessed by Revenue Canada. The Canadian purchaser who exported Product X from the United States to Canada and who otherwise qualifies for drawback is entitled to drawback under 19 U.S.C. 1313(j)(1) in the amount of $4.95 (99 percent of the US$5.00 equivalent in duties paid to Canada). Eligibility for full drawback of the $10.00 in U.S. duties under § 181.45(b) would be precluded because Product X, although unused, was not exported to Canada in the same condition as when imported into the United States within the meaning of § 181.45(b)(1).

§ 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

Example. Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders for successive stages of production until NAFTA tariffs are fully phased out.)

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition.* A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 181.44 of this part.

Example. X imports a desk into the United States from England and pays $25.00 in duty. X immediately exports the desk to Z in Mexico and Z pays the equivalent of US$10.00 in Mexican duties. X can obtain a refund of 99 percent of the $25.00 paid upon importation of the desk into the United States.

(1) *Same condition defined.* For purposes of this subpart, a reference to a good in the ''same condition'' includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting or grading.

(2) *Commingling of fungible goods*—(i) *General.* Commingling of fungible goods in inventory, such as parts, is permissible (see § 191.141(e) of this chapter), provided that the entries for designation for same condition drawback are identified on the basis of an approved inventory method set forth in the appendix to this part.

(ii) *Exception.* Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in § 181.44 of this part. Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.

Example. X orders, after seeing a sample in the ABC Company's catalog, a certain quantity of 2-by-4 lumber from ABC Company located in Honduras. ABC Company, having run out of the specific lumber, ships instead a different kind of lumber. X rejects the lumber because it did not conform to the sample and is asked to send it to a customer of ABC in Canada. X exports it within 90 days of its release from Customs custody. X may recover 99 percent of the $500 duties it paid to U.S. Customs upon the exportation of the lumber, or $495.00.

(d) *Certain goods exported to Canada.* Goods identified in Annex 303.6 of the NAFTA and in sections 203(a) (7) and (8) of the North American Free Trade Agreement Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part.

§ 181.46 Time and place for filing drawback claim.

(a) *Time of filing.* A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing.* A drawback claim must be filed at the port(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from that port. To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place (see § 191.141(b)(3) (ii) and (iii) of this chapter). Customs must be notified at least 2 working days in advance of the intended date of

exportation in order to have the opportunity to examine the goods.

§ 181.47 Completion of claim for drawback.

(a) *General.* A claim for drawback shall be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback shall be in accordance with the provisions of part 191 of this chapter; however, a drawback claim subject to the provisions of this subpart shall be filed separately from any part 191 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the 3-year period specified in § 181.46 of this part shall be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart shall consist of the filing of the appropriate completed drawback entry form, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry form filed under this subpart shall be conspicuously marked at the top with the word ''NAFTA''.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, must be submitted to Customs in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following shall be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed Customs Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) Customs Form 7501 or the import entry number;

(C) Exporter's summary procedure, if applicable. For purposes of this subpart, the exporter's summary procedure must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred shall be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify Customs if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1).* The following shall be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed Customs Form 7539J. In addition, the tariff classification number of the imported goods shall be recorded on the form;

(B) Customs Form 7501. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and Customs or taxpayer identification number. Explicit line item information shall be clearly noted on the Customs Form 7501 so that the subject goods are easily discernible;

(C) Customs Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) The certificate of delivery portion of Customs Form 331, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is required if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) Customs Form 7512, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) Evidence of exportation. If a claimant is not approved for the exporter's summary procedure, either a certified Customs Form 7511 or an uncertified Customs Form 7511 supported by documentary evidence of exportation to Canada or Mexico such as a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier, or any other evidence of exportation provided for in § 191.51 of this chapter. Supporting documentary evidence shall establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred shall be required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following shall be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7539C, completed and submitted at the time the goods are returned to Customs custody;

(B) Customs Form 7501 to establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see § 181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or

advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) Customs Form 7512, if applicable; and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph shall be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart L of part 191 of this chapter.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico shall consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B–3, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the ''pedimento'');

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

§ 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback.* The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback.* Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback.* The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1) unless he has in writing waived his right to claim drawback.

§ 181.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer (see § 191.5 of this chapter) shall be retained for at least three years after payment of such claims. However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.

§ 181.50 Liquidation and payment of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 181.44 of this part or in accordance with the regular drawback calculation. The liquidation procedures of subpart G of part 191 of this chapter shall control for purposes of this subpart.

(b) *Time for liquidation.* A drawback claim shall not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with Customs or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 181.45 of this part, a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the U.S. import entry has become final.

(c) *Accelerated payment.* Accelerated drawback payment procedures shall apply as set forth in § 191.72 of this chapter. However, a person who receives drawback of duties under this procedure shall repay the duties paid if a NAFTA drawback claim is adversely affected thereafter by administrative or court action.

§ 181.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The drawback claimant shall certify to Customs that he has not earlier received payment on the same import entry for the same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant shall repay any amount paid on the second claim.

(b) *Preparation of Certificate of Origin.* The drawback claimant shall, within 30 calendar days after the filing of the drawback claim under this subpart, submit to Customs a written statement as to whether he has prepared, or has knowledge that another person has prepared, a Certificate of Origin provided for under § 181.11(a) of this part and pertaining to the goods which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such Certificate of Origin, the claimant shall, within 30 calendar days thereafter, disclose that fact to Customs.

§ 181.52 Subsequent claims for preferential tariff treatment.

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate Customs officer shall reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 181.44 of this part.

§ 181.53 Waiver or reduction of duty under duty-deferral programs.

(a) *General*—(1) *Duty-deferral program defined.* For purposes of this section, a ''duty-deferral program'' means a measure which postpones duty payment upon arrival of a good in the United States, including a measure governing manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, or temporary importations under bond under Chapter 98, HTSUS, until withdrawn or removed for exportation to Canada or Mexico.

(2) *Treatment as entered or withdrawn for domestic consumption.* Where a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 is imported into the United States pursuant to a duty-deferral program and is subsequently exported to Canada or Mexico or is used as a material in the production of another good that is subsequently exported to Canada or Mexico, the exported good shall be treated, for purposes of this section, as if it had been entered or withdrawn for domestic consumption and thus subject to duty. However, the provisions of this paragraph shall not apply to goods covered by § 181.45.

(3) *Adjustment to duties paid.* Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who exports the good to Canada or Mexico in accordance with paragraphs (b) through (f) of this section, provided that evidence of exportation and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c) of this part) are submitted within 60 calendar days of the date of exportation.

(b) *Manipulation in warehouse.* Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company B imports toys in bulk and makes a warehouse entry into a Class 8 warehouse, whereupon Company B repackages the toys for retail sale. Upon withdrawal of the goods from the warehouse, $200 in U.S. duty is assessed. Company B exports this merchandise to Mexico and pays the equivalent of US$300 in duties. Thirty days after exportation from the United States, Company B submits to Customs evidence of exportation and a copy of the Mexican consumption entry (''pedimento'') as evidence of the payment of the US$300 equivalent to Mexico. Customs will waive the collection of the $200 assessment since $200 is a lesser amount than the total amount of duties paid to Mexico.

(c) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for immediate exportation to Canada, U.S. duty is assessed on the basis of the unmanufactured tea in the amount of $900. Company N, however, does not pay the duties at this time. Canada assesses the equivalent of US$800 on the exported ice tea mix. Company N submits to Customs both evidence of exportation to Canada and a Canadian K–84 Statement showing payment of the US$800 equivalent in duties to Canada. Company N will only be required to pay $100 in U.S. duties out of the original $900 bill.

(d) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after the date of exportation of the treated materials to Canada or Mexico either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported treated materials, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise and pays $90,000 in U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials and Customs cancels the bond charges. Two weeks later, Company Z secures a buyer, Company B, in Canada and exports the merchandise. Upon importation of the processed zinc into Canada, the equivalent of US$50,000 in duties are assessed against Company B. Company Z would like to claim a NAFTA refund under this section. Company Z must secure from Company B the necessary Canadian documentation to show exportation and to show that the US$50,000 equivalent in duties was paid to Revenue Canada in order for Company Z to obtain a refund of that amount from Customs.

(e) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then exported from the zone to Canada or Mexico, the duty assessed, as calculated under paragraph (e)(1) or (e)(2) of this section, shall be paid no later than 60 calendar days after the date of exportation of the good to Canada or Mexico except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of either the total amount of duty payable on the good under this section

or the total amount of customs duties paid to Canada or Mexico.

(1) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico.

Example. CMG imports $1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or $40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent ($25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and sells them to XYZ who ships them to Mexico. XYZ enters the automobiles in Mexico, pays the equivalent of US$20,000 in duty, and does not claim NAFTA preferential tariff treatment. Before the expiration of 60 calendar days from exportation, CMG submits the required documentation showing exportation and payment of duty in Mexico and pays $5,000 in duty to Customs representing the difference between the $25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US$20,000 equivalent paid to Mexico by XYZ.

(2) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

Example. O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon entry of the refined goods from the zone by O&G, Inc., U.S. duty is assessed on the imported crude petroleum in the amount of $700 rather than on the refined goods (which would have been assessed $1,200). O&G, Inc. then ships the refined goods to Canada. D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US$1,500 on the goods. D&O claims NAFTA preferential tariff treatment in Canada. O&G, Inc. potentially is entitled to a duty remission of the full $700 assessed in the United States. However, if D&O's NAFTA claim is approved and results in a refund of duty by Canada, O&G, Inc.'s actual duty remission or refund will be reduced by that amount of refund received by D&O in excess of $800.

(f) *Temporary importation under bond.* Where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, HTSUS) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after the date of exportation except that, upon presentation of evidence of exportation and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the exported good, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at $6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US$6,200 equivalent in duties was assessed but not yet paid to Mexico, and Customs sends a bill to Company A for the $6,000 in U.S. duty which Company A pays. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of evidence of the finality of the collection of the US$6,200 equivalent by Mexico, is entitled to a refund of the full $6,000 in U.S. duty.

(g) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico. Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(h) *Failure to timely provide evidence of duties paid or owed to Canada or Mexico.* If the person who exports the goods to Canada or Mexico fails to provide satisfactory evidence of duties paid or owed to Canada or Mexico within the 60-day period specified in this section, that person will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(i) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs shall reliquidate the NAFTA drawback claim and obtain a refund of the amount waived or reduced in excess of the amount permitted to be waived or reduced under this section.

§ 181.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart shall be subject to such verification, including verification with the Canadian or Mexican customs administration of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as Customs may deem necessary.

Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

§ 181.61 Applicability.

This subpart sets forth the rules which apply for purposes of duty-free entry of commercial samples of negligible value as provided for in Article 306 of the NAFTA and for purposes of the re-entry of goods after repair or alteration in Canada or Mexico as provided for in Article 307 of the NAFTA.

§ 181.62 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, ''commercial samples of negligible value'' means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods; and

(2) If valued over US$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

§ 181.63 [Reserved]

§ 181.64 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules which apply for purposes of

obtaining duty-free or reduced-duty treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. Goods returned after having been repaired or altered in Canada other than pursuant to a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the United States-Canada Free-Trade Agreement (see § 10.301 of this chapter), provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Example. Glass mugs produced in the United States are exported to Canada for etching and tempering operations, after which they are returned to the United States for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

(b) *Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

Example. Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the United States are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

(c) *Documentation*—(1) *Declarations required.* Except as otherwise provided in this section, the following declarations shall be filed in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty free or subject to duty only on the value of the repairs or alterations performed abroad:

(i) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I/We, _____, declare that the goods herein specified are the goods which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19_____, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that such repairs or alterations were (were not) performed pursuant to a warranty; that the full cost or (when no charge is made) value of such repairs or alterations is correctly stated below; and that no substitution whatever has been made to replace any of the goods originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of goods and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see Subchapter II, Chapter 98, HTSUS)	Total value of goods after repairs or alterations

_____
Date
Signature
_____
Address
_____
_____
Capacity
_____

(ii) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the goods _____ were _____ were not (check one) subject to NAFTA drawback; that such goods were exported from the United States for repairs or alterations from _____ (port) on _____, 19____; and that the goods entered in their repaired or altered condition are the same goods that were exported on the above date and that are identified in the (above) (attached) declaration.

_____
Date
Signature _____
Address _____
_____
Capacity
_____

(2) *Additional documentation.* The port director may require such additional documentation as is deemed necessary to prove actual exportation of the goods from the United States for repairs or alterations, such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill.

(3) *Waiver of declarations.* If the port director concerned is satisfied, because of the nature of the goods or production of other evidence, that the goods are imported under circumstances meeting the requirements of this section, he may waive submission of the declarations provided for in paragraph (c)(1) of this section.

(4) *Deposit of estimated duties.* For goods returned after having been repaired or altered in Canada other than pursuant to a warranty, the port director shall require a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations performed in Canada other than pursuant to a warranty, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty for such goods, shall be limited to the cost or value of the repairs or alterations actually performed in Canada, which shall include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in the United States whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations in Canada, or otherwise.

Subpart G—Origin Verifications and Determinations

§ 181.71 Denial of preferential tariff treatment dependent on origin verification and determination.

Except where a Certificate of Origin either is not submitted when requested under § 181.22(b) of this part or is not acceptable and a corrected Certificate is not submitted or accepted as provided in § 181.22(c) of this part and except as otherwise provided in § 181.23 of this part and except in the case of a pattern of conduct provided for in § 181.76(c) of this part, Customs shall deny preferential tariff treatment on an imported good, or shall deny a post-importation claim for a refund filed under subpart D of this part, only after initiation of an origin verification under § 181.72(a) of this part which results in a determination that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part.

§ 181.72 Verification scope and method.

(a) *General.* Subject to paragraph (e) of this section, Customs may initiate a verification in order to determine whether a good imported into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA as stated on the Certificate of Origin pertaining to the good. Such a verification:

(1) May also involve a verification of the origin of a material that is used in the production of a good that is the subject of a verification under this section;

(2) May include verification of the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and may include a determination of whether a good is a qualifying good for purposes of Annex 703.2 of the NAFTA; and

(3) Shall be conducted only by means of one or more of the following:

(i) A verification letter which requests information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, and which identifies the good or material that is the subject of the verification. The verification letter may be on Customs Form 28 or other appropriate format and may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(ii) A written questionnaire sent to an exporter or a producer, including a producer of a material, in Canada or Mexico. The questionnaire:

(A) May be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) May be sent by any other method, regardless of whether it produces proof of receipt by the exporter or producer; and

(C) May be completed by the Canadian or Mexican exporter or producer either in the English language or in the language of the country in which that exporter or producer is located;

(iii) Visits to the premises of an exporter or a producer, including a producer of a material, in Canada or Mexico to review the types of records referred to in § 181.12 of this part and observe the facilities used in the production of the good or material; and

(iv) Any other method which results in information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, that is relevant to the origin determination. The information so obtained may form a basis for a negative determination regarding a good (see § 181.75(b) of this part) only if the information is in writing and is signed by the exporter or producer.

(b) *Applicable accounting principles.* Any verification of a regional value-content requirement undertaken pursuant to paragraph (a) of this section shall be conducted in accordance with the Generally Accepted Accounting Principles applied in the country from which the good was exported to the United States.

(c) *Inquiries to importer not precluded.* Nothing in paragraph (a) of this section shall preclude Customs from directing inquiries or requests to a U.S. importer for documents or other information regarding the imported good. If such an inquiry or request involves requesting the importer to obtain and provide written information from the exporter or producer of the good or from the producer of a material that is used in the production of the good, such information shall be requested by the importer and provided to the importer by the exporter or producer only on a voluntary basis, and a failure or refusal on the part of the importer to obtain and provide such information shall not be considered a failure of the exporter or producer to provide the information and shall not constitute a ground for denying preferential tariff treatment on the good.

(d) *Failure to respond to letter or questionnaire.*—(1) *Nonresponse to initial letter or questionnaire.* If the exporter or producer, including a producer of a material, fails to respond to a verification letter or questionnaire sent under paragraph (a)(2)(i) or (a)(2)(ii) of this section within 30 calendar days from the date on which the letter or questionnaire was sent, or such longer period as may be specified in the letter or questionnaire, Customs shall send a follow-up verification letter or questionnaire to that exporter or producer. The follow-up letter or questionnaire:

(i) Except where the verification letter or questionnaire only involved the origin of a material used in the production of a good and was sent to the producer of the material, may include the written determination referred to in § 181.75 of this part, provided that the information specified in paragraph (b) of that section is also included; and

(ii) Shall be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; or

(B) By any method, if no request under paragraph (d)(1)(ii)(A) of this section has been made by the Canadian or Mexican customs administration.

(2) *Nonresponse to follow-up letter or questionnaire*—(i) *Producer of a material.* If a producer of a material fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the material to be non-originating for purposes of determining whether the good to which that material relates is an originating good.

(ii) *Exporter or producer of a good.* If the exporter or producer of a good fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the good to be non-originating and consequently may deny preferential tariff treatment on the good as follows:

(A) If the follow-up letter or questionnaire included a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified therein:

(*1*) From the date on which the follow-up letter or questionnaire and

written determination were received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire and written determination were either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section; or

(B) Provided that the procedures set forth in §§ 181.75 and 181.76 of this part are followed, if the follow-up letter or questionnaire does not include a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified in the letter or questionnaire:

(*1*) From the date on which the follow-up letter or questionnaire was received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire was either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section.

(e) *Calculation of regional value content under net cost method*—(1) *General.* Where a Canadian or Mexican producer of a good elects to calculate the regional value content of a good under the net cost method as set forth in General Note 12, HTSUS, and in the appendix to this part, Customs may not, during the time period over which that net cost is calculated, conduct a verification under § 181.72(a) of this part with respect to the regional value content of that good.

(2) *Cost submission for motor vehicles.* Where, pursuant to General Note 12, HTSUS, and the appendix to this part, a Canadian or Mexican producer of a light duty vehicle or heavy duty vehicle, as defined in the appendix to this part, elects to average its regional value content calculation over its fiscal year, Customs may request, in writing, that the producer provide a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. Such a written request shall constitute a verification letter under paragraph (a)(2)(i) of this section, and the requested cost submission shall be submitted to Customs within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

§ 181.73 Notification of verification visit.

(a) *Written notification required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall give written notification of the intention to conduct the visit. Such notification shall be delivered:

(1) By certified or registered mail, or by any other method that produces a confirmation of receipt, to the address of the Canadian or Mexican exporter or producer whose premises are to be visited;

(2) To the customs administration of the country in which the visit is to occur; and

(3) If requested by the country in which the visit is to occur, to the embassy of that country located in the United States.

(b) *Contents of notification.* The notification referred to in paragraph (a) of this section shall include:

(1) The identity of the Customs office and officer issuing the notification;

(2) The name of the Canadian or Mexican exporter or producer of the good, or producer of the material, whose premises are to be visited;

(3) The date and place of the proposed verification visit;

(4) The object and scope of the proposed verification visit, including specific reference to the good or material that is the subject of the verification;

(5) The names and titles of the Customs officers performing the proposed verification visit;

(6) The legal authority for the proposed verification visit; and

(7) A request that the Canadian or Mexican exporter or producer of the good, or producer of the material, provide its written consent for the proposed verification visit.

§ 181.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall obtain the written consent of the Canadian or Mexican exporter or producer of the good or producer of the material whose premises are to be visited.

(b) *Written consent procedures.* The written consent provided for in paragraph (a) of this section shall be delivered by certified or registered mail, or by any other method that generates a reliable receipt, to the Customs officer who gave the notification provided for in § 181.73 of this part.

(c) *Failure to provide written consent or to cooperate or to maintain records.* Except as otherwise provided in paragraph (d) of this section, where a Canadian or Mexican exporter or producer of a good, or a Canadian or Mexican producer of a material, has not given its written consent to a proposed verification visit within 30 calendar days of receipt of notification pursuant to § 181.73 of this part, Customs may deny preferential tariff treatment to that good, or for purposes of determining whether a good is an originating good may consider as non-originating that material, that would have been the subject of the visit, provided that, as regards the good, notice of intent to deny such treatment is given to that exporter or producer of the good and to the U.S. importer thereof prior to taking such action. A failure on the part of the Canadian or Mexican exporter or producer of a good, or on the part of the Canadian or Mexican producer of a material, to maintain records or provide access to such records or otherwise cooperate during the verification visit shall mean that the verification visit never took place and may be treated by Customs in the same manner as a failure to give written consent to a verification visit. However, in the case of a Canadian or Mexican producer of a good who is found during a verification visit to have not maintained records in accordance with the Generally Accepted Accounting Principles applied in the producer's country, Customs may deny preferential tariff treatment on the good based solely on a failure to so maintain those records only if the producer does not conform the records to those Principles within 60 calendar days after Customs informs the producer in writing of that failure.

(d) *Postponement of visit in Canada or Mexico.* Following receipt of the notification provided for in § 181.73 of this part, the Canadian or Mexican customs administration may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Customs officer who issued the notification of the verification visit, unless a longer period is requested and agreed to by Customs. Such a postponement shall not constitute a failure to provide written consent within the meaning of paragraph (c) of this section and shall not otherwise by itself constitute a valid basis upon which Customs may:

(1) Consider a material that is used in the production of a good to be a non-originating material; or

(2) Deny preferential tariff treatment to a good.

(e) *Verification visits within the United States*—(1) *Notification and consent procedure.* When the Canadian or Mexican customs administration intends to conduct a verification visit in the United States, notification of such intent will be given, and consent will be required, as provided for under Article 506 of the NAFTA. For purposes of the required notification to Customs, such notification shall be sent to Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–0400.

(2) *Postponement of visit.* Following receipt of notification from the Canadian or Mexican customs administration of its intention to conduct a verification visit in the United States, Customs may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Canadian or Mexican customs administration.

(3) *Designation of observers.* A U.S. exporter or producer, including a producer of a material, whose good or material is the subject of a verification visit by the Canadian or Mexican customs administration shall be allowed to designate two observers to be present during the visit, subject to the following conditions:

(i) The U.S. exporter or producer shall not be required to designate observers;

(ii) There shall be no restriction on the class of persons that may be designated as observers by the U.S. exporter or producer;

(iii) The observers to be present are designated in the written consent to the proposed visit or subsequent thereto;

(iv) The observers do not participate in the verification visit in a manner other than as passive observers;

(v) The presence of observers shall in no way affect the right to have legal counsel or other advisors present during the visit;

(vi) There shall be no obligation on the part of the United States government or on the part of the Canadian or Mexican government to designate observers from its staff, even when the U.S. exporter or producer fails to, or specifically declines to, designate observers; and

(vii) The failure of the U.S. exporter or producer to designate observers shall not result in the postponement of the visit.

§ 181.75 Issuance of origin determination.

(a) *General.* Except in the case of a pattern of conduct within the meaning of § 181.76(c) of this part, following receipt and analysis of the results of an origin verification initiated under § 181.72(a) of this part in regard to a good imported into the United States and prior to denying preferential tariff treatment on the import transaction which gave rise to the origin verification, Customs shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good. Subject to paragraph (b) of this section, the written origin determination shall be sent within 60 calendar days after conclusion of the origin verification process, unless circumstances require additional time, and shall set forth:

(1) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(2) Subject to the provisions of § 181.131 of this part and except in the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire sent under § 181.72 of this part, a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(3) With specific reference to the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in the appendix to this part, the legal basis for the determination.

(b) *Negative origin determinations.* If Customs determines, as a result of an origin verification initiated under § 181.72(a) of this part, that the good which is the subject of the verification does not qualify as an originating good, the written determination required under paragraph (a) of this section:

(1) Shall be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; and

(2) Shall, in addition to the information specified in paragraph (a) of this section, set forth the following:

(i) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination;

(ii) The specific date after which preferential tariff treatment will be denied, as established in accordance with § 181.76(a)(1) of this part;

(iii) The period, established in accordance with § 181.76(a)(1) of this part, during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(iv) A statement advising the exporter or producer of the right to file a protest under 19 U.S.C. 1514 and part 174 of this chapter:

(A) Within 90 days after notice of liquidation is provided pursuant to part 159 of this chapter; or

(B) In cases where the negative origin determination does not result in a liquidation, within 90 days after the date of issuance of the written determination.

§ 181.76 Application of origin determinations.

(a) *General.* Except as otherwise provided in this section, an origin determination may be applied upon issuance of the determination under § 181.75 of this part.

(b) *Negative origin determinations.* In the case of a negative origin determination issued under § 181.75(b) of this part:

(1) The date on which preferential tariff treatment may be denied shall be no earlier than 30 calendar days from the date on which:

(i) Receipt of the written determination by the exporter or producer is confirmed, if a request under § 181.75(b)(1) of this part has been made; or

(ii) The written determination is sent by Customs, if no request under § 181.75(b)(1) of this part has been made; and

(2) Before denying preferential tariff treatment, Customs shall take into account any comments or additional information provided by the exporter or producer during the period established in accordance with paragraph (b)(1) of this section.

(c) *Cases involving a pattern of conduct.* Where multiple origin verifications initiated under § 181.72(a) of this part indicate a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good imported into the United States qualifies as an originating good, Customs may deny subsequent claims for preferential tariff treatment on identical goods exported or produced by such person until that person establishes compliance with the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in this part, provided that advance written notice of the intent to deny such claims is given to the importer. For purposes of this paragraph, a ''pattern of conduct'' means repeated instances of

false or unsupported representations by an exporter or producer as established by Customs on the basis of not fewer than two origin verifications of two or more importations of the good that result in the issuance of not fewer than two written determinations issued to that exporter or producer pursuant to § 181.75 of this part which conclude, as a finding of fact, that Certificates of Origin completed and signed by that exporter or producer with respect to identical goods contain false or unsupported representations.

(d) *Differing determinations.* Where Customs determines, either as a result of an origin verification initiated under § 181.72(a) of this part or under any other circumstance, that a certain good imported into the United States does not qualify as an originating good based on a tariff classification or a value applied in the United States to one or more materials used in the production of the good, including a material used in the production of another material that is used in the production of the good, which differs from the tariff classification or value applied to the materials by the country from which the good was exported, the Customs determination shall not become effective until Customs provides written notification thereof both to the U.S. importer of the good and to the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based.

(e) *Applicability of a determination to prior importations.* Customs shall not apply a determination made under paragraph (c) of this section to an importation made before the effective date of the determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the NAFTA or any other ruling on the tariff classification or on the value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely and on which that person did in fact rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A ''ruling'' on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Codigo Fiscal de la Federacion and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) ''Consistent treatment'' means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (d) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (d) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (d) of this section.

(f) *Detrimental reliance.* If Customs proposes to deny preferential tariff treatment to a good pursuant to a determination made under paragraph (d) of this section, Customs shall postpone the application of the determination for a period not exceeding 90 calendar days from the date of issuance of the determination where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

Subpart H—Penalties

§ 181.81 Applicability to NAFTA transactions.

Except as otherwise provided in § 181.82 of this part, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the Customs and related laws and regulations shall also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the NAFTA.

§ 181.82 Exceptions to application of penalties.

(a) *General.* A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) *''Voluntarily'' defined*—(1) *General.* For purposes of paragraph (a) of this section, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in § 162.74(g) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud.* Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph (b)(2), the term ''fraud'' shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement.* For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be

accompanied by a written statement which:

(i) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(iii) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(iv) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (b)(3) of this section, provided that:

(i) Customs is satisfied that the information was provided before the commencement of a formal investigation; and

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and the regulations issued thereunder.

Subpart I—Advance Ruling Procedures

§ 181.91 Applicability.

This subpart sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico may request and obtain an advance ruling on a NAFTA transaction only in accordance with the provisions of this subpart whenever the requested ruling involves a subject matter specified in § 181.92(b)(6) of this part. Accordingly, the provisions of this subpart shall apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in § 181.92(b)(6).

§ 181.92 Definitions and general NAFTA advance ruling practice.

(a) *Definitions.* For purposes of this subpart:

(1) An *advance ruling* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that interprets and applies the provisions of NAFTA to a specific set of facts involving any subject matter specified in § 181.92(b)(6) of this part. An ''advance ruling letter'' is an advance ruling issued in response to a written request and set forth in a letter addressed to the person making the request or his designee. A ''published advance ruling'' is an advance ruling which has been published in full text in the Customs Bulletin.

(2) An *authorized agent* is a person expressly authorized by a principal to act on his or her behalf. An advance ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before Customs as an agent in connection with an advance ruling request may be required to present evidence of his or her authority to represent the principal. The foregoing requirements will not apply to an individual representing his or her full-time employer or to a bona-fide officer, director or other qualified representative of a corporation, association, or organized group.

(3) The term *Headquarters Office,* means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, DC.

(4) An *information letter* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that does no more than call attention to a well-established interpretation of principles under the NAFTA, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for an advance ruling when:

(i) The request suggests that general information, rather than an advance ruling, is actually being sought;

(ii) The request is incomplete or otherwise fails to meet the requirements set forth in this subpart; or

(iii) The requested advance ruling cannot be issued for any other reason.

(5) A *NAFTA transaction* is an act or activity to which the NAFTA provisions apply. A ''prospective'' NAFTA transaction is one that is merely contemplated or is currently being undertaken but has not resulted in any arrival or in the filing of any entry or entry summary or other document or in any other act so as to bring the transaction, or any part of it, under the jurisdiction of any Customs office. A ''current'' NAFTA transaction is one which is presently under consideration by a field office of Customs. A ''completed'' NAFTA transaction is one which has been acted upon by a Customs field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest or other review as provided in the applicable Customs laws and regulations. An ''ongoing'' NAFTA transaction is a series of identical, recurring transactions, consisting of current and completed transactions where future transactions are contemplated.

(6) The term *National Commodity Specialist Division* means the National Commodity Specialist Division, United States Customs Service, New York, New York.

(b) *General advance ruling practice.* An advance ruling may be requested under the provisions of this subpart with respect to prospective NAFTA transactions. An advance ruling will be based on the facts and circumstances presented by the requester.

(1) *Prospective NAFTA transactions.* It is in the interest of the sound administration of the NAFTA that persons engaging in any transaction affected by NAFTA fully understand the consequences of that transaction prior to its consummation. For this reason, Customs will give full and careful consideration to written requests from importers in the United States and exporters or producers in Canada or Mexico for advance rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law or other appropriate information.

(2) *Current or ongoing NAFTA transactions.* A question arising in connection with a NAFTA transaction already before a Customs field office by reason of arrival, entry or otherwise will be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the NAFTA or the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that field office may, if it believes it appropriate, forward the question to the Headquarters Office for consideration.

(3) *Completed NAFTA transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed NAFTA transaction, may not be the subject of an advance ruling request under this subpart.

(4) *Oral advice.* Customs will not issue an advance ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing advance rulings, the scope of such advance rulings, the types of transactions with respect to which Customs will issue advance rulings, the scope of the advance rulings which may be issued, or the procedures to be followed in submitting advance ruling requests, as prescribed in this subpart.

(5) *Who may request an advance ruling.* An advance ruling may be requested by any of the following persons (individuals, corporations, partnerships, associations, or other entities or groups) having a direct and demonstrable interest in the question or questions presented in the advance ruling request, or by the authorized agent of any such person:

(i) An importer in the United States;

(ii) An exporter or a producer of a good in Canada or Mexico; or

(iii) A Canadian or Mexican producer of a material that is used in the production of a good imported into the United States, but only with regard to that material and only in regard to a matter described in paragraphs (b)(6)(i) through (v) and (vii) of this section.

(6) *Subject matter of advance rulings.* Customs shall issue advance rulings under this subpart concerning the following:

(i) Whether materials imported from a country other than the United States, Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification set forth in General Note 12, HTSUS, as a result of production occurring entirely in the United States, Canada and/or Mexico;

(ii) Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part;

(iii) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico, in accordance with the principles set forth in the appendix to this part, for calculating the transaction value of the good or of the materials used in the production of the good;

(iv) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set forth in the appendix to this part, for calculating the net cost of the good or the value of an intermediate material;

(v) Whether a good qualifies as an originating good under General Note 12, HTSUS, and under the appendix to this part;

(vi) Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment in accordance with § 181.64 of this part;

(vii) Whether the proposed or actual marking of a good satisfies country of origin marking requirements under part 134 of this chapter and under the Marking Rules set forth in part 102 of this chapter;

(viii) Whether an originating good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 and Chapter Seven of the NAFTA; and

(ix) Whether a good is a qualifying good under Chapter Seven of the NAFTA.

§ 181.93 Submission of advance ruling requests.

(a) *Form.* A request for an advance ruling should be written in the English language and in the form of a letter. For any subject matter specified in § 181.92(b)(6) (i), (v), (vi), (vii), (viii) or (ix) of this part, the request may be directed either to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, or to the National Commodity Specialist Division, United States Customs Service, 6 World Trade Center, New York, NY 10048. For any subject matter specified in § 181.92(b)(6)(ii), (iii) or (iv) of this part, the request must be directed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229.

(b) *Content*—(1) *General.* Each request for an advance ruling must identify the specific subject matter under § 181.92(b)(6) of this part to which the request relates, must contain a complete statement of all relevant facts relating to the NAFTA transaction and must state that the information presented is accurate and complete. The following facts must be included: the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling. Where the request for an advance ruling is submitted by or on behalf of the importer of the good involved in the transaction, the request must include the name and address of the exporter and, if known, producer of the good. Where the request for an advance ruling is submitted by or on behalf of the exporter of the good involved in the transaction, the request must include the name and address of the producer and importer of the good, if known. Where the request for an advance ruling is submitted by or on behalf of the producer of the good involved in the transaction, the request must include the name and address of the exporter

and importer of the good, if known. In addition, where relevant to the issue that is the subject of the request for an advance ruling, and regardless of the specific nature of the advance ruling requested, the request must include:

(i) A copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued by Customs to the person submitting the request; or

(ii) Sufficient information to enable Customs to classify the good where no advance ruling or other ruling with respect to the tariff classification of the good has been issued by Customs to the person submitting the request. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, and product literature, drawings, photographs or schematics.

(2) *Description of transaction*—(i) *General.* The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

(ii) *Tariff change rulings*—(A) *General.* If the transaction involves the importation of a good or material for which a ruling is requested as to whether a change in tariff classification has occurred, the request should set forth: The principal or chief use of the good or material in the United States and the commercial, common, or technical designation of the good or material; if the good or material is composed of two or more substances, the relative quantity (by both weight and by volume) and value of each substance; any applicable special invoicing requirements set forth in part 141 of this chapter (if known); and any other information which may assist in determining the appropriate tariff classification of the good or material. The advance ruling request should also note, whenever germane, the purchase price of the good or material, and its approximate selling price in the United States. Each individual request for an advance ruling must be limited to five merchandise items, all of which must be of the same class or kind. Only NAFTA tariff change rulings will be issued under this subpart. Tariff classification rulings which do not involve the application of the NAFTA shall be issued under part 177 of this chapter.

(B) *Issues involving a change in tariff classification of a material.* Where the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of an imported good undergo an applicable change in tariff classification, the request must list each material used in the production of the good and must:

(*1*) Identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;

(*2*) Identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification if known; and

(*3*) Describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

(iii) *NAFTA rulings on regional value content.* NAFTA advance ruling requests, if involving the issue of whether a good satisfies a regional value content requirement under the transaction value method or under the net cost method, or under both methods, as provided for in General Note 12, HTSUS, and in the appendix to this part, must specify each method under which eligibility is sought. Where the transaction value method is specified, the advance ruling request must include: information sufficient to calculate the transaction value of the good in accordance with schedule II of the appendix to this part with respect to the transaction of the producer of the good, adjusted to an F.O.B. basis; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used by the producer in the production of the good in accordance with the provisions of section 7 and, where applicable, section 6(10) of the appendix to this part; a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status; information sufficient to permit an examination of the factors enumerated in schedule III or VIII of the appendix to this part where the advance ruling request involves an issue of whether, with respect to the good or material under the applicable schedule, the transaction value is acceptable; and information sufficient for any other circumstance to make any determination relevant to the application of the regional value content requirement to the good. Where the net cost method is specified, the advance ruling request must include: a list of all product, period and other costs relevant to determining the total cost of the good as defined in the appendix to this part; a list of all excluded costs to be subtracted from the total cost of the good as provided in the appendix to this part; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used in the production of the good, in accordance with section 7 of the appendix to this part; the basis for any allocation of costs in accordance with schedule VII of the appendix to this part; the period over which the net cost calculation is to be made; and any other information relevant to determining the appropriate value of any cost under this part. Where the advance ruling request concerns only the calculation of an element of a regional value content formula, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only contain the following: the information in paragraph (b)(1), other than the information specified in paragraph (b)(1)(i) or (b)(1)(ii); the information in paragraph (b)(5); and any information in this paragraph (b)(2)(iii) which is relevant to the issue that is the subject of the request.

(iv) *NAFTA rulings on producer materials. W*here the advance ruling request involves an issue with respect to an intermediate material under Article 402(10) of the NAFTA (see section 7(4) of the appendix to this part), the request must contain sufficient information to determine the origin and value of the material in accordance with Article 402(11) of the NAFTA (see section 7(6) of the appendix to this part). Where the advance ruling request is submitted by a Canadian or Mexican producer of a material under § 181.92(b)(5)(iii) of this part and concerns only the origin of such material, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only include the following: the information in paragraph (b)(1), including any information specified in paragraph (b)(1)(i) or (b)(1)(ii) which is relevant to the issue that is the subject of the request; any information in paragraph (b)(2)(ii)(B) which is relevant to the issue that is the subject of the request; a sample as provided for in paragraph (b)(3) if relevant to the issue that is the subject of the request; and the information in paragraph (b)(5).

(3) *Samples.* Each request for an advance ruling should be accompanied by photographs, drawings, or other

pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CAS number, and related information. A sample submitted in connection with a request for an advance ruling becomes a part of the Customs file in the matter and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request.

(4) *Related documents.* If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the advance ruling request become a part of the Customs file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

(5) *Prior or current transactions.—(i) General.* Each request for an advance ruling must state:

(A) Whether, to the knowledge of the person submitting the request, the same transaction or issue, or one identical to it, has ever been considered, or is currently being considered by any Customs office;

(B) Whether, to the knowledge of the person submitting the request, the issue involved has ever been, or is currently, the subject of:

(*1*) Review by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom, or review by a judicial or quasi-judicial body in Canada or Mexico;

(*2*) A verification of origin performed in the United States, Canada or Mexico;

(*3*) An administrative appeal in the United States, Canada or Mexico; or

(*4*) A request for an advance ruling under this subpart, or a request for an advance ruling in Canada or Mexico under an appropriate authority referred to in § 181.76(d)(1) of this part;

(C) The status or disposition of any matter on which an affirmative statement is made under paragraph (b)(5)(i)(B) of this section; and

(D) Whether the transaction described in the advance ruling request is but one of a series of similar and related transactions.

(ii) *Change in status of transaction.* If a prospective transaction which is the subject of an advance ruling request becomes a current transaction, the person who submitted the request shall so notify the office processing the request.

(6) *Statement of position.* If the request for an advance ruling asks that a particular determination or conclusion be reached in the advance ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be issued until all trade secret, privilege or confidentiality issues are resolved (see § 181.99(a)(3) of this part).

(c) *Signing; instruction as to reply.* The request for an advance ruling must be signed by a person authorized to make the request, as described in § 181.92(b)(5) of this part. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* Customs will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in § 181.99 of this part. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

§ 181.94 Nonconforming requests for advance rulings.

A person submitting a request for an advance ruling that does not comply with all of the provisions of this subpart will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the advance ruling request to the requirements referred to in the notice. The Customs file with respect to advance ruling requests which are not brought into compliance with the provisions of this subpart within the period of time allowed will be administratively closed and the request removed from active consideration. A request for an advance ruling that is removed from active consideration by reason of failure to comply with the provisions of this subpart may be treated as withdrawn. A failure to comply with the provisions of this subpart will result in the rejection of the advance ruling request with the notice specifying the deficiencies.

§ 181.95 Oral discussion of issues.

(a) *General.* A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any

argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

(b) *Time, place and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his or her place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for an advance ruling to provide for inclusion in the Customs file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

§ 181.96 Change in status of transaction.

Each person submitting a request for an advance ruling in connection with a NAFTA transaction must immediately advise Customs in writing of any change in the status of that transaction upon becoming aware of the change. In particular, Customs must be advised when any transaction described in the advance ruling request as prospective becomes current and under the jurisdiction of a Customs field office. In addition, any person engaged in a NAFTA transaction coming under the jurisdiction of a Customs field office who has previously requested a NAFTA advance ruling with respect to that transaction must advise the field office of that fact.

§ 181.97 Withdrawal of NAFTA advance ruling requests.

Any request for an advance ruling may be withdrawn by the person submitting it at any time before the issuance of an advance ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs file and will not be returned. In addition, the Headquarters Office may forward, to Customs field offices which have or may have jurisdiction over the transaction to which the advance ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs file.

§ 181.98 Situations in which no NAFTA advance ruling may be issued.

(a) *General.* No advance ruling letter will be issued in response to a request therefor which fails to comply with the provisions of this subpart. No advance ruling letter will be issued in regard to a completed transaction.

(b) *Pending matters.* Where a request for an advance ruling involves an issue that is under review in connection with an origin verification under subpart G of this part or that is the subject of an administrative review procedure provided for in subpart J of this part or in part 174 of this chapter, Customs may decline to issue the requested advance ruling. In addition, no NAFTA advance ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of an advance ruling letter, provided neither Customs nor any of its officers or agents is named as a party to the action.

§ 181.99 Issuance of NAFTA advance rulings or other advice.

(a) *NAFTA advance ruling letters*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, Customs will, within 120 calendar days of receipt of a request, including any required information supplemental thereto, issue an advance ruling letter in the English language setting forth the position of Customs and the reasons therefor with respect to a specifically described Customs transaction whenever a request for such an advance ruling is submitted in accordance with the provisions of this subpart and it is in the sound administration of the NAFTA provisions to do so. Otherwise, a request for an advance ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or in the form of a laboratory analysis.

(2) *Submission of NAFTA advance ruling letters to field offices.* Any importer engaging in a NAFTA transaction with respect to which an advance ruling letter has been issued under this subpart either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate with the information filed for that transaction that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

(3) *Disclosure of NAFTA advance ruling letters.* No part of the advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103 of this chapter, or shall be deemed to be subject to the confidentiality principle set forth in § 181.121 of this part, unless, as provided in § 181.93(b)(7) of this part, the information claimed to be exempt from disclosure is clearly identified and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to his request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs

will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(4) *Penalties for misrepresented or omitted material facts or for noncompliance.* If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

(b) *Other NAFTA advice and guidance.* The Headquarters Office may on its own initiative from time to time issue other external advice and guidance with respect to issues or transactions arising under the NAFTA which come to its attention. Such NAFTA advice and guidance, which represent the official position of Customs and which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 181.101 of this part. Nothing in this subpart shall preclude Customs from issuing advice and guidance to its field offices concerning the application of the NAFTA.

§ 181.100 Effect of NAFTA advance ruling letters; modification and revocation.

(a) *Effect of NAFTA advance ruling letters*—(1) *General.* An advance ruling letter issued by Customs under the provisions of this subpart represents the official position of Customs with respect to the particular transaction or issue described therein and is binding on all Customs personnel in accordance with the provisions of this subpart until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the advance ruling set forth in the advance ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. An advance ruling letter is generally effective on the date it is issued or such later date as may be specified in the advance ruling and, commencing on its effective date, may be applied to entries for consumption and warehouse withdrawals for consumption which are unliquidated, or to other transactions with respect to which Customs has not taken final action on that date. See, however, paragraph (b) of this section (ruling letters which modify previous advance ruling letters) and § 181.101 of this part (advance ruling letters published in the Customs Bulletin).

(2) *Application of NAFTA rulings to transactions*—(i) *General.* Each NAFTA ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of an advance ruling letter by a Customs field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the advance ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the advance ruling was based, and if the facts are materially different or a condition has not been satisfied, the treatment specified in the advance ruling will not be applied to the actual transaction. If, in the opinion of any Customs field office by whom the transaction is under consideration or review, the advance ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, prior to any final disposition with respect to the transaction by that office. If the transaction described in the NAFTA advance ruling letter and the actual transaction are the same, and any and all conditions set forth in the advance ruling letter have been satisfied, the advance ruling will be applied to the transaction.

(ii) *Tariff change rulings.* Each advance ruling letter concerning whether a change in tariff classification has occurred will be applied only with respect to transactions involving either articles which are identical to the sample submitted with the advance ruling request and reflect the same processing or articles which conform to the description set forth in the advance ruling letter.

(iii) *Regional value content rulings.* Each advance ruling letter concerning the application of a regional value content requirement will be applied only with respect to transactions involving the same merchandise and identical facts.

(3) *Reliance on NAFTA advance rulings by others.* An advance ruling letter is subject to modification or revocation without notice to any person other than the person to whom the letter was addressed. Accordingly, no other person may rely on the advance ruling letter or assume that the principles of that advance ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request an advance ruling under § 181.92(b)(5) of this part may request information as to whether a previously-issued advance ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the advance ruling letter or furnishing other information sufficient to permit the advance ruling letter in question to be identified.

(b) *Modification or revocation of NAFTA advance ruling letters*—(1) *General.* Any NAFTA advance ruling letter may be modified or revoked by Customs Headquarters in any of the following circumstances or for any of the following purposes, provided that written notice of the modification or revocation is given to the person to whom the advance ruling letter was addressed:

(i) If the ruling letter reflects or is based on an error:

(A) Of fact;

(B) In the tariff classification of a good or material that is the subject of the ruling;

(C) In the application of a regional value-content requirement under General Note 12, HTSUS, and under this part;

(D) In the application of the rules for determining whether a good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 or Chapter Seven of the NAFTA;

(E) In the application of the rules for determining whether a good is a qualifying good under Chapter Seven of the NAFTA; or

(F) In the application of the rules for determining whether a good qualifies for duty-free treatment under § 181.64 of this part when the good re-enters the United States after having been exported to Canada or Mexico for repair or alteration;

(ii) If the ruling letter is not in accordance with an interpretation agreed on by the United States, Canada and Mexico regarding Chapter Three or Chapter Four of the NAFTA;

(iii) If there is a change in the material facts or circumstances on which the ruling is based;

(iv) To conform to a modification of Chapter Three, Four, Five or Seven of the NAFTA, or of the Marking Rules, or

of the regulations set forth in this part; or

(v) To conform to a judicial decision or change in domestic law.

(2) *Application of modification or revocation of NAFTA advance ruling letters.* The modification or revocation of a NAFTA advance ruling letter will not be applied to entries or warehouse withdrawals for consumption which were made prior to the effective date of such modification or revocation, except where the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

(3) *Effective dates.* Generally, a NAFTA letter modifying or revoking an earlier advance ruling will be effective on the date it is issued. However, Customs may, upon request or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issuance. Such a delay may be granted at the request of the party to whom the ruling letter was issued, provided such party can demonstrate to the satisfaction of Customs that it relied on the earlier advance ruling in good faith and to its detriment. The evidence of such reliance must cover the period from the date of the letter modifying or revoking the advance ruling back to the date of that advance ruling and must list all transactions claimed to be covered by the modified or revoked advance ruling by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by Customs. Such evidence must also include contracts, purchase orders, or other materials tending to establish that future transactions were arranged based on the earlier advance ruling. The request for delay must specifically identify the prior ruling on which reliance is claimed. All persons requesting a delay will be issued a separate letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, Customs may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the **Customs Bulletin** and individual ruling letters will not be issued.

§ 181.101 Publication of decisions.

Within 90 days after issuing any precedential decision relating to any NAFTA transaction, Customs shall publish the decision in the **Customs Bulletin** or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1, part 103 of this chapter, and § 181.99(a)(3) of this part.

§ 181.102 Administrative and judicial review of advance rulings.

(a) *Administrative review*—(1) *Submission of request for review.* Any person who received an advance ruling issued under this subpart, or an authorized agent of such person, may request administrative review, at Customs Headquarters, of that advance ruling, including any modification or revocation thereof, by letter addressed to the Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229. Such request shall be filed within 30 calendar days after issuance of the advance ruling and shall set forth the following information:

(i) The name and address of the person seeking review and the name and address of his authorized agent if the request is signed by such an agent;

(ii) The Customs identification number or employer identification number in the case of a U.S. importer and authorized agent thereof, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer and authorized agent thereof, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer and authorized agent thereof;

(iii) The number and date of the advance ruling at issue;

(iv) The numbers and dates of any involved entries for consumption or warehouse withdrawals for consumption;

(v) The nature of, and justification for, the objection to the advance ruling set forth distinctly and specifically with respect to each aspect of the advance ruling for which administrative review is sought; and

(vi) Whether an oral discussion of the issues, as provided in § 181.95 of this part, is desired.

(2) *Issuance of review decision.* Customs will normally issue a written decision within 120 days of receipt of the request for administrative review submitted under this section. However, Customs will, upon a reasonable showing of business necessity, issue a written decision within 60 days of receipt of the request for administrative review. For purposes of this paragraph, the date of receipt of the request for administrative review shall be the date on which all information necessary to process the request, including any information provided after submission of the request in connection with a conference, is filed with Customs.

(b) *Judicial review.* Any person whose claims with regard to a request for administrative review of an advance ruling have been denied in whole or in part under this section may seek judicial review by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after the date of mailing of notice of the denial.

Subpart J—Review and Appeal of Adverse Marking Decisions

§ 181.111 Applicability.

This subpart sets forth the circumstances and procedures under which exporters and producers of merchandise imported into the United States may obtain information about, and administrative and judicial review of, an adverse marking decision, as provided for in Article 510 of the NAFTA. This subpart does not apply to the review of advance rulings issued under Article 509 of the NAFTA (see subpart I of this part) or to the review of determinations that a good is not an originating good under General Note 12, HTSUS, and the appendix to this part (see part 174 of this chapter).

§ 181.112 Definitions.

For purposes of this subpart, the following words and phrases have the meanings indicated:

(a) *Adverse marking decision* means a decision made by the port director which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of the NAFTA and which may be protested by the importer pursuant to § 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter. Notification of an adverse marking decision is given to an importer in the form of a Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. Examples of adverse marking decisions include determinations by the port director: that an imported article is not a good of a NAFTA country, as determined under the Marking Rules, and that it therefore cannot be marked ''Canada'' or ''Mexico''; that a good of a NAFTA country is not marked in a manner which is sufficiently permanent; and that a good of a NAFTA country does not qualify for an exception from marking specified in Annex 311 of the NAFTA. Adverse marking decisions do not include: decisions issued in response to requests for advance rulings under subpart I of

this part or for internal advice under part 177 of this chapter; decisions on protests under part 174 of this chapter; and determinations that an article does not qualify as an originating good under General Note 12, HTSUS, and the appendix to this part.

(b) An *exporter* of merchandise is an exporter located in Canada or Mexico who must maintain records in that country relating to the transaction to which the adverse marking decision relates. The records must be sufficient to enable Customs to evaluate the merits of the exporter's claim(s) regarding the adverse marking decision.

(c) A *producer* of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

§ 181.113 Request for basis of adverse marking decision.

(a) *Request; form and filing.* The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with the port director who issued the decision. The request should be on letterhead paper in the form of a letter and clearly designated as a ''Request for Basis of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(b) *Content.* The Request for Basis of Adverse Marking Decision letter shall set forth the following information:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;

(3) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(4) The number and date of each entry involved in the request;

(5) A specific description of the merchandise which is the subject of the adverse marking decision; and

(6) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

§ 181.114 Customs response to request.

(a) *Time for response.* The port director will issue a written response to the requestor within 30 days of receipt of a request containing the information specified in § 181.113 of this part. If the request is incomplete, such that the transaction in question cannot be identified, the port director will notify the requestor in writing within 30 days of receipt of the request regarding what information is needed.

(b) *Content.* The response by the port director shall include the following:

(1) A statement concerning the basis for the adverse marking decision;

(2) A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, no statement under paragraph (b)(1) of this section is required;

(3) A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and

(4) A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in § 181.115 of this part or file a petition as provided in § 181.116 of this part.

§ 181.115 Intervention in importer's protest.

(a) *Conditional right to intervene.* An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, if an importer protests the adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which is the subject of the adverse marking decision may intervene in the importer's protest. Such intervention shall not affect any time limits applicable to the protest or delay action on the protest.

(b) *Form and filing of intervention.* In order to intervene in an importer's protest, as provided for in paragraph (a) of this section, the exporter or producer of the merchandise shall file, in triplicate, a typewritten statement of intervention, in English, with the port director with whom the protest was filed. The statement should be on letterhead paper in the form of a letter and should be clearly designated ''NAFTA Exporter or Producer Intervention in Protest''. The statement shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The NAFTA Exporter or Producer Intervention in Protest letter shall include the following:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(3) The number and date of each entry involved in the adverse marking decision;

(4) A specific description of the merchandise which is the subject of the adverse marking decision;

(5) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

(6) A detailed statement of position regarding why the exporter or producer believes the adverse marking decision is contrary to the provision of Annex 311 of the NAFTA;

(7) A statement as to whether a Request for Basis of Adverse Marking Decision was filed under § 181.113 of this part, and if so, the date of such Request and of any Customs response thereto issued under § 181.114 of this part. Copies of the Request and the Customs response shall be submitted, if available;

(8) The number assigned to the importer's protest;

(9) A statement that the intervenor is the exporter or producer of the merchandise that was the subject of the adverse marking decision being protested by the importer and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim(s) regarding the adverse marking decision; and

(10) If the intervenor prefers that the principle of confidentiality set forth in § 181.121 of this part be applied to the information submitted under this section, a statement to that effect. If no such statement is included in the letter, the intervention and information submitted in connection therewith shall be subject to the same treatment as that

provided in the case of requests by all interested parties for consolidation of protests as set forth in § 174.15(b)(1) of this chapter.

(d) *Effect of Intervention.* The rights of the intervenor under this section are subordinate to the importer's protest rights. Accordingly, intervention by an exporter or producer of merchandise will not affect the procedures under part 174 of this chapter, and the importer's elections concerning accelerated disposition and application for further review of the protest will govern how the protest is handled and how the intervention is considered. If the importer withdraws or settles the protest, the exporter or producer has no right to continue the intervention action.

(e) *Action by port director.* If final administrative action has already been taken with respect to the importer's protest at the time the intervention is filed, the port director shall so advise the exporter or producer and, if the importer has filed a civil action in the Court of International Trade as a result of a denial of the protest, the port director shall advise the exporter or producer of that filing and of the exporter's or producer's right to seek to intervene in such judicial proceeding. If final administrative action has not been taken on the protest, the port director shall forward the intervention letter to the Customs office which has the importer's protest under review for consideration in connection with the protest.

(f) *Final disposition.* The intervenor shall be notified in writing of the final disposition of the protest. If the protest is denied in whole or in part, the intervenor shall be furnished a copy of the notice given to the importer under § 174.29.

§ 181.116 Petition regarding adverse marking decision.

(a) *Right to petition.* If the importer does not protest an adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which was the subject of the adverse marking decision may file a petition with Customs requesting reconsideration of the decision. The petition may not be filed until after the importer's time to protest the adverse marking decision has expired (see § 174.12(e) of this chapter for the time limits for filing protests). If the importer filed a protest upon which final administrative action has been taken, the exporter or producer may file a petition under this section, provided that the exporter or producer was not given notice of the pending protest pursuant to § 181.114 of this part. If the importer filed a protest on which final administrative action has not been taken and notice of the pending protest was not provided to the exporter or producer under § 181.114 of this part, a petition filed under this section shall be treated by the port director as an intervention under § 181.115 of this part.

(b) *Form and filing of petition.* A petition under this section shall be typewritten, in English, and shall be filed, in triplicate, with the port director who issued the adverse marking decision. The petition under this subpart should be on letterhead paper in the form of a letter, clearly designated as a ''Petition for NAFTA Review of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The Petition for NAFTA Review of Adverse Marking Decision letter shall contain all the information specified § 181.115 of this part, except for the protest number. It shall also include a statement that petitioner was not notified by Customs in writing of a pending protest.

(d) *Review of petition*—(1) *Review by port director.* Within 60 days of the date of receipt of the petition, the port director shall determine if the petition is to be granted or denied, in whole or in part. If, after reviewing the petition, the port director agrees with all of the petitioner's claims and determines that the initial adverse marking decision was not correct, a written notice granting the petition shall be issued to the petitioner. A description of the merchandise, a brief summary of the issue(s) and the port director's findings shall be forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for publication in the Customs Bulletin. If, after reviewing the petition, the port director determines that the initial adverse marking decision was correct in its entirety, a written notice shall be issued to the petitioner advising that the matter has been forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for further review and decision. All relevant background information, including available samples, a description of the adverse marking decision and the reasons for the decision, and the port director's recommendation shall be furnished to Headquarters.

(2) *Review by Headquarters.* Within 120 days of the date the petition and background information are received at Customs Headquarters, the Director, Tariff Classification Appeals Division, shall determine if the petition is to be granted or denied, in whole or in part, and the petitioner shall be notified in writing of the determination. If the petition is granted in whole or in part, a description of the merchandise, a brief summary of the issue(s) and the director's findings will be published in the Customs Bulletin.

(3) *Effect of granting the petition.* The decision on the petition, if contrary to the initial adverse marking decision, will be implemented with respect to merchandise entered or withdrawn from warehouse for consumption after 30 days from the date on which the notice of determination is published in the Customs Bulletin.

(e) *Pending litigation.* No decision on a petition will be issued under this section with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a decision on a petition under this section, provided neither Customs nor any of its officers or agents is named as a party to the action.

(f) *Judicial review of denial of petition.*

Any person whose petition under this section has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

Subpart K—Confidentiality of Business Information

§ 181.121 Maintenance of confidentiality.

The port director or other Customs officer who has possession of confidential business information collected pursuant to this part shall, in accordance with part 103 of this chapter, maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information.

§ 181.122 Disclosure to government authorities.

Nothing in § 181.121 of this part shall preclude the disclosure of confidential business information to governmental authorities in the United States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

Subpart L—Rules of Origin

§ 181.131 Rules of origin.

(a) The regulations effective October 1, 1995, implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA are contained in the appendix to this part.

(b) If the fiscal year of a producer of goods begins before October 1, 1995, the producer may choose to have the regulations implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA that were in effect prior to October 1, 1995 (see 19 CFR chapter I, 1994 edition, appendix to part 181) continue to apply in regard to all goods produced by that producer for the remainder of that fiscal year.

(c) If a motor vehicle producer's fiscal year that has been chosen by a producer of goods pursuant to section 12(5) of the regulations referred to in paragraph (b) of this section begins before October 1, 1995, the producer of the goods may choose to have those regulations continue to apply in regard to the goods produced by that producer for the remainder of that fiscal year, provided that:

(1) The producer of the goods has made an election under section 12(1) of those regulations or has provided a statement referred to in section 9(6) or 10(8) of those regulations that states the value of non-originating materials determined in accordance with section 12(3) of those regulations; and

(2) The period chosen under section 12(5) of those regulations is the fiscal year of the motor vehicle producer to whom those goods are sold.

Appendix to Part 181—Rules of Origin Regulations

SECTION 1. CITATION

This Appendix may be cited as the *NAFTA Rules of Origin Regulations.*

PART I
SECTION 2. DEFINITIONS AND INTERPRETATION
Definitions

(1) For purposes of this Appendix,

''accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools'' means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

''adjusted to an F.O.B. basis'' means, with respect to a good, adjusted by

(a) deducting

(i) the costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers,

where those costs are included in the transaction value of the good, and

(b) adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment,

where those costs are not included in the transaction value of the good;

''Agreement'' means the *North American Free Trade Agreement;*

''applicable change in tariff classification'' means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule set out in Schedule I for the tariff provision under which the good is classified;

''automotive component'' means a good that is referred to in column I of an item of Schedule V;

''automotive component assembly'' means a good, other than a heavy-duty vehicle, that incorporates an automotive component;

''costs incurred in packing'' means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

''customs value'' means

(a) in the case of Canada, value for duty as defined in the *Customs Act*, except that for purposes of determining that value the reference in section 55 of that Act to ''in accordance with the regulations made under the *Currency Act*'' shall be read as a reference to ''in accordance with subsection 3(1) of these Regulations'',

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera,* converted, in the event such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations, and

(c) in the case of the United States, the value of imported merchandise as determined by the Customs Service in accordance with section 402 of the *Tariff Act of 1930,* as amended, converted, in the event such value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations.

''days'' means calendar days, and includes weekends and holidays;

''direct labor costs'' means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

''direct material costs'' means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

''direct overhead'' means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

''enterprise'' means any entity constituted or organized under applicable laws, whether or not for profit and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

''excluded costs'' means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

''fungible goods'' means goods that are interchangeable for commercial purposes and the properties of which are essentially identical;

''fungible materials'' means materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as set out in

(a) in the case of Canada, the *Customs Tariff,*

(b) in the case of Mexico, the *Tarifa de la Ley del Impuesto General de Importación,* and

(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

''heavy-duty vehicle'' means a motor vehicle provided for in any of heading 8701, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and heading 8705 and 8706;

''identical goods'' means, with respect to a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''identical materials'' means, with respect to a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''incorporated'' means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

''indirect material'' means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, and includes

(a) fuel and energy,

(b) tools, dies and molds,

(c) spare parts and materials used in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment and supplies,

(f) equipment, devices and supplies used for testing or inspecting the other goods,

(g) catalysts and solvents, and

(h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production;

''interest costs'' means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

''intermediate material'' means a self-produced material that is used in the production of a good and is designated as an intermediate material under section 7(4) ;

''light-duty automotive good'' means a light-duty vehicle or a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use as original equipment in the production of a light-duty vehicle;

''light-duty vehicle'' means a motor vehicle provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8703.21 through 8703.90, 8704.21 and 8704.31;

''listed material'' means a good that is referred to in column II of an item of Schedule V;

''location of the producer'' means,

(a) where the warehouse or other receiving station at which a producer receives materials for use by the producer in the production of a good is located within a radius of 75 km (46.60 miles) from the place at which the producer produces the good, the location of that warehouse or other receiving station, and

(b) in any other case, the place at which the producer produces the good in which a material is to be used;

''material'' means a good that is used in the production of another good, and includes a part or ingredient;

''motor vehicle assembler'' means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles;

''month'' means a calendar month;

''NAFTA country'' means a Party to the Agreement;

''national'' means a natural person who is a citizen or permanent resident of a NAFTA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a ''national of the United States'' as defined in the *Immigration and Nationality Act* on the date of entry into force of the Agreement;

''net cost method'' means the method of calculating the regional value content of a good that is set out in section 6(3);

''non-allowable interest costs'' means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located;

''non-originating good'' means a good that does not qualify as originating under this Appendix;

''non-originating material'' means a material that does not qualify as originating under this Appendix;

''original equipment'' means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is

(a) a good of a tariff provision listed in Schedule IV, or

(b) an automotive component assembly, automotive component, sub-component or listed material;

''originating good'' means a good that qualifies as originating under this Appendix;

''originating material'' means a material that qualifies as originating under this Appendix;

''other costs,'' with respect to total cost, means all costs that are not product costs or period costs;

''packaging materials and containers'' means materials and containers in which a good is packaged for retail sale;

''packing materials and containers'' means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

''payments'' means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

''period costs'' means costs, other than product costs, that are expensed in the period in which they are incurred;

''person'' means a natural person or an enterprise;

''person of a NAFTA country'' means a national, or an enterprise constituted or organized under the laws of a NAFTA country;

''point of direct shipment'' means the location from which a producer of a good normally ships that good to the buyer of the good;

''producer'' means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

''product costs'' means costs that are associated with the production of a good, and includes the value of materials, direct labor costs and direct overhead;

''production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

''related person'' means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses);

''reusable scrap or by-product'' means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

''right to use,'' for purposes of the definition of royalties, includes the right to sell or distribute a good;

''royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where performed, and

(b) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

''sales promotion, marketing and after-sales service costs'' means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

''self-produced material'' means a material that is produced by the producer of a good and used in the production of that good;

''shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

''similar goods'' means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''similar materials'' means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,

(b) were produced in the same country as that material, and (c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''subject to a regional value-content requirement'' means, with respect to a good, that the provisions of this Appendix that are applied to determine whether the good is an originating good include a regional value-content requirement;

''sub-component'' means a good that comprises a listed material and one or more other materials or listed materials;

''tariff provision'' means a heading, subheading or tariff item;

''territory'' means, with respect to

(a) Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources,

(b) Mexico,

(i) the states of the Federation and the Federal District,

(ii) the islands, including the reefs and keys, in adjacent seas,

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,

(vi) the space located above the national territory, in accordance with international law, and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and

(c) the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

''total cost'' means the total of all product costs, period costs and other costs incurred in the territory of one or more of the NAFTA countries;

''transaction value method'' means the method of calculating the regional value content of a good that is set out in subsection 6(2);

''used'' means used or consumed in the production of a good;

''verification of origin'' means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act*,

(b) in the case of Mexico, Article 506 of the Agreement, and

(c) in the case of the United States, section 509 of the *Tariff Act* of 1930, as amended.

Interpretation: ''similar''

(2) For purposes of the definitions of ''similar goods'' and ''similar materials,'' the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for purposes of determining whether goods or materials are similar.

Interpretation: terms used to refer to HTSUS; use of term "books"

(3) For purposes of this Appendix,

(a) ''chapter,'' unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) ''heading'' refers to any four-digit number, or the first four digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(c) ''subheading'' refers to any six-digit number, or the first six digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(d) ''tariff item'' refers to any eight-digit number set out in the column ''Heading/Subheading'' in the Harmonized System;

(e) any reference to a tariff item in Chapter Four of the Agreement or this Appendix that includes letters shall be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each NAFTA country; and

(f) ''books'' refers to,

(i) with respect to the books of a person who is located in a NAFTA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the NAFTA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards.

Use of Examples to illustrate the application of a provision

(4) Where an example, referred to as an ''Example,'' is set out in this Appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

References to domestic laws

(5) Except as otherwise provided, references in this Appendix to domestic laws of the NAFTA countries apply to those laws as they may be amended or superseded.

Calculation of total cost

(6) For purposes of sections 5(9), 6(11) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in paragraphs (b) (i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, shall be the value determined in accordance with section 7(1),

(ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated shall be calculated in accordance with section 7(6),

(iii) the value of indirect materials and the value of packing materials and containers shall be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), shall be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the good shall be deducted from total cost, and losses related to currency conversion that are related to the production of the good shall be included in total cost; and

(e) the value of materials with respect to which production is accumulated under section 14 shall be determined in accordance with that section.

(7) For purposes of calculating total cost under sections 5(9) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) where the regional value content of the good is calculated on the basis of the net cost method and the producer has chosen under section 6(15), 11 (1), (3) or (6), 12(5) or 13(4) to calculate the regional value content over a period, the total cost shall be calculated over that period; and

(b) in any other case, the producer may choose that the total cost be calculated over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year.

(8) A choice made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the choice is made.

(9) Where a producer chooses a one, three or six month period under subsection (7) with respect to a good or material, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) With respect to a good exported to a NAFTA country, a choice to average is considered to have been made

(a) in the case of a choice referred to in section 11 (1), (3) or (6) or 13(4), if the choice is received by the customs administration of that NAFTA country; and

(b) in the case of a choice referred to in section 2(7), 6(15) or 12(1), if the customs administration of that NAFTA country is informed in writing during the course of a verification of the origin of the good that the choice has been made.

SECTION 3. CURRENCY CONVERSION

(1) Where the value of a good or a material is expressed in a currency other than the currency of the country in which the producer of the good is located, that value shall be converted to the currency of the country in which that producer is located on the basis of

(a) in the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for purposes of recording that sale or purchase, as the case may be; and

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) Where a producer of a good has a statement referred to in section 9, 10 or 14 that includes information in a currency other than the currency of the country in which that producer is located, the currency shall be converted to the currency of the country in which the producer is located on the basis of

(a) if the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange used by the producer for purposes of recording the purchase;

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 4. ORIGINATING GOODS

Identification of goods which are ''wholly obtained or produced''

(1) A good originates in the territory of a NAFTA country where the good is

(a) a mineral good extracted in the territory of one or more of the NAFTA countries;

(b) a vegetable or other good harvested in the territory of one or more of the NAFTA countries;

(c) a live animal born and raised in the territory of one or more of the NAFTA countries;

(d) a good obtained from hunting, trapping or fishing in the territory of one or more of the NAFTA countries;

(e) fish, shellfish or other marine life taken from the sea by a vessel registered or recorded with a NAFTA country and flying its flag;

(f) a good produced on board a factory ship from a good referred to in paragraph (e), where the factory ship is registered or recorded with the same NAFTA country as the vessel that took that good and flies that country's flag;

(g) a good taken by a NAFTA country or a person of a NAFTA country from or beneath the seabed outside the territorial waters of that country, where a NAFTA country has the right to exploit that seabed;

(h) a good taken from outer space, where the good is obtained by a NAFTA country or a person of a NAFTA country and is not processed outside the territories of the NAFTA countries;

(i) waste and scrap derived from

(i) production in the territory of one or more of the NAFTA countries, or

(ii) used goods collected in the territory of one or more of the NAFTA countries, where those goods are fit only for the recovery of raw materials; or

(j) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (a) through (i), or from the derivatives of such a good, at any stage of production.

Goods made from non-originating materials: change in tariff classification requirement; regional value-content requirement

(2) A good originates in the territory of a NAFTA country where

(a) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a change in tariff classification, and the good satisfies all other applicable requirements of this Appendix;

(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries and the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies both a change in tariff classification and a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix; or

(c) the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a regional value-content requirement, and the good satisfies all other applicable requirements of this Appendix.

Goods made exclusively from originating materials

(3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

Exceptions to the change in tariff classification requirement

(4) A good originates in the territory of a NAFTA country where

(a) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because the materials were imported together, whether or not with originating materials, into the territory of a NAFTA country as an unassembled or disassembled good, and were classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System,

(iii) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(iv) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I; or

(b) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because

(A) those materials are provided for under the Harmonized System as parts of the good, and

(B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,

(iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),

(iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,

(v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(vi) the good satisfies all other applicable requirements of this Appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I.

Interpretation: heading or subheading which provides for both a good and parts of the good

(5) For purposes of subsection (4)(b),

(a) the determination of whether a heading or subheading provides for a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) where, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated ''Parts'', a subheading designated ''Other'' under that heading shall be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) For purposes of subsection (2), where Schedule I sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

Special rule for certain goods

(7) A good originates in the territory of a NAFTA country if the good is referred to in Table 308.1.1 of Section B of Annex 308.1 to Chapter Three of the Agreement and is imported from the territory of a NAFTA country at a time when the NAFTA countries' most-favored-nation rate of duty for that good is in accordance with paragraph 1 of Section A of that Annex.

Self-produced material may be a material for determining applicability of rules of origin

(8) For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the self-produced material is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good.

(9) The following example is an ''Example'' as referred to in section 2(4).

Example: section 4(8), Self-produced Materials as Materials for Purposes of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a NAFTA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For purposes of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

SECTION 5. DE MINIMIS

De minimis rule for non-originating materials that do not undergo subject to authorization, a required tariff change

(1) Except as otherwise provided in subsection (4), a good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven percent

(a) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(b) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule,

provided that,

(c) if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and

(d) the good satisfies all other applicable requirements of this Appendix.

(2) For purposes of subsection (1), where

(a) Schedule I sets out two or more alternative rules for the tariff provision under which the good is classified, and

(b) the good, in accordance with subsection (1), is considered to originate under one of those rules,

the good is not required to satisfy the requirements specified in any alternative rule referred to in paragraph (a).

(3) For purposes of subsection (1), in the case of a good that is provided for in heading 2402, the percentage shall be nine percent instead of seven percent.

Exceptions

(4) Subsections (1) and (2) do not apply to

(a) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4;

(b) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in any of tariff items 1901.10.10 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.10 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids), heading 2105 and tariff items 2106.90.05, 2106.90.13, 2106.90.41, 2106.90.51 and 2106.90.61 (preparations containing over 10 percent by weight of milk solids), 2202.90.10 and 2202.90.20 (beverages containing milk) and 2309.90.31 (animal feeds containing over 10 percent by weight of milk solids);

(c) a non-originating material provided for in any of heading 0805 and subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.30 and tariff items 2106.90.16 and 2106.90.17 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) and 2202.90.30, 2202.90.35 and 2202.90.36 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

(d) a non-originating material provided for in Chapter 9 that is used in the production of a good provided for in tariff item 2101.10.21 (instant coffee, not flavored);

(e) a non-originating material provided for in Chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, 1512, 1514 and 1515;

(f) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703;

(g) a non-originating material provided for in Chapter 17 or heading 1805 that is used in the production of a good provided for in subheading 1806.10; (h) a non-originating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in any of headings 2207 through 2208;

(i) a non-originating material that is used in the production of a good provided for in any of tariff item 7321.11.30 (gas stove or range), subheadings 8415.10, 8415.81 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29, Mexican tariff item 8479.82.03 (trash compactors) or Canadian or U.S. tariff item 8479.89.55 (trash compactors), and tariff item 8516.60.40 (electric stove or range);

(j) a printed circuit assembly that is a non-originating material used in the production of a good, where the applicable change in tariff classification for the good places restrictions on the use of that non-originating material, such as by prohibiting, or limiting the quantity of, that non-originating material;

(k) a non-originating material that is a single juice ingredient provided for in heading 2009 that is used in the production of a good provided for in any of subheading 2009.90 and tariff items 2106.90.18 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) and 2202.90.37 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins);

(l) a non-originating material that is used in the production of a good provided for in any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(m) a non-originating material that is used in the production of a good provided for in any of Chapters 50 through 63.

De minimis rule for regional value-content requirement

(5) A good that is subject to a regional value-content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where

(a) the value of all non-originating materials used in the production of the good is not more than seven percent

(i) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(ii) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule; and

(b) the good satisfies all other applicable requirements of this Appendix.

De minimis rule for textile goods

(6) A good provided for in any of Chapters 50 through 63, that does not originate in the territory of a NAFTA country because certain fibers or yarns that are used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if

(a) the total weight of all those fibers or yarns is not more than seven percent of the total weight of that component; and

(b) the good satisfies all other applicable requirements of this Appendix.

(7) For purposes of subsection (6),

(a) the component of a good that determines the tariff classification of that good shall be identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of fibers and yarns in that component.

(8) For purposes of subsections (1) and (5), the value of non-originating materials shall be determined in accordance with sections 7(1) through (4).

Calculation of "total cost" for de minimis rules: choice of methods

(9) For purposes of subsection (1)(b) and subsection (5)(a)(ii), the total cost of a good shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule VII.

Calculation of total cost; application of Schedules IX and X for determining value of non-originating materials

(10) Total cost under subsection (9) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection and section 2(7).

(11) For purposes of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, where Schedule X is not being used to determine the value of those non-originating materials,

(a) if the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under section 6(10) that one of the methods set out in Schedule IX be used to determine the value of those non-originating materials for purposes of calculating the regional value content of the good, the value of those non-originating materials shall be determined in accordance with that method;

(b) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement and subsection (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer chooses under section 6(15), 11(1), (3) or (6), 12(1) or 13(4) that the regional value content of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials determined in accordance with that choice, divided by the number of units of the goods with respect to which the choice is made;

(c) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value-content requirement or subsection (5)(a) applies with respect to that good, and

(iii) the producer chooses under section 2(7)(b) that, for purposes of section 5(9), the total cost of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials divided by the number of units produced during that period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

(12) For purposes of subsection (5), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

Examples illustrating de minimis rules

(13) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 5(1)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of copper anodes provided for in heading 7402. The rule set out in Schedule I for heading 7402 specifies a change in tariff classification from any other chapter. There is no applicable regional value-content requirement for this heading. Therefore, in order for the copper anode to qualify as an originating good under the rule set out in Schedule I, Producer A may not use in the production of the copper anode any non-originating material provided for in Chapter 74.

All of the materials used in the production of the copper anode are originating materials, with the exception of a small amount of copper scrap provided for in heading 7404, that is in the same chapter as the copper anode. Under section 5(1), if the value of the non-originating copper scrap does not exceed seven percent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable, the copper anode would be considered an originating good.

Example 2: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of ceiling fans provided for in subheading 8414.51. There are two alternative rules set out in Schedule I for subheading 8414.51, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the ceiling fans are classified and a regional value-content requirement. Therefore, in order for the ceiling fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of ceiling fans and used in the production of the completed ceiling fan must be originating materials.

In this case, all of the non-originating materials used in the production of the ceiling fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of ceiling fans. Under section 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed seven percent of the transaction value of the ceiling fan or the total cost of the ceiling fan, whichever is applicable, the ceiling fan would be considered an originating good. Therefore, under section 5(2), the ceiling fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value-content requirement.

Example 3: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of plastic bags provided for in subheading 3923.29. The rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification from any other heading, except from subheadings 3920.20 or 3920.71, under which certain plastic materials are classified, and a regional value-content requirement. Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the plastic bag to qualify as an originating good, any plastic materials that are classified under subheading 3920.20 or 3920.71 and that are used in the production of the plastic bag must be originating materials.

In this case, all of the non-originating materials used in the production of the plastic bag satisfy the specified change in tariff classification, with the exception of a small amount of plastic materials classified under subheading 3920.71. Section 5(1) provides that the plastic bag can be considered an originating good if the value of the non-originating plastic materials that do not satisfy the specified change in tariff classification does not exceed seven percent of the transaction value of the plastic bag or the total cost of the plastic bag, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the seven percent limit.

However, the rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification and a regional value-content requirement. Therefore, under section 5(1)(c), in order to be considered an originating good, the plastic bag must also, except as otherwise provided in section 5(5), satisfy the regional value-content requirement specified in that rule. As provided in section 5(1)(c), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the plastic bag, will be taken into account in calculating the regional value content of the plastic bag.

Example 4: section 5(5)

Producer A, located in a NAFTA country, primarily uses originating materials in the production of shoes provided for in heading 6405. The rule set out in Schedule I for heading 6405 specifies both a change in tariff classification from any subheading other than subheadings 6401.10 through 6406.10 and a regional value-content requirement.

With the exception of a small amount of materials provided for in Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under section 5(5), if the value of all of the non-originating materials used in the production of the shoes does not exceed seven percent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value-content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

Example 5: section 5(5)

Producer A, located in a NAFTA country, produces barbers' chairs provided for in subheading 9402.10. The rule set out in Schedule I for goods provided for in heading 9402 specifies a change in tariff classification from any other chapter. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, section 4(4)(b) provides, among other things, that, where there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods shall qualify as originating goods if they satisfy a specified regional value-content requirement.

However, under section 5(5), if the value of the non-originating materials does not exceed seven percent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value-content requirement set out in section 4(4)(b)(v).

Example 6: sections 5 (6) and (7)

Producer A, located in a NAFTA country, produces women's dresses provided for in subheading 6204.41 from fine wool fabric of heading 5112. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The rule set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under section 5(6), if the total weight of the non-originating combed wool yarn does not exceed seven percent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

PART III
SECTION 6. REGIONAL VALUE CONTENT

(1) Except as otherwise provided in subsection (6), the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

Transaction Value Method

(2) The transaction value method for calculating the regional value content of a good is as follows:

$$\mathrm{RVC} = \frac{\mathrm{TV} - \mathrm{VNM}}{\mathrm{TV}} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 7.

Net Cost Method

(3) The net cost method for calculating the regional value content of a good is as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 9 and 10, in accordance with section 7.

VNM does not include value of non-originating materials used in originating material

(4) Except as otherwise provided in section 9 and section 10(1)(d), for purposes of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good shall not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) For purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material shall be included in the value of non-originating materials used in the production of the good; and

(b) where a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials shall be included in the value of non-originating materials.

Net Cost Method required in certain circumstances

(6) The regional value content of a good shall be calculated only on the basis of the net cost method where

(a) there is no transaction value for the good under section 2(1) of Schedule III;

(b) the transaction value of the good is unacceptable under section 2(2) of Schedule III;

(c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales by that producer of identical goods or similar goods, or any combination thereof, to related persons during the six month period immediately preceding the month in which the goods are sold exceeds 85 percent of the producer's total sales to all persons, whether or not related and regardless of location, after ''the producer's total sales''of identical goods or similar goods, or any combination thereof, during that period;

(d) the good is

(i) a motor vehicle provided for in any of headings 8701 and 8702, subheadings 8703.21 through 8703.90 and headings 8704, 8705 and 8706,

(ii) a good provided for in a tariff provision listed in Schedule IV or an automotive component assembly, automotive component, sub-component or listed material, and is for use in a motor vehicle referred to in subparagraph (i), either as original equipment or as an after-market part,

(iii) a good provided for in any of subheadings 6401.10 through 6406.10, or

(iv) a good provided for in tariff item 8469.10.40 (word processing machines);

(e) the exporter or producer chooses to accumulate with respect to the good in accordance with section 14; or

(f) the good is an intermediate material and is subject to a regional value-content requirement.

Option to change from TVM to NCM for calculation of regional value content

(7) If the exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the exporter or producer, is required to be adjusted under section 4 of Schedule II or is unacceptable under section 2(2) of Schedule III, there is no transaction value for the good under section 2(1) of Schedule III or the transaction value method may not be used because of the application of subsection (6)(c), or

(b) the value of any material used in the production of the good, as determined by the exporter or producer, is required to be adjusted under section 5 of Schedule VIII or is unacceptable under section 2(3) of Schedule VIII, or there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value method may not be used to calculate the regional value content of the material because of the application of subsection (6)(c),

the exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 60 days after the producer receives the notification, or such longer period as that customs administration specifies.

Change from NCM to TVM not permitted

(8) If the exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value-content requirement, the exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) Nothing in subsection (7) shall be construed as preventing any review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

Application of Schedule IX for determining value of "identical" non-originating materials under TVM

(10) For purposes of the transaction value method, where non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule IX.

Options for calculating the net cost of a good

(11) For purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule VII, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule VII, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule VII, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

Calculation of total cost

(12) Total cost under subsection (11) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection.

Calculation of net cost; excluded costs

(13) For purposes of calculating net cost under subsection (11),

(a) excluded costs shall be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good shall not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a NAFTA country.

Non-allowable interest; determination under Schedule XI

(14) For purposes of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located shall be made in accordance with Schedule XI.

Use of "averaging" over a period to calculate RVC under NCM; period cannot be changed

(15) For purposes of the net cost method, the regional value content of the good, other than a good with respect to which a choice to average may be made under section 11(1), (3) or (6), 12(1) or 13(4), may be calculated, where the producer chooses to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) The calculation made under subsection (15) shall apply with respect to all units of the good produced during the period chosen by the producer under subsection (15)(a).

(17) A choice made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

Choice of averaging period cannot be changed for remainder of fiscal year

(18) Where a producer chooses a one, three or six month period under subsection (15) with respect to goods, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to those goods.

Choice of net cost method cannot be changed for remainder of the fiscal year

(19) Where the net cost method is required to be used or has been chosen and a choice has been made under subsection (15), the regional value content of the good shall be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

Obligation to perform self-analysis and give notification of changed circumstance if RVC calculated on basis of estimated costs

(20) Except as otherwise provided in sections 11(10), 12(11) and 13(10), where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen in subsection (15)(a), the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value-content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

Option to treat any material as non-originating

(21) For purposes of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

Examples of Calculation of RVC under TVM and NCM

(22) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: example of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

Example 2: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has six factories, all located within the territory of one of the NAFTA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

Example 3: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, located near the center of one of the NAFTA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

Example 4: section 6(3), net cost method

A producer located in NAFTA country A sells Good A that is subject to a regional value-content requirement to a buyer located in NAFTA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of this Appendix, other than the regional value-content requirement, have been met. The applicable regional value-content requirement is 50 percent.

In order to calculate the regional value-content of Good A, the producer first calculates the net cost of Good A. Under section 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:	
Value of originating materials	$30.00
Value of non-originating materials	40.00
Other product costs	20.00
Period costs	10.00
Other costs	0.00
Total cost of Good A, per unit	$100.00
Excluded costs:	
Sales promotion, marketing and after-sales service cost	$5.00
Royalties	2.50
Shipping and packing costs	3.00
Non-allowable interest costs	1.50
Total excluded costs	$12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A, per unit:	$100.00
Excluded costs	−12.00
Net cost of Good A, per unit	$88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{88 - 40}{88} \times 100$$

$$= 54.5\%$$

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value-content of 54.5 percent.

Example 5: section 6(6)(c), net cost method required for certain sales to related persons

On January 15, 1994, a producer located in NAFTA country A sells 1,000 units of Good A to a related person, located in NAFTA country B. During the six month period beginning on July 1, 1993 and ending on December 31, 1993, the producer sold 90,000 units of identical goods and similar goods to related persons from various countries, including that buyer. The producer's total sales of those identical goods and similar goods to all persons from all countries during that six month period were 100,000 units.

The total quantity of identical goods and similar goods sold by the producer to related persons during that six month period was 90 percent of the producer's total sales of those identical goods and similar goods to all persons. Under section 6(6)(c), the producer must use the net cost method to calculate the regional value content of Good A sold in January 1994, because the 85 percent limit was exceeded.

Example 6: section 6(11)(a)

A producer in a NAFTA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000
The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.	
Total cost of Good A and Good B	$9,000
Excluded costs	−1,200
Net cost of Good A and Good B	$7,800

The net cost must then be reasonably allocated, in accordance with Schedule VII, to Good A and Good B.

Example 7: section 6(11)(b)

A producer located in a NAFTA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000

Under section 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

	Allocated to Good A	Allocated to Good B
Total cost ($9,000 for both Good A and Good B)	$5,220	$3,780

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

		Excluded Cost Allocated to Good A	Excluded Cost Allocated to Good B
Total excluded costs:			
Sales promotion, marketing and after-sale service costs	500	290	210
Royalties	200	116	84
Shipping and packing costs	500	290	210
Net cost (total cost minus excluded costs)	.....	$4,524	$3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

Example 8: section 6(11)(c)

A Producer located in a NAFTA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

	Total cost: Good C and Good D (in thousands of dollars)	Allocated to Good C (in thousands of dollars)	Allocated to Good D (in thousands of dollars)
Product costs:			
Value of originating materials	100	0	100
Value of non-originating materials	900	800	100
Other product costs	500	300	200
Period costs (including $420 in excluded costs)	5,679	3,036	2,643
Minus Excluded Costs	420	300	120
Other costs	0	0	0
Total cost (aggregate of product costs, period costs and other costs)	6,759	3,836	2,923

Example 9: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with tools to be used in the production of Material X. The cost of the tools that is recorded on the books of Producer A has been expensed in the current year. Pursuant to section 5(1)(b)(ii) of Schedule VIII, the value of the tools is included in the value of Material X. Therefore, the cost of the tools that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

Example 10: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under section 6(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under section 7(1).

Example 11: section 6(12)

Given the same facts as in example 10, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under section 7(1).

PART IV

SECTION 7. MATERIALS

Valuation of materials used in the production of a good other than certain automotive goods

(1) Except as otherwise provided for non-originating materials used in the production of a good referred to in section 9(1) or 10(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for purposes of calculating the regional value content of a good and for purposes of sections 5(1) and (5), the value of a material that is used in the production of the good shall be

(a) except as otherwise provided in subsection (2), where the material is imported by the producer of the good into the territory of the NAFTA country in which the good is produced, the customs value of the material with respect to that importation, or

(b) where the material is acquired by the producer of the good from another person located in the territory of the NAFTA country in which the good is produced

(i) the transaction value, determined in accordance with section 2(1) of Schedule VIII, with respect to the transaction in which the producer acquired the material, or

(ii) the value determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction in which the producer acquired the material, there is no transaction value under section 2(2) of that Schedule or the transaction value is unacceptable under section 2(3) of that Schedule,

and shall include the following costs if they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Valuation of material if customs value is not in accordance with Schedule VIII

(2) For purposes of subsection (1)(a), where the customs value of the material referred to in that paragraph was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation of that material and, where the costs referred to in subsections (1)(c) through (f) are not included in that value, those costs be added to that value.

Costs recorded on books

(3) For purposes of subsection (1), the costs referred to in subsections (1)(c) through (f) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

Designation of self-produced material as an intermediate material; limitation on designations; designation is optional

(4) Except for purposes of determining the value of non-originating materials used in the production of a light-duty automotive good and except in the case of an automotive component assembly, automotive component or sub-component for use as original equipment in the production of a heavy-duty vehicle, for purposes of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(5) For purposes of subsection (4),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material shall be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in section 14(4), the proviso set out in subsection (4) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (4).

Valuation of an intermediate material

(6) The value of an intermediate material shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule VII.

Calculation of total cost

(7) Total cost under subsection (6) consists of the costs referred to in section 2(6), and is calculated in accordance with that section and section 2(7).

Rescission of a designation during course of verification; option to designate another intermediate material

(8) Where a producer of a good designates a self-produced material as an intermediate material under subsection (4) and the customs administration of a NAFTA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated.

(9) A producer of a good who rescinds a designation under subsection (8)

(a) shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(b) may, not later than 30 days after the customs administration referred to in subsection (8) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the proviso set out in subsection (4).

(10) Where a producer of a good designates another self-produced material as an intermediate material under subsection (9)(b) and the customs administration referred to in subsection (8) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated;

(b) the producer shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(c) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

Indirect Materials; deemed originating; value as recorded on books of producer

(11) For purposes of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) shall be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value-content requirement, for purposes of calculating the net cost under the net cost method, the value of the indirect material shall be the costs of that material that are recorded on the books of the producer of the good.

Packaging Materials and Containers; origin disregarded for tariff change rules

(12) Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, shall be disregarded for purposes of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

Actual originating status considered for RVC requirement; valuation of packaging

(13) Where packaging materials and containers are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value-content requirement, the value of those packaging materials and containers shall be taken into account as originating materials or non-originating materials, as the case may be, for purposes of calculating the regional value content of the good.

(14) For purposes of subsection (13), where packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

Packing materials and containers; disregarded for tariff change rule and for RVC requirement; value as recorded on books

(15) For purposes of determining whether a good is an originating good, packing materials and containers in which the good is packed

(a) shall be disregarded for purposes of determining whether

(i) the non-originating materials used in the production of the good undergo an applicable change in tariff classification, and

(ii) the good satisfies a regional value-content requirement; and

(b) if the good is subject to a regional value-content requirement, the value of the packing materials and containers shall be the costs thereof that are recorded on the books of the producer of the good.

Fungible materials; fungible commingled goods; inventory management methods for determining whether originating

(16) For purposes of determining whether a good is an originating good,

(a) where originating materials and non-originating materials that are fungible materials are used in the production of the good, the determination of whether the materials are originating materials may, at the choice of the producer of the good or the person from whom the producer acquired the materials, be made on the basis of any of the applicable inventory management methods set out in Schedule X; and

(b) where originating goods and non-originating goods that are fungible goods are physically combined or mixed in inventory and prior to exportation do not undergo production or any other operation in the territory of the NAFTA country in which they were physically combined or mixed in inventory, other than unloading, reloading or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the territory of another NAFTA country, the determination of whether the good is an originating good may, at the choice of the exporter of the good or the person from whom the exporter acquired the good, be made on the basis of any of the applicable inventory management methods set out in Schedule X.

Accessories, spare parts and tools; deemed originating for tariff change rule; actual origin applicable for RVC requirement

(17) Accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools are originating materials if the good is an originating good, and shall be disregarded for purposes of determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification or determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification, provided that

(a) the accessories, spare parts or tools are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good, within the industry that produces the good.

(18) Where a good is subject to a regional value-content requirement, the value of accessories, spare parts and tools that are delivered with that good and form part of the good's standard accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

(19) For purposes of subsection (18), where accessories, spare parts and tools are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

Examples illustrating the provisions on materials

(20) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 7(2), Customs Value not Determined in a Manner Consistent with Schedule VIII

Producer A, located in NAFTA country A, imports material A into NAFTA country A. Producer A purchased material A from a middleman located in country B. The middleman purchased the material from a manufacturer located in country B. Under the laws in NAFTA country A that implement the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,* the customs value of material A was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses material A to produce Good C, and exports Good C to NAFTA country D. Good C is subject to a regional value-content requirement.

Under section 4(1) of Schedule VIII, the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value-content requirement. A seller is the person who sells the material being valued to the producer.

The customs value of material A was not determined in a manner consistent with Schedule VIII because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, section 7(2) applies and material A is valued in accordance with Schedule VIII.

Example 2: section 7(5), Value of Intermediate Materials

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement under section 4(2)(b). The producer also produces Material A, which is used in the production of Good B. Both originating materials and non-originating materials are used in the production of Material A. Material A is subject to a change in tariff classification requirement under section 4(2)(a). The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.30 in royalties)	0.50
Other costs	0.10
Total cost of Material A	$10.60

The producer designates Material A as an intermediate material and determines that, because all of the non-originating materials that are used in the production of Material A undergo an applicable change in tariff classification set out in Schedule I, Material A would, under paragraph 4(2)(a) qualify as an originating material. The cost of the non-originating materials used in the production of Material A is therefore not included in the value of non-originating materials that are used in the production of Good B for the purpose of determining the regional value content of Good B. Because Material A has been designated as an intermediate material, the total cost of Material A, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of Good B. The total cost of Good B is determined in accordance with the following figures:

Product costs:	
Value of originating materials	
—intermediate materials	$10.60
—other materials	3.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs	2.50
Other costs	0.10
Total cost of Good B	$28.20

Example 3: section 7(5), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 7(1). The following situations demonstrate how this is achieved:

Situation 1

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer purchases Material A, which is used in the production of Good B, from a supplier located in a NAFTA country. The value of Material A determined in accordance with subsection 7(1) is $11.00. Material A is an originating material. All other materials used in the production of Good B are non-originating materials. The net cost of Good B is determined as follows:

Product costs:	
Value of originating materials (Material A)	$11.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Good B	$23.60
Excluded costs: (included in period costs)	−0.20
Net cost of Good B	$23.40

The regional value content of Good B is calculated as follows:

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$23.40 - \$5.50}{\$23.40} \times 100$$

$$= 76.5\%$$

The regional value content of Good B is 76.5 percent, and Good B, therefore, qualifies as an originating good.

Situation 2

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer does not designate Material A as an intermediate material under subsection 7(4). The net cost of Good B is calculated as follows:

	Costs of Material A (not designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$1.00	$0.00	$1.00
Value of non-originating materials	7.50	5.50	13.00
Other product costs	1.50	6.50	8.00
Period costs (including $0.20 in excluded costs)	0.50	0.50	1.00
Other costs	0.10	0.10	0.20
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	0.20	0.20	−0.40
Net cost of Good B (total cost minus excluded costs)			$22.80

The regional value content of Good B is calculated as follows:

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$22.80 - \$13.00}{\$22.80} \times 100$$

$$= 42.9\%$$

The regional value content of Good B is 42.9 percent, and Good B, therefore, does not qualify as an originating good.

Situation 3

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A, which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer designates Material A as an intermediate material under subsection 7(4). Material A qualifies as an originating material under paragraph 4(2)(a). Therefore, the value of non-originating materials used in the production of Material A is not included in the value of non-originating materials for the purposes of calculating the regional value content of Good B. The net cost of Good B is calculated as follows:

	Costs of Material A (designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$10.60	$0.00	$10.60
Value of non-originating materials	.....	5.50	5.50
Other product costs	.....	6.50	6.50
Period costs (including $0.20 in excluded costs)	.....	0.50	0.50
Other costs	.....	0.10	0.10
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	.....	.20	−0.20
Net cost of Good B (total cost minus excluded costs)	.....	.....	$23.00

The regional value content of Good B is calculated as follows:

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$23.00 - \$5.50}{\$23.00} \times 100$$

$$= 76.1\%$$

The regional value content of Good B is 76.1 percent, and Good B, therefore, qualifies as an originating good.

Example 4: Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in NAFTA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value-content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value-content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 percent.

Producer A sells the switches to Producer B, located in NAFTA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value-content requirement. Producers A and B are not accumulating their production within the meaning of section 14. Producer B is therefore able, under section 7(4), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 14, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

Example 5: Single Producer and Successive Designations of Materials Subject to a Regional Value-Content Requirement as Intermediate Materials

Producer A, located in NAFTA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value-content requirement. Producer A designates Material A as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value-content requirement. Under the proviso set out in section 7(4), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value-content requirement, because Material X was already designated by Producer A as an intermediate material.

Example 6: Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in NAFTA country X, uses non-originating materials in the production of self-produced materials A, B, and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to NAFTA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value-content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value-content requirement, Producer X may, under section 7(4), designate all of the self-produced materials as intermediate materials. The proviso set out in section 7(4) only applies where self-produced materials are used in the production of other self-produced materials and both are subject to a regional value-content requirement.

Example 7: section 7(17)

The following are examples of accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools:

(a) consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,
(b) a carrying case for equipment,
(c) a dust cover for a machine,
(d) an operational manual for a vehicle,
(e) brackets to attach equipment to a wall,
(f) a bicycle tool kit or a car jack,
(g) a set of wrenches to change the bit on a chuck,
(h) a brush or other tool to clean out a machine, and
(i) electrical cords and power bars for use with electronic goods.

Example 8: Value of Indirect Materials that are Assists

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country, and uses it in the production of Good A. Producer A provides to Producer B, at no charge, tools to be used in the production of Material X. The tools have a value of $100 which is expensed in the current year by Producer A.

Material X is subject to a regional value-content requirement which Producer B chooses to calculate using the net cost method. For purposes of determining the value of non-originating materials in order to calculate the regional value content of Material X, the tools are considered to be an originating material because they are an indirect material. However, pursuant to section 7(11) they have a value of nil because the cost of the tools with respect to Material X is not recorded on the books of Producer B.

It is determined that Material X is a non-originating material. The cost of the tools that is recorded on the books of producer A is expensed in the current year. Pursuant to section 5 of Schedule VIII, the value of the tools (see section 5(1)(b)(ii) of Schedule VIII) must be included in the value of Material X by Producer A when calculating the regional value content of Good A. The cost of the tools, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of Good A because it is already included in the value of Material X. The entire cost of Material X, which includes the cost of the tools, is included in the value of non-originating materials for purposes of the regional value content of Good A.

PART V
AUTOMOTIVE GOODS
SECTION 8. DEFINITIONS AND INTERPRETATION

For purposes of this Part,

''after-market parts'' means goods that are not for use as original equipment in the production of light-duty vehicles or heavy-duty vehicles and that are

(a) goods provided for in a tariff provision listed in Schedule IV, or

(b) automotive component assemblies, automotive components, sub-components or listed materials;

''class of motor vehicles'' means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in any of subheading 8701.20, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and headings 8705 and 8706,

(b) motor vehicles provided for in any of subheadings 8701.10 and 8701.30 through 8701.90,

(c) motor vehicles provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8704.21 and 8704.31, and

(d) motor vehicles provided for in any of subheadings 8703.21 through 8703.90;

''complete motor vehicle assembly process'' means the production of a motor vehicle from separate constituent parts, which parts include the following:

(a) a structural frame or unibody,

(b) body panels,

(c) an engine, a transmission and a drive train,

(d) brake components,

(e) steering and suspension components,

(f) seating and internal trim,

(g) bumpers and external trim,

(h) wheels, and

(i) electrical and lighting components;

''first prototype'' means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and

(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

''floor pan of a motor vehicle'' means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the firewall or bulkhead of the motor vehicle and ending

(a) where there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, and

(b) where there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

''heavy-duty automotive good'' means a heavy-duty vehicle or a heavy-duty component;

''heavy-duty component'' means an automotive component or automotive component assembly that is for use as original equipment in the production of a heavy-duty vehicle;

''marque'' means a trade name used by a marketing division of a motor vehicle assembler that is separate from any other marketing division of that motor vehicle assembler;

''model line'' means a group of motor vehicles having the same platform or model name;

''model name'' means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler

(a) to differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) to associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) to denote a platform design;

''new building'' means a new construction to house a complete motor vehicle assembly process, where that construction includes the pouring or construction of a new foundation and floor, the erection of a new frame and roof, and the installation of new plumbing and electrical and other utilities;

''plant'' means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) light-duty vehicles and heavy-duty vehicles,

(b) goods of a tariff provision listed in Schedule IV, and

(c) automotive component assemblies, automotive components, sub-components and listed materials;

''platform'' means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

''received in the territory of a NAFTA country'' means, with respect to section 9(2), the location at which a traced material arrives in the territory of a NAFTA country and is documented for any customs purpose, which, in the case of a traced material imported into

(a) Canada,

(i) where the traced material is imported on a vessel, as defined in section 2 of the *Reporting of Imported Goods Regulations*, is the location at which the traced material is last unloaded from the vessel and reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond by a conveyance other than that vessel, and

(ii) in any other case, is the location at which the traced material is reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond,

(b) Mexico,

(i) where the traced material is imported on a vessel, the location at which the traced material is last unloaded from the vessel and reported for any customs purpose, and

(ii) in any other case, the location at which the traced material is reported for any customs purpose, and

(c) the United States, is the location at which the traced material is entered for any customs purpose, including entered for consumption, entered for warehouse or entered for transportation under bond, or admitted into a foreign trade zone;

''refit'' means a closure of a plant for a period of at least three consecutive months that is for purposes of plant conversion or retooling;

''size category'', with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m^3) but less than 100 cubic feet (2.80 m^3),

(c) 100 cubic feet (2.80 m^3) or more but not more than 110 cubic feet (3.08 m^3),

(d) more than 110 cubic feet (3.08 m^3) but less than 120 cubic feet (3.36 m^3), or

(e) 120 cubic feet (3.36 m^3) or more;

''traced material'' means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported, of a tariff provision listed in Schedule IV;

''underbody'' means the floor pan of a motor vehicle.

SECTION 9. LIGHT-DUTY AUTOMOTIVE GOODS

VNM determined by tracing of certain non-originating materials

(1) For purposes of calculating the regional value content of a light-duty automotive good under the net cost method, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good.

Valuation of traced materials for VNM in the RVC

(2) Except as otherwise provided in subsections (3) and (6) through (8), the value of each of the traced materials that is incorporated into a good shall be

(a) where the producer imports the traced material from outside the territories of the NAFTA countries and has or takes title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(b) where the producer imports the traced material from outside the territories of the NAFTA countries and does not have or take title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(c) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(d) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(e) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or a material that incorporates the traced material from a person in the territory of a NAFTA country who has title to it, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material or the material that incorporates it, and

(ii) states the value of the traced material or a material that incorporates the traced material, determined in accordance with subsection (5), with respect to a transaction that occurs after the customs value of the traced material was determined,

the value of the traced material or the material that incorporates the traced material, determined in accordance with subsection (5), with respect to the transaction referred to in that statement;

(f) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material and states the regional value content of the material,

an amount equal to $VM \times (1 - RVC)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal;

(g) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material but does not state any value with respect to the traced material,

an amount equal to $VM \times (1 - RVCR)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal;

(h) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires a material that

(i) incorporates that traced material,

(ii) was produced in the territory of a NAFTA country, and

(iii) with respect to which an amount was determined in accordance with paragraph (f) or (g),

if the producer of the good has a statement signed by the person from whom the producer acquired that material that states that amount, the amount as determined in accordance with paragraph (f) or (g), as the case may be; and

(i) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement described in any of paragraphs (c) through (h), the value of the traced material or any material that incorporates it, determined in accordance with subsection (5) with respect to the transaction in which the producer acquires the traced material or any material that incorporates it.

Value of traced material if customs value is not in accordance with Schedule VIII

(3) For purposes of subsections (2) (a) through (d), where the customs value of the traced material referred to in those paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be the sum of

(a) the value of the material determined in accordance with Schedule VIII with respect to the transaction in which the person who imported the material from outside the territories of the NAFTA countries acquired it; and

(b) where not included in that value, the costs referred to in subsections (2)(a) (ii) and (iii), subsections (2)(b) (ii) and (iii), subsections (2)(c)(ii) (B) and (C) or subsections (2)(d)(ii) (B) and (C), as the case may be.

Additional costs included in traced value if not already included in customs value

(4) The costs referred to in subsections (2) (a) through (d) and subsection (3) are the following:

(a) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(b) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.

Value of traced material determined under Schedule VIII if value is not customs value

(5) For purposes of subsections (2) (e) through (g) and (i) and subsections (6) and (7), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that paragraph or subsection, or

(b) shall be determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction referred to in that paragraph or subsection, there is no transaction value for the material under section 2(2) of that Schedule, or the transaction value of the material is unacceptable under section 2(3) of that Schedule,

and, where not included under paragraph (a) or (b), shall include taxes, other than duties paid on an importation of a material from a NAFTA country, paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than taxes that are waived, refunded, refundable or otherwise recoverable, including credit against tax paid or payable.

(6) Where it is determined, during the course of a verification of origin of a light-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (2) (f) or (g), that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (2), be determined in accordance with subsection (5) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified

(7) Where any person who has information with respect to a statement referred to in any of subsections (2)(c) through (h) does not allow a customs administration to verify that information during a verification of origin, the value of the material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (5) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material

(8) Where a traced material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a light-duty automotive good, the statement referred to in subsection (2)(c), (d) or (e) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the traced material.

Interpretations and clarifications for provisions applicable to tracing rules for light-duty automotive goods

(9) For purposes of this section,

(a) where a producer, in accordance with section 7(4), designates as an intermediate material any self-produced material used in the production of a light-duty automotive good,

(i) the designation applies solely to the calculation of the net cost of that good, and

(ii) the value of a traced material that is incorporated into that good shall be determined as though the designation had not been made;

(b) the value of a material not listed in Schedule IV, when imported from outside the territories of the NAFTA countries,

(i) shall not be included in the value of non-originating materials that are used in the production of a light-duty automotive good, and

(ii) shall be included in calculating the net cost of a light-duty automotive good that incorporates that material;

(c) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(d) the costs referred to in subsections (2)(a)(ii) and (b)(ii), subsections (2)(c)(ii)(B) and (d)(ii)(B) and subsections (4) and (5) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the light-duty automotive good;

(e) for purposes of calculating the regional value content of a light-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (5) with respect to the transaction in which the producer acquired it; and

(f) any information set out in a statement referred to in subsection (2) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

Examples of application of tracing for light-duty automotive goods

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1:

Nuts and bolts provided for in heading 7318 are imported from outside the territories of the NAFTA countries and are used in the territory of a NAFTA country in the production of a light-duty automotive good referred to in section 9(1). Heading 7318 is not listed in Schedule IV so the nuts and bolts are not traced materials.

Because the nuts and bolts are not traced materials the value, under section 9(1), of the nuts and bolts is not included in the value of non-originating materials used in the light-duty automotive good even though the nuts and bolts are imported from outside the territories of the NAFTA countries.

The value, under section 9(9)(b), of the nuts and bolts is included in the net cost of the light-duty automotive good for the purposes of calculating, under section 9(1), regional value content of the motor vehicle.

Example 2:

A rear view mirror provided for in subheading 7009.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

Subheading 7009.10 is listed in Schedule IV. The rear view mirror is a traced material. For purposes of calculating, under section 9(1), regional value content of the light-duty vehicle, the value of the mirror is included in the value of non-originating materials in accordance with sections 9(2) through (9).

Example 3:

Glass provided for in heading 7005 is imported from outside the territories of the NAFTA countries and is used in the territory of NAFTA country A in the production of a rear view mirror. The rear view mirror is a non-originating good because it fails to satisfy the applicable change in tariff classification.

That rear view mirror is exported to NAFTA country B where it is used as original equipment in the production of a light-duty vehicle. Even though the rear view mirror is a non-originating material and is provided for in a tariff item listed in Schedule IV, it is not a traced material because it was not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle in which the rear view mirror is incorporated, the value of the rear view mirror, under section 9(1), is not included in the value of non-originating materials used in the production of the light-duty vehicle.

Even though the glass provided for in heading 7005 that was used in the production of the rear view mirror and incorporated into the light-duty vehicle was imported from outside the territories of the NAFTA countries, the glass is not a traced material because heading 7005 is not listed in Schedule IV. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the glass, the value of the glass is not included in the value of non-originating materials used in the production of the light-duty vehicle. The value of the rear view mirror would be included in the net cost of the light-duty vehicle, but the value of the imported glass would not be separately included in the value of non-originating materials of the light-duty vehicle.

Example 4:

An electric motor provided for in subheading 8501.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country in the production of a seat frame provided for in subheading 9401.90. The seat frame, with the electric motor attached, is sold to a producer of seats provided for in subheading 9401.20. The seat producer sells the seat to a producer of light-duty vehicles. The seat is to be used as original equipment in the production of that light-duty vehicle.

Subheadings 8501.10 and 9401.20 are listed in Schedule IV; subheading 9401.90 is not. The electric motor is a traced material; the seat is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The seat is a light-duty automotive good referred to in section 9(1). For purposes of calculating, under section 9(1), the regional value content of the seat, the value of traced materials incorporated into it is included in the value of non-originating materials used in the production of the seat. The value of the electric motor is included in that value. (However, the value of the motor would not be included separately in the net cost of the seat because the value of the motor is included as part of the cost of the seat frame.)

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the electric motor is included in the value of non-originating materials used in the production of the light-duty vehicle, even if the seat is an originating material.

Example 5:

Cast blocks, cast heads and connecting rod assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer, who has title to them at the time of importation, and are used by the producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. After the regional value content of the engine is calculated, the engine is an originating good. It is not a traced material because it was not imported from outside the territories of the NAFTA countries. The engine is exported to NAFTA country B, to be used as original equipment by a producer of light-duty vehicles.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine, because heading 8409 is listed in Schedule IV and because the cast blocks, cast heads and connecting rod assemblies were imported into the territory of a NAFTA country and are incorporated into the light-duty vehicle, the value of those materials, which are traced materials, is included in the value of non-originating materials used in the production of the light-duty vehicle, even though the engine is an originating material.

The producer of the light-duty vehicle did not import the traced materials. However, because that producer has a statement referred to in section 9(2)(c) and that statement states the value of non-originating materials of the traced materials in accordance with section 12(2), the producer of the light-duty vehicle may, in accordance with section 9(8), use that value as the value of non-originating materials of the light-duty vehicle with respect to that engine.

Example 6:

Aluminum ingots provided for in subheading 7601.10 and piston assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer and are used by that producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. The aluminum ingots are used by the producer to produce an engine block; the piston assembly is then incorporated into the engine block and the producer designates, in accordance with section 7(4), a short block provided for in heading 8409 as an intermediate material. The intermediate material qualifies as an originating material. The engine that incorporates the short block is exported to NAFTA country B and used as original equipment in the production of a light-duty vehicle. The piston assemblies provided for in heading 8409 are traced materials; neither the engine nor the short block are traced materials because they were not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of the engine, the value of the piston assemblies is included, under section 9(9)(a)(ii), in the value of non-originating materials, even if the intermediate material is an originating material. However, the value of the aluminum ingots is not included in the value of non-originating materials because subheading 7601.10 is not listed in Schedule IV. The value of the aluminum ingots does not need to be included separately in the net cost of the engine because that value is included in the value of the intermediate material, and the total cost of the intermediate material is included in the net cost of the engine.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine (and the piston assemblies), the value of the piston assemblies incorporated into that light-duty vehicle is included in the value of non-originating materials of the light-duty vehicle.

Example 7:

An engine provided for in heading 8407 is imported from outside the territories of the NAFTA countries. The producer of the engine, located in the country from which the engine is imported, used in the production of the engine a piston assembly provided for in heading 8409 that was produced in a NAFTA country and is an originating good. The engine is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The engine is a traced material.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle that incorporates that engine, the value of the engine is included in the value of non-originating materials of that light-duty vehicle. The value of the piston assembly, which was, before its exportation to outside the territories of the NAFTA countries, an originating good, shall not be deducted from the value of non-originating materials used in the production of the light-duty vehicle. Under section 18 (transshipment), the piston assembly is no longer considered to be an originating good because it was used in the production of a good outside the territories of the NAFTA countries.

Example 8:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hoses provided for in heading 4009, which is listed in Schedule IV. The wholesaler takes title to the goods at the wholesaler's place of business in City A. The customs value of the imported goods is $500. All freight, taxes and duties associated with the good to the wholesaler's place of business total $100; the cost of the freight, included in that $100, from the place where it was received in the territory of a NAFTA country to the location of the wholesaler's place of business in City A is $25. The wholesaler sells the rubber hoses for $650 to a producer of light-duty vehicles who uses the goods in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The light-duty vehicle producer pays $50 to have the goods shipped from the location of the wholesaler's place of business in City A to the location at which the light-duty vehicle is produced.

The rubber hoses are traced materials and they are incorporated into a light-duty automotive good. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle,

(1) if the wholesaler takes title to the goods before the first place at which they were received in the territory of a NAFTA country, then the value of non-originating materials, where the light-duty vehicle producer has a statement referred to in section 9(2)(c), would not include the cost of freight from the place where they were received in the territory of a NAFTA country to the location of the wholesaler's place of business: in this situation, the value of non-originating materials would be $575;

(2) if the producer has a statement referred to in section 9(2)(d) that states the customs value of the traced material and, where not included in that price, the cost of taxes, duties, fees and transporting the goods to the place where title is taken, the light-duty vehicle producer may use those values as the value of non-originating materials with respect to the goods: in this situation, the value of non-originating materials would be $600; or

(3) if the wholesaler is unwilling to provide the light-duty vehicle producer with such a statement, the value of non-originating materials with respect to the traced materials will be the value of the materials with respect to the transaction in which the producer acquired them, as provided for in section 9(2)(i), in this instance $650; the costs of transporting the goods from the location of the wholesaler's place of business to the location of the producer will be included in the net cost of the goods, but not in the value of non-originating materials.

Example 9:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV. The wholesaler sells the good to a producer located in the territory of the NAFTA country who uses the hose to produce a power steering hose assembly, also provided for in heading 4009. The power steering hose assembly is then sold to a producer of light-duty vehicles who uses that good in the production of a light-duty vehicle. The rubber hose is a traced material; the power steering hose assembly is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The wholesaler who imported the rubber hose from outside the territories of the NAFTA countries has title to it at the time of importation. The customs value of the good is $3, including freight and insurance and all other costs incurred in transporting the good to the first place at which it was received in the territory of the NAFTA country. Duties and fees and all other costs referred to in section 9(4), paid by the wholesaler with respect to the good, total an additional $1. The wholesaler sells the good to the producer of the power steering hose assemblies for $5, not including freight to the location of that producer. The power steering hose producer pays $2 to have the good delivered to the location of production. The value of the power steering hose assembly sold to the light-duty vehicle producer is $10, including freight for delivery of the goods to the location of the light-duty vehicle producer.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle:

(1) if the motor vehicle producer has a statement referred to in section 9(2)(c) from the producer of the power steering hose assembly that states the customs value of the imported rubber hose incorporated in the power steering hose assembly, and the value of the duties, fees and other costs referred to in section 9(4), the producer may use those values as the value of non-originating materials with respect to that traced good: in this situation, that value would be the customs value of $3 and the cost of duties and fees of $1, provided that the wholesaler has provided the producer of the power steering hose assembly with the information regarding the customs value of the imported good and the other costs;

(2) if the light-duty vehicle producer has a statement from the producer of the power steering hose assembly that states the value of the imported hose, with respect to the transaction in which the power steering hose assembly producer acquires the imported hose from the wholesaler, the light-duty vehicle producer may include that value as the value of non-originating materials, in accordance with section 9(2)(e): in this situation, that value is $5; and the $2 cost of transporting the good from the location of the wholesaler to the location of the producer, because that cost is separately identified, would not be included in the value of non-originating materials of the light-duty vehicle;

(3) if the light-duty vehicle producer has a statement referred to in section 9(2)(f) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(f) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value content is 55 per cent, the value of non-originating materials would be $4.50; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(f) does not allow for the deduction of transportation costs that would otherwise not be non-originating;

(4) if the light-duty vehicle producer has a statement referred to in section 9(2)(g) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(g) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value-content requirement is 50 per cent, the value of non-originating materials would be $5; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(g) does not allow for the deduction of transportation costs that would otherwise not be non-originating; or

(5) if the light-duty vehicle producer does not have a statement referred to in any of sections 9(2)(c) through (h) from the producer of the power steering hose assembly, the light-duty vehicle producer includes in the value of non-originating materials of the vehicles the value, determined in accordance with section 9(2)(i), of the power steering hose assembly: in this situation, that amount would be $10, the cost to the producer of acquiring that material.

Example 10:

A producer of light-duty vehicles located in City C in the territory of a NAFTA country imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV, and uses that good as original equipment in the production of a light-duty vehicle.

The rubber hose arrives at City A in the NAFTA country, but the producer of the light-duty vehicle does not have title to the good; it is transported under bond to City B, and on its arrival in City B, the producer of the light-duty vehicle takes title to it and the good is received in the territory of a NAFTA country. The good is then transported to the location of the light-duty vehicle producer in City C.

The customs value of the imported good is $4, the transportation and other costs referred to in subparagraph 9(2)(b)(ii) to City A are $3 and to City B are $2, and the cost of duties, taxes and other fees referred to in section 9(4) is $1. The cost of transporting the good from City B to the location of the producer in City C is $1. The rubber hose is traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value, under section 9(2)(b), of non-originating materials of that vehicle is the customs value of the traced material and, where not included in that value, the cost of taxes, duties, fees and the cost of transporting the traced material to the place where title is taken. In this situation, the value of non-originating materials would be the customs value of the traced material, $4, the cost of duties taxes and other fees, $1, the cost of transporting the material to City A, $3, and the cost of transporting that material from City A to City B, $2, for a total of $10. The $1 cost of transporting the good from City B to the location of the producer in City C would not be included in the value of non-originating materials of the light-duty vehicle because a person of a NAFTA country has taken title to the traced material.

Example 11:

A radiator provided for in subheading 8708.91 is imported from outside the territories of the NAFTA countries by a producer of light-duty vehicles and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

The radiator is transported by ship from outside the territories of the NAFTA countries and arrives in the territory of the NAFTA country at City A. The radiator is not, however, unloaded at City A and although the radiator is physically present in the territory of the NAFTA country, it has not been received in the territory of a NAFTA country.

The ship sails in territorial waters from City A to City B and the radiator is unloaded there. The light-duty vehicle producer files, from City C in the same country, the entry for the radiator; the radiator enters the territory of the NAFTA country at City B.

Subheading 8708.91 is listed in Schedule IV. The radiator is a traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the radiator is included in the value of non-originating materials of the light-duty vehicle. The costs of any freight, insurance, packing and other costs incurred in transporting the radiator to City B are included in the value of non-originating materials of the light-duty vehicle, including the cost of transporting the radiator from City A to City B. The costs of any freight, insurance, packing and other costs that were incurred in transporting the radiator from City B to the location of the producer are not included in the value of non-originating materials of the light-duty vehicle.

Example 12:

Producer X, located in NAFTA country A, produces a car seat of subheading No. 9401.20 that is used in the production of a light-duty vehicle. The only non-originating material used in the production of the car seat is an electric motor of subheading No. 8501.20 that was imported by Producer X from outside the territories of the NAFTA countries. The electric motor is a material of a tariff provision listed in Schedule IV and thus is a traced material.

Producer X sells the car seat as original equipment to Producer Y, a light-duty vehicle producer, located in NAFTA country B. The car seat is an originating good because the non-originating material in the car seat (the electric motor) undergoes the applicable change in tariff classification set out in a rule that specifies only a change in tariff classification. Consequently, Producer X does not choose to calculate the regional value content of the car seat in accordance with section 12(1).

For purposes of determining, under section 9(1), the value of non-originating materials used in the production of the light-duty vehicle that incorporates the car seat, the value of the electric motor is included even though the car seat qualifies as an originating material.

Producer X provides Producer Y with a statement described in section 9(2)(c), with the value of non-originating material used in the production of the car seat determined in accordance with section 12(3), as is permitted by section 9(8). Producer Y uses that value as the value of non-originating materials used in the production of the light-duty vehicle with respect to the car seat.

Example 13:

This example has the same facts as in Example 12, except that the car seat does not qualify as an originating good under the rule that specifies only a change in tariff classification. Instead, it qualifies as an originating good under a rule that specifies a regional value-content requirement and a change in tariff classification. For purposes of that rule, Producer X chose to calculate the regional value content of the car seat in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(a).

For purposes of the statement described in section 9(2)(c), Producer X determined, as is permitted under section 9(8), the value of non-originating material used in the production of the car seat in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 10. HEAVY-DUTY AUTOMOTIVE GOODS

Determining VNM for the calculation of the RVC for heavy-duty automotive goods

(1) Except as otherwise provided in subsections (3) through (8) and section 12(10)(a), for purposes of calculating the regional value content of a heavy-duty automotive good under the net cost method, the value of non-originating materials used by the producer of the good in the production of the good shall be the sum of

(a) for each listed material that is a non-originating material, is a self-produced material and is used by the producer in the production of the good, at the choice of the producer, either

(i) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that listed material in accordance with Schedule VII,

(ii) the aggregate of each cost that forms part of the total cost incurred with respect to that listed material that can be reasonably allocated to that listed material in accordance with Schedule VII, or

(iii) the sum of

(A) the customs value of each non-originating material imported by the producer and used in the production of the listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(B) the value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired it;

(b) for each listed material that is a non-originating material, is produced in the territory of a NAFTA country and is acquired and used by the producer in the production of the good, at the choice of the producer, either

(i) the value of that non-originating listed material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired the listed material, or

(ii) where the producer of the good has a statement described in clause (A) or (B) with respect to each material that is a non-originating material used in the production of that listed material, the sum of

(A) the customs value of each non-originating material imported by the producer of the listed material and used in the production of that listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), if the producer of the good has a statement signed by the producer of the listed material that states the customs value of that non-originating material and the costs referred to in subsections (2)(c) through (f) that the producer of the listed material incurred with respect to the non-originating material, and

(B) the value of each non-originating material that is not imported by the producer of the listed material, and is acquired and used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired that non-originating material, if the producer of the good has a statement signed by the producer of the listed material that states the value of the acquired material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired the non-originating material;

(c) for each listed material, automotive component assembly, automotive component or sub-component that is imported from outside the territories of the NAFTA countries, and is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating listed material, automotive component assembly, automotive component or sub-component, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating listed material, automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(d) for each automotive component assembly, automotive component or sub-component that is an originating material and is acquired and used by the producer in the production of the good, at the choice of the producer,

(i) the sum of

(A) the value of each non-originating listed material used in the production of the originating material, determined under paragraphs (a) and (b),

(B) the value of each non-originating material incorporated into the originating material, determined under paragraph (c),

(C) the value of each non-originating listed material used in the production of a material referred to in paragraph (e) that is used in the production of the originating material, determined under paragraphs (a) and (b), and

(D) where the value of a non-originating listed material referred to in clause (C), and used in the production of a non-originating automotive component assembly, automotive component or sub-component that is used in the production of the originating material, is not included under clause (C), the value of that automotive component assembly, automotive component or sub-component, determined under paragraph (e)(ii),

if the producer has a statement, signed by the person from whom the originating material was acquired, that states the sum of the values, as determined by the producer of the originating material under paragraphs (a), (b), (c) and (e) of each non-originating material referred to in any of clauses (A) through (D) that is incorporated into that originating material;

(ii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVC)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material and states the regional value content of the material,

(iii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVCR)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material but does not state the value of non-originating materials with respect to that acquired material; or

(iv) the value of that automotive component assembly, automotive component or sub-component determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material;

(e) for each automotive component assembly, automotive component or sub-component that is a non-originating material produced in the territory of a NAFTA country and that is acquired by the producer and used by the producer in the production of the good, at the choice of the producer, either

(i) the sum of the values of the non-originating materials incorporated into that non-originating material that is acquired by the producer, determined under paragraphs (a), (b), (c), (d) and (f), if the producer has a statement, signed by the person from whom the non-originating material was acquired, that states the sum of the values of the non-originating materials incorporated into that non-originating material, determined by the producer of the non-originating material in accordance with paragraphs (a), (b), (c), (d) and (f), or

(ii) the value of that non-originating automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material; and

(f) for each non-originating material that is not referred to in paragraph (a), (b), (c) or (e) and that is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating material, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material.

Application of Schedule VIII to determine VNM; additional costs to be included

(2) For purposes of subsection (1)(a)(ii)(B), subsection (1)(b)(i), subsection (1)(b)(ii)(B), subsections (1)(c)(ii), (1)(d)(ii) through (iv), (1)(e)(ii) and subsection (1)(f)(ii), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that clause, subparagraph or paragraph, or

(b) where, with respect to the transaction referred to in that clause, subparagraph, or paragraph, there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value of the material is unacceptable under section 2(3) of that Schedule, shall be determined in accordance with sections 6 through 11 of that Schedule,

and shall include the following costs where they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing, and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage and customs clearance services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

Value of imported material if customs value is not in accordance with Schedule VIII

(3) For purposes of subsections (1)(a)(ii)(A) and (b)(ii)(A) and subsections (1)(c)(i) and (f)(i), where the customs value of an imported material referred to in those clauses or paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in sections (2)(c) through (f) are not included in that value, those costs shall be added to the value of the material.

Option to use section 9 tracing rules in certain circumstances

(4) For purposes of calculating the regional value content of a heavy-duty component, where

(a) a heavy-duty component is produced in the same plant as an automotive component assembly or automotive component that is of the same heading or subheading as that heavy-duty component and is for use as original equipment in a light-duty vehicle, and

(b) it is not reasonable for the producer to know which of the production will constitute a heavy-duty component for use in a heavy-duty vehicle,

the value of the non-originating materials used in the production of the heavy-duty component in that plant may, at the choice of the producer, be determined in the manner set out in section 9.

(5) For purposes of calculating the regional value content of a heavy-duty vehicle, where a producer of such a vehicle acquires, for use by that producer in the production of the vehicle, a heavy-duty component with respect to which the value of non-originating materials has been determined in accordance with subsection (4), the value of the non-originating materials used by the producer with respect to that heavy-duty component is the value of non-originating materials determined under that subsection.

VNM may be redetermined for certain acquired materials

(6) Where it is determined, during the course of a verification of origin of a heavy-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (1)(d)(ii) or (iii) that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (1), be determined in accordance with subsection (2) with respect to the transaction in which that producer acquired it.

Effect on value of traced material if value on a statement cannot be verified

(7) Where any person who has information with respect to a statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) does not allow a customs administration to verify that information during a verification of origin, the value of any material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (2) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

Use of value of VNM as determined under section 12(3) for traced material incorporated into another material

(8) Where a heavy-duty component, sub-component or listed material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a heavy-duty automotive good, the statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the heavy-duty component, sub-component or listed material.

Interpretations and clarifications for provisions applicable to rules for determining VNM for heavy-duty automotive goods

(9) For purposes of this section,

(a) for purposes of calculating the regional value content of a heavy-duty automotive good, sub-component or listed material, a producer of such a good may, in accordance with section 7(4), designate as an intermediate material any self-produced material, other than a heavy-duty component or sub-component, that is used in the production of that good;

(b) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(c) this section does not apply to a sub-component for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good;

(d) for purposes of calculating the regional value content of a heavy-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(e) any information set out in a statement referred to in subsections (1)(b)(ii), (d)(i) through (iii) or (e)(i) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located; and

(f) total cost under subsections (1)(a)(i) and (ii) consists of the costs referred to section 2(6), and is calculated in accordance with that section and section 2(7).

Examples of application of rules for determining VNM for heavy-duty automotive goods

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: A listed material is imported from outside the territories of the NAFTA countries

A cast head, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The cast head is a listed material; the engine is an automotive component.

Situation 1: Use of the listed material in an automotive component

For purposes of calculating the regional value content of the engine, the value of listed materials imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the engine. Because the cast head was produced outside the territories of the NAFTA countries, its value, under section 10(1)(c), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the listed material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value, determined under section 10(1)(c), of the cast head, is included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(ii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(iii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the listed material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the cast head, as determined under section 10(1)(c), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Example 2: A material is imported from outside the territories of the NAFTA countries

A rocker arm assembly, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The rocker arm assembly is neither a listed material nor a sub-component; the engine is an automotive component.

Situation 1: Use of the material in an automotive component

For purposes of calculating the regional value content of the engine, the value of non-originating materials that are not listed materials is included in the value of non-originating materials used in the production of the engine. Because the rocker arm assembly was produced outside the territories of the NAFTA countries, it is a non-originating material and its value, under section 10(1)(f), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is not included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(ii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(iii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1) (a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Situation 4: Use of the material in a self-produced automotive component

If the engine is a self-produced material rather than an acquired material, the heavy-duty vehicle producer is using the rocker arm assembly in the production of the heavy-duty vehicle rather than in the production of the engine, because, under section 7(4), the engine cannot be designated as an intermediate material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value, under section 10(1)(f), of the rocker arm assembly is included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 3: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component.

Situation: Use of the automotive component

For purposes of calculating the regional value content of the heavy-duty vehicle in which the transmission is used, the value of the transmission is included in the value of the non-originating materials under section 10(1)(c), regardless of whether the producer imported the transmission or acquired it from someone else in the territory of a NAFTA country.

Example 4: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and combined with an engine to produce an engine-transmission assembly that will be used as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component; the engine-transmission assembly is an automotive component assembly.

Situation: Use of the automotive component assembly

The automotive component assembly is acquired by a producer who uses it in the production of a heavy-duty vehicle. If the automotive component assembly that incorporates the imported transmission is an originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under any of section 10(1)(d) (i), (ii), (iii) and (iv). (See example 1 for more detailed explanations of these provisions.) If the automotive component assembly that incorporates the imported transmission is a non-originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under section 10(1)(e) (i) or (ii). (See example 1 for more detailed explanations of these provisions.)

Regardless of whether the automotive component assembly is an originating material or a non-originating material, the value of the automotive component that was imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the heavy-duty vehicle. The transmission is a non-originating material, and, for purposes of calculating the regional value content of an automotive component assembly or heavy-duty vehicle that incorporates that transmission, the value of the transmission is included in the value of non-originating materials used in the production of the automotive component assembly or heavy-duty vehicle that incorporates it.

Example 5: A material is imported from outside the territories of the NAFTA countries

An aluminum ingot, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of cast block that will be used in an engine that will be used as original equipment in the production of a heavy-duty vehicle. The aluminum ingot is not a listed material; the cast block is a listed material; the engine is an automotive component.

Situation 1: Use of the material in an intermediate material that is a listed material

The engine producer designates the cast block as an intermediate material under section 7(4). For purposes of determining the origin of that cast block, because the aluminum ingot is classified under a different heading than the cast block, the cast block satisfies the applicable change in tariff classification and is an originating material.

Situation 2: Use of the listed material incorporating the material

For purposes of calculating the regional value content of the engine that incorporates that cast block (and thus incorporates the aluminum ingot), the value of non-originating materials is determined under section 10(1). Because none of sections 10(1) (a) through (f) require that a listed material that is an originating material be included in the value of non-originating materials used in the production of a good, the value of the cast block is not included in the value of non-originating materials used in the production of the engine or in the value of non-originating materials used in the production of an automotive component assembly or heavy-duty vehicle that incorporates the engine.

Because section 10(1)(d) does not refer to a listed material that is an originating material, the value of the non-originating aluminum ingot used in the production of the originating cast block is not included in the value of non-originating materials used in the production of any good or material that incorporates the originating cast block.

Example 6: A non-originating listed material is used to produce a sub-component that is used to produce another sub-component

A crankshaft, produced in the territory of NAFTA country A from a forging imported from outside the territories of the NAFTA countries, is a non-originating material. The crankshaft is sold to another producer, located in the same country, who uses it to produce an originating block assembly. That block assembly is sold to another producer, also located in the same country, who uses it to produce a finished block. The finished block is sold to a producer of engines, who is located in NAFTA country B, for use in the production of a heavy-duty vehicle. The crankshaft is a listed material; the block assembly is a sub-component, as is the finished block.

Situation 1: Calculating the regional value content of the finished block

A sub-component is not a heavy-duty automotive good. As referred to in section 10(9)(c), for purposes of calculating the regional value content of the sub-component before it is incorporated into a heavy-duty automotive good, such as when the sub-component is exported from the territory of one NAFTA country to the territory of another NAFTA country, the value of non-originating materials of the sub-component includes only the value of non-originating materials used in the production of that sub-component. Because the block assembly is an originating material, its value is not included in the value of non-originating materials of the finished block, nor is the value of the non-originating crankshaft included in the value of non-originating materials used in the production of the finished block because the crankshaft was used in the production of the block assembly and was not used in the production of the finished block.

Situation 2: Calculating the regional value content of the component that incorporates the finished block

For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates a sub-component, the value of non-originating materials used in the production of the sub-component is determined under section 10(1) (d) or (e) with respect to that sub-component. In this situation, the value, under section 10(1)(b), of the non-originating crankshaft is included in the value of non-originating materials used in the production of the engine. (See examples 1 and 2 for more detailed explanations of sections 10(1) (d) and (e).)

Example 7: A non-listed material is imported from outside the territories of the NAFTA countries and is used in the production of another non-listed material

A bumper part, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and is used in the production of a bumper. The bumper is used in the territory of a NAFTA country as original equipment in the production of a heavy-duty vehicle. Neither a bumper part nor a bumper is a listed material, sub-component, automotive component or automotive component assembly.

Situation 1: The non-listed material is an originating material

The bumper is an originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, neither the value of the imported bumper part nor the value of the bumper is included in the value of the non-originating materials.

Situation 2: The non-listed material is a non-originating material

The bumper is a non-originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(f) with respect to the bumper. In this situation, the value of the bumper is included in the value of non-originating materials of the heavy-duty vehicle. Because a bumper is not a listed material, the producer of the heavy-duty vehicle does not have the option, under section 10(1)(b)(ii), to include only the value of the imported bumper part in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 8:

Situation: Transhipment of a listed material

A producer, located in the territory of a NAFTA country, produces, in that country, a cast head that is an originating good. The producer exports the cast head to outside the territories of the NAFTA territories, where valves, springs, valve lifters, a camshaft and gears are added to it to create a cast head assembly. An engine producer, located in the territory of a NAFTA country, imports the cast head assembly into that country and uses it in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. A cast head is a listed material; a cast head assembly is a sub-component.

For purposes of calculating the regional value content of the engine, the value of the imported cast head assembly is included in the value of non-originating materials under section 10(1)(c). The value of the cast head cannot be deducted from the value determined under section 10(1)(c). Although the cast head was once an originating good, under section 18 when further production was performed with respect to the cast head outside the territories of the NAFTA countries, it was no longer an originating good.

Example 9: A material is imported from outside the territories of the NAFTA countries and a heavy-duty vehicle producer self-produces a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment by the same producer in the production of a heavy-duty vehicle. Although the producer, under section 7(4), designates the water pump as an intermediate material it is a non-originating material because it fails to satisfy the regional value-content requirement. A water pump is a listed material.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the total cost, determined under section 10(1)(a)(i), of the water pump or the value, determined under section 10(1)(a)(iii)(A), of the material imported from outside the territories of the NAFTA countries.

Example 10: A material is acquired and used to produce a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is acquired in the territory of a NAFTA country and is used in that country in the production of a water pump that will be used as original equipment in the production of a heavy-duty vehicle. The producer of the water pump and the producer of the heavy-duty vehicle are separate, unrelated producers, located in the same country. A water pump is a listed material. The producer of the water pump chose to calculate the regional value content of the water pump in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(b). The water pump is a non-originating material because it fails to satisfy the regional value-content requirement.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the value, determined under section 10(1)(b)(i), of the water pump or, if the producer has a statement referred to in section 10(1)(b)(ii)(B), the value, determined under that section, of the material imported from outside the territories of the NAFTA countries.

The producer has a statement referred to in section 10(1)(b)(ii)(B) and chooses to use the value of non-originating material determined under that section. The statement states, as is permitted under section 10(8), the value of non-originating material used in the production of the water pump in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 11. MOTOR VEHICLE AVERAGING

NC and VNM for motor vehicles may be averaged over producer's fiscal year

(1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that

(a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and

(b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required when producer chooses to average for motor vehicles

(2) A choice made under subsection (1) shall

(a) state the category chosen by the producer, and

(i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (9);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

Averaging period

(3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) or (6) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.

(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

Categories of motor vehicles for averaging

(5) The categories referred to in subsection (1) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(c) the same model line of motor vehicles produced in the territory of a NAFTA country.

(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule VI be made in accordance with that schedule.

Timely filing of choice to average

(7) Subject to section 5(4) of Schedule VI, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

Choice to average cannot be rescinded

(8) A choice filed for the period referred to in subsection (1) or (3) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Averaged net cost and VNM included in calculation of RVC on the basis of producer's option to include all vehicles of category or only certain exported vehicles of category

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(11) The following example is an ''Example'' as referred to in section 2(4).

Example:

A motor vehicle producer located in NAFTA country A produces vehicles that fall within a category set out in section 11(5) that is chosen by the producer. The motor vehicles are to be sold in NAFTA countries A, B and C, as well as in country D, which is not a NAFTA country. Under section 11(1), the motor vehicle producer may choose that the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year. The producer may state in the choice the basis of the calculation as described in section 11(9)(a), in which case the calculation would be on the basis of all the motor vehicles produced regardless of where they are destined. Alternatively, the producer may state in the choice the basis of the calculation as described in section 11(9)(b). In this case, the producer would also need to state that the calculation is on the basis of

(a) the motor vehicles produced that are for export to NAFTA countries B and C;

(b) the motor vehicles produced that are for export to only NAFTA country B; or

(c) the motor vehicles produced that are for export to only NAFTA country C.

The calculation would be on the basis as described in the choice.

SECTION 12. AUTOMOTIVE PARTS AVERAGING

NC and VNM for automotive parts may be averaged to determine RVC of parts

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or an automotive component assembly, an automotive component, a sub-component or a listed material, produced in the same plant, may, where the producer of those goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

VNM for each unit in a category of goods for which averaging used

(3) The value of non-originating materials of each unit of the goods

(a) in the category set out in subsection (4) chosen by the producer, and

(b) produced during the period chosen by the producer under subsection (5),

shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

Categories of automotive parts for averaging

(4) The categories referred to in subsection (1)(a) are the following:

(a) original equipment for use in the production of light- duty vehicles;

(b) original equipment for use in the production of heavy-duty vehicles;

(c) after-market parts;

(d) any combination of goods referred to in paragraphs (a) through (c);

(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and

(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

Periods for averaging RVC for automotive parts

(5) The period referred to in subsection (1)(a) is,

(a) with respect to goods referred to in subsection (4) (a), (b) or (d), or subsection (4) (e) or (f) where the goods in that category are in a category referred to in subsection (4) (a) or (b), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period or the fiscal year of the motor vehicle producer to whom those goods are sold; and

(b) with respect to goods referred to in subsection (4)(c), or subsection (4) (e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, the fiscal year of that producer or the fiscal year of the motor vehicle producer to whom those goods are sold.

Choice to average may not be rescinded

(6) A choice made under subsection (1) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

(7) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(a), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for

(a) the remainder of the fiscal year of the motor vehicle producer to whom those goods are sold, where the producer chooses under subsection (9)(a) the fiscal year of that motor vehicle producer; and

(b) the remainder of the fiscal year of the producer of those goods, where the producer does not choose under subsection (9)(a) the fiscal year of the motor vehicle producer to whom the goods are sold.

(8) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(b), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of, at the choice of the producer, the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold.

(9) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods, the producer may,

(a) with respect to goods referred to in subsection (5)(a), at the end of the fiscal year of the motor vehicle producer to whom those goods are sold, choose the fiscal year of that motor vehicle producer; and

(b) with respect to goods referred to in subsection (5)(b), at the end of the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold, as the case may be, choose the producer's fiscal year or the fiscal year of that motor vehicle producer.

Applicable method for averaging VNM under different categories

(10) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4) (d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(11) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

SECTION 13. SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

Changes in regional value content level for automotive goods

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content requirement for a good referred to in paragraph (a) or (b) is as follows:

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

Regional value content level for motor vehicles produced in a new plant or in a refit plant

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

Value of machinery in a new plant

(3) For purposes of subsection (2)(a)(iii), the value of machinery shall be

(a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;

(b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and

(c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

Averaging period for calculation of RVC for vehicles of new plant or refit plant

(4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into the territory of which vehicles in that category are to be imported a choice to calculate the regional value content of such vehicles by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over

(i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins on or after the beginning of the period,

(ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or

(iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

Information required on document filed when choosing to average; timely filing;

(5) A choice made under subsection (4) shall

(a) state the category chosen by the producer and

(i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (8);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

No rescission or modification permitted

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

Categories of motor vehicles for averaging

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

Period for averaging RVC of motor vehicles of new or refit plant

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

Year-end analysis required if averaging based on estimated costs; obligation to notify of change in status

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value-content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

PART VI
GENERAL PROVISIONS
SECTION 14. ACCUMULATION

Option to determine origin of good by accumulating the production of a material with production of the good in which the material is used

(1) Subject to subsections (2) and (4), for purposes of determining whether a good is an originating good, an exporter or producer of a good may choose to accumulate the production, by one or more producers in the territory of one or more of the NAFTA countries, of materials that are incorporated into that good so that the production of the materials shall be considered to have been performed by that exporter or producer.

Statement required; information as to net cost and value of non-originating materials from production of material if accumulating for regional value content requirement

(2) Where a good is subject to a regional value-content requirement and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that

(a) states the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the net cost incurred by the producer of the material plus, where not included in the net cost incurred by the producer of the material, the costs referred to in sections 7(1)(c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of non-originating materials used by the producer of the material; or

(b) states any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Averaging of costs from accumulated production

(3) Where a good is subject to a regional value-content requirement and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, where not included in the net costs incurred by the producer of the material, the costs referred to in sections 7(1) (c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

Accumulated production considered to be production of a single producer

(4) For purposes of section 7(4), where a producer of the good chooses to accumulate the production of materials under subsection (1), that production shall be considered to be the production of the producer of the good.

(5) For purposes of this section,

(a) in order to accumulate the production of a material,

(i) where the good is subject to a regional value-content requirement, the producer of the good must have a statement described in subsection (2) or (3) that is signed by the producer of the material, and

(ii) where an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the NAFTA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) or (3) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

Examples of accumulation of production

(6) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 14(1)

Producer A, located in NAFTA country A, imports unfinished bearing rings provided for in subheading 8482.99 into NAFTA country A from a non-NAFTA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods. The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the finished bearing rings, per unit	$1.45
Excluded costs: (included in period costs)	0.05
Net cost of the finished bearing rings, per unit	$1.40

Producer A sells the finished bearing rings to Producer B who is located in NAFTA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to NAFTA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value-content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in section 14(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs: (($0.15 + $0.15), including $0.10 in excluded costs)	0.30
Other costs: ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit	$2.85
Excluded costs: (included in period costs)	0.10
Net cost of the bearings, per unit	$2.75

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − $0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 − $0.65)	0.85
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 − $0.35)	1.15
Other product costs ($0.75 + $0.35)	1.10
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$

$$= 59.7\%$$

Therefore, the bearings are originating goods.

Example 2: section 14(1)

Producer A, located in NAFTA country A, imports non-originating cotton, carded or combed, provided for in heading 5203 for use in the production of cotton yarn provided for in heading 5205. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 5205, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in NAFTA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 5208. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 5208, which is a change from any heading outside headings 5208 through 5212, except from certain headings, under which various yarns, including cotton yarn provided for in heading 5205, are classified. Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, under section 14(1), if Producer B chooses to accumulate the production of Producer A, the production of Producer A would be considered to have been performed by Producer B. The rule for heading 5208, under which the cotton fabric is classified, does not exclude a change from heading 5203, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 5203 to the woven fabric of cotton provided for in heading 5208 would satisfy the applicable change of tariff classification for heading 5208. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in section 14(4)(a)(ii).

SECTION 15. INABILITY TO PROVIDE SUFFICIENT INFORMATION

Supplier of material unable to provide information; beyond control of supplier; procedure to be followed by Customs

(1) Where, during a verification of origin of a good, the person from whom a producer of the good acquired a material used in the production of that good is unable to provide the customs administration that is conducting the verification with sufficient information to substantiate that the material is an originating material or that the value of the material declared for purpose of calculating the regional value content of the good is accurate, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin or value of the material, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that material that concluded that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(b) whether an independent auditor has confirmed the accuracy of

(i) any signed statement referred to in this Appendix with respect to the material,

(ii) the information that was used by the person from whom the producer acquired the material to substantiate whether the material is an originating material, or

(iii) the information submitted by the producer of the material with an application for an advance ruling where, on the basis of that information, the customs administration concluded that the material is an originating material or that the value declared for the purpose of calculating the regional value content of the good is accurate;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical materials or similar materials produced by the producer of the material and determined that

(i) the identical materials or similar materials are originating materials, or

(ii) any signed statement referred to in this Appendix with respect to those identical materials or similar materials is accurate;

(d) whether the producer of the good has exercised due diligence to ensure that any signed statement that is referred to in this Appendix with respect to the material and that was provided by the person from whom the producer acquired the material is accurate;

(e) where the customs administration has access only to partial records of the person from whom the producer acquired the material, whether the records provide sufficient evidence to substantiate that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin or value of the material from the customs administration of the NAFTA country in the territory of which the person from whom the producer acquired the material was located; and

(g) whether the producer of the good, the person from whom the producer acquired the material or a representative of that person or producer agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the material.

"Reasons beyond control" of supplier

(2) For purposes of subsection (1), ''reasons beyond the control'' of the person from whom the producer of the good acquired the material includes

(a) the bankruptcy of the person from whom the producer acquired the material or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the material is an originating material or the value of the material declared for the purpose of calculating the regional value content of the good;

(b) any other reason that results in partial or complete loss of records of that producer that the producer could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

Exporter or producer of good unable to provide information; reasons beyond control of exporter or producer; procedure to be followed by Customs

(3) Where, during a verification of origin of a good, the exporter or producer of the good is unable to provide the customs administration conducting the verification with sufficient information to substantiate that the good is an originating good, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin of the good, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that good that concluded that the good is an originating good;

(b) whether an independent auditor has confirmed the accuracy of an origin statement with respect to the good;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical goods or similar goods produced by the producer of the good and determined that the identical goods or similar goods are originating goods;

(d) whether the exporter or producer of the good has exercised due diligence to ensure that the information provided to substantiate that the good is an originating good is sufficient; and

(e) where the customs administration has access only to partial records of the exporter or producer of the good, whether the records provide sufficient evidence to substantiate that the good is an originating good;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin of the good from the customs administration of the NAFTA country in the territory of which the exporter or producer of the good was located; and

(g) whether the exporter or producer of the good or a representative of that person agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the good.

"Reasons beyond control"

(4) For purposes of subsection (3), ''reasons beyond the control'' of the exporter or producer of the good includes

(a) the bankruptcy of the exporter or producer or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the good is an originating good;

(b) any other reason that results in partial or complete loss of records of that exporter or producer that that person could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

SECTION 16. TRANSSHIPMENT

Effect of subsequent processing outside the territory of a NAFTA country; loss of originating good status

(1) A good is not an originating good by reason of having undergone production that occurs entirely in the territory of one or more of the NAFTA countries that would enable the good to qualify as an originating good if subsequent to that production

(a) the good is withdrawn from customs control outside the territories of the NAFTA countries; or

(b) the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading or any other operation necessary to preserve the good in good condition, such as inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulphur dioxide or other aqueous solutions, replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a NAFTA country.

Transshipped good considered entirely non-originating

(2) A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for purposes of this Appendix.

Exceptions for certain goods

(3) Subsection (1) does not apply with respect to a good provided for in any of subheadings 8541.10 through 8541.60 and 8542.11 through 8542.80 where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90.

SECTION 17. NON-QUALIFYING OPERATIONS

Mere dilution; production or pricing practice to circumvent the provisions of this Appendix

17. A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this Appendix.

SCHEDULE I

Schedule I shall be the text of Annex 401 to the Agreement as implemented in General Note 12 of the HTSUS.

SCHEDULE II
VALUE OF GOODS

SECTION 1. Definitions.

For purposes of this Schedule, unless otherwise stated:

''buyer'' refers to a person who purchases a good from the producer;

''buying commissions'' means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

''producer'' refers to the producer of the good being valued.

SECTION 2.

For purposes of Article 402(2) of the Agreement, as implemented by section 6(2) of this Appendix, the transaction value of a good shall be the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

SECTION 3.

(1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money; it may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities shall not be added to the price actually paid or payable.

(3) The transaction value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good has been sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

SECTION 4.

(1) In determining the transaction value of a good, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers in which the good is packaged for retail sale are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the NAFTA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsections (1)(a) (i) and (ii) shall be

(a) those amounts that are recorded on the books of the buyer, or

(b) where those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subsection (1)(a)(iii) and the value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are imported from outside the territory of the NAFTA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) where the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) where the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) where the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the NAFTA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (7),

and shall include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer, to the extent that such costs are not included under paragraphs (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(f) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(h) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(7) For purposes of subsection (6)(d), the total cost of the packaging materials and containers referred to in subsection (1)(a)(iii) or the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII; and

(b) where the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the buyer, or

(b) where such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements shall be the cost of the lease as recorded on the books of the buyer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the good the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only where that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the buyer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the buyer or the producer.

SCHEDULE III
UNACCEPTABLE TRANSACTION VALUE

SECTION 1. Definitions.

For purposes of this Schedule, unless otherwise stated

''buyer'' refers to a person who purchases a good from the producer;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good being valued is imported;

''producer'' refers to the producer of the good being valued.

SECTION 2.

(1) There is no transaction value for a good where the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable where

(a) there are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 4(1)(d) of Schedule II; or

(d) except as provided in section 3, the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The conditions or considerations referred to in subsection (2)(b) include the following circumstances:

(a) the producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that has been provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of subsection (2)(b), conditions or considerations relating to the production or marketing of the good shall not render the transaction value unacceptable, such as where the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 4(1) of Schedule II, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(2)(d), the fact that the producer and the buyer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the producer and the buyer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the producer and the buyer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the producer and the buyer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the producer and the buyer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the producer and the buyer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the producer and the buyer, or it may already have detailed information concerning the relationship between the producer and the buyer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the producer and the buyer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the producer and the buyer organize their commercial relations and the way in which the price actually paid or payable for the good being valued was arrived at, in order to determine whether the relationship between the producer and the buyer influenced that price actually paid or payable. Where it can be shown that the producer and the buyer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the good had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the producer settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the buyer and the producer. As another illustration, where it is shown that the price actually paid or payable for the good is adequate to ensure recovery of the total cost of producing the good plus a profit that is representative of the producer's overall profit realized over a representative period of time, such as on an annual basis, in sales of goods of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the buyer.

(4) In a sale between a producer and a buyer who are related persons, the transaction value shall be accepted and determined in accordance with section 2 of Schedule II wherever the producer demonstrates that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).

(5) The value to be used as a test value shall be the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.

(6) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 4(1)(b) of Schedule II and the costs incurred by the producer in sales to unrelated buyers that are not incurred by the producer in sales to a related person.

(7) The application of the test value referred to in subsection (4) shall be used at the initiative of the producer and shall be used only for comparison purposes to determine whether the transaction value of the good is acceptable. The test value shall not be used as the transaction value of that good.

(8) Subsection (4) provides an opportunity for the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration, and is therefore acceptable under subsections (1) and (4). Where the application of a test value under subsection (4) demonstrates that the transaction value of the good being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the producer and the buyer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates a test value referred to in subsection (4), the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(9) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical goods or similar goods closely approximates the transaction value of the good being valued. These factors include the nature of the good, the nature of the industry itself, the season in which the good is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of good could be unacceptable, while a large difference in a case involving another type of good might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SCHEDULE IV
LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX

4009
4010.10
4011
4016.93.10
4016.99.30 and 4016.99.55
7007.11 and 7007.21
7009.10
8301.20
8407.31
8407.32

8407.33
8407.34.05, 8407.34.15 and 8407.34.25
8407.34.35, 8407.34.45 and 8407.34.55
8408.20
8409
8413.30
8414.59.30
8414.80.05
8415.81 through 8415.83
8421.39.40
8481.20, 8481.30 and 8481.80
8482.10 through 8482.80
8483.10 through 8483.40
8483.50
8501.10
8501.20
8501.31
8501.32.45
8507.20.40, 8507.30.40, 8507.40.40 and 8507.80.40
8511.30
8511.40
8511.50
8512.20
8512.40
8519.91
8527.21
8527.29
8536.50
8536.90
8537.10.30
8539.10
8539.21
8544.30
8706
8707
8708.10.30
8708.21
8708.29.20
8708.29.10
8708.29.15
8708.39
8708.40
8708.50
8708.60
8708.70.05, 8708.70.25 and 8708.70.45
8708.80
8708.91
8708.92
8708.93.15 and 8708.93.60
8708.94
8708.99.03, 8708.99.27 and 8708.99.55
8708.99.06, 8708.99.31 and 8708.99.58
8708.99.09, 8708.99.34 and 8708.99.61
8708.99.12, 8708.99.37 and 8708.99.64
8708.99.15, 8708.99.40 and 8708.99.67
8708.99.18, 8708.99.43 and 8708.99.70
8708.99.21, 8708.99.46 and 8708.99.73
8708.99.24, 8708.99.49 and 8708.99.80
9031.80
9032.89
9401.20

SCHEDULE V

LIST OF AUTOMOTIVE COMPONENTS AND MATERIALS FOR THE PURPOSES OF SECTION 10 OF THE APPENDIX

Item	Column I automotive components	Column II listed materials
1.	Engines provided for in heading 8407 or 8408	Cast blocks, cast heads, fuel nozzles, fuel injector pumps, glow plugs, turbochargers, superchargers, electronic engine controls, intake manifolds, exhaust manifolds, intake valves, exhaust valves, crankshafts, camshafts, alternators, starters, air cleaner assemblies, pistons, connecting rods and assemblies made therefrom, rotor assemblies for rotary engines, flywheels (for manual transmissions), flexplates (for automatic transmissions), oil pans, oil pumps, pressure regulators, water pumps, crankshaft gears, camshaft gears, radiator assemblies, charge-air coolers.
2.	Gear boxes (transmissions) provided for in subheading 8708.40.	(a) For manual transmissions: transmission cases and clutch housings; clutches; internal shifting mechanisms; gear sets, synchronizers and shafts; and (b) For torque convertor type transmissions: transmission cases and convertor housings; torque convertor assemblies; gear sets and clutches; electronic transmission controls.

SCHEDULE VI
REGIONAL VALUE-CONTENT CALCULATION FOR CAMI

SECTION 1. Definitions.

In this Schedule,

''closed'' means, with respect to a plant, a closure

(a) for purposes of re-tooling for a change in model line, or

(b) as a result of any event or circumstance (other than the imposition of antidumping duties or countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI Automotive, Inc. or General Motors of Canada Limited) that CAMI Automotive, Inc. or General Motors of Canada Limited could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or a delay in obtaining raw materials, parts, fuel or utilities;

''GM'' means General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A. de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof;

''producer'' means CAMI Automotive, Inc.

SECTION 2.

For purposes of section 11 of this Appendix, for purposes of determining the regional value content, in a fiscal year, of a motor vehicle of a class of motor vehicles or a model line produced by the producer in the territory of Canada and imported into the territory of the United States, the producer may choose to calculate the regional value content by

(a) calculating

(i) the sum of

(A) the net cost incurred by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 3 that is chosen by the producer, and

(B) the net cost incurred by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(ii) the sum of

(A) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 2.1 that is chosen by the producer, and

(B) the value, determined in accordance with section 9 of this Appendix for light-duty vehicles and section 10 of this Appendix for heavy-duty vehicles, of the non-originating materials that are used by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(b) using the sums referred to in paragraphs (a)(i) and (ii) as the net cost and the value of non-originating materials, respectively, in the calculation referred to in section 6(3) of this Appendix,

provided that

(c) at the beginning of the producer's fiscal year, General Motors of Canada Limited owns 50 percent or more of the voting common stock of the producer, and

(d) GM acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line, as the case may be, that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 3.

The categories referred to in clauses 2(a)(i)(A) and (ii)(A) are the following:

(a) the class of motor vehicles that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries; and

(b) the model line that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 4.

Where GM does not satisfy the requirement set out in section 2(d), the producer may choose that the regional value content be calculated in accordance with section 2 only for those motor vehicles that are acquired by GM for distribution under the GEO marque or another GM marque.

SECTION 5.

(1) The producer may choose that the calculation referred to in section 2 be made over a period of two fiscal years where

(a) any plant operated by the producer or by General Motors of Canada Limited is closed for more than two consecutive months; and

(b) the motor vehicles of a category referred to in section 3, with respect to which the producer chooses that the regional value content be calculated in accordance with section 2, are produced in that plant.

(2) Subject to subsection (3), the period of two fiscal years referred to in subsection (1) corresponds to the fiscal year in which the plant is closed and, at the choice of the producer, the preceding or the subsequent fiscal year.

(3) Where the plant is closed for a period that spans two fiscal years, the calculation referred to in section 2 may be made only over those two fiscal years.

(4) Where the producer has chosen that the regional value content be calculated over two fiscal years under this section, the choice referred to in section 11(6) of this Appendix shall be filed not later than 10 days after the end of the period during which the plant is closed, or at such later time as the customs administration may accept.

SECTION 6.

For purposes of this Schedule, a motor vehicle producer shall be deemed to be GM where, as a result of an amalgamation, reorganization, division or similar transaction, that motor vehicle producer

(a) acquires all or substantially all of the assets used by GM, and

(b) directly or indirectly controls, or is controlled by, GM, or both that motor vehicle producer and GM are controlled by the same person.

SCHEDULE VII
REASONABLE ALLOCATION OF COSTS

SECTION 1. Definitions.

For purposes of this Schedule,

''costs'' means any costs that are included in total cost and that need to be allocated pursuant to sections 5(9), 6(11) and 7(6) and sections 10(1)(a)(i) and (ii) of these Regulations, section 4(7) of Schedule II and sections 5(7) and 10(2) of Schedule VIII;

''discontinued operations'', in the case of a producer located in a NAFTA country, has the meaning set out in that NAFTA country's Generally Accepted Accounting Principles;

''indirect overhead'' means period costs and other costs;

''internal management purpose'' means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

''overhead'' means costs, other than direct material costs and direct labor costs.

SECTION 2. Interpretation.

(1) In this Schedule, reference to ''producer'' shall, for purposes of section 4(7) of Schedule II, be read as a reference to ''buyer''.

(2) In this Schedule, reference to ''good'' shall,

(a) for purposes of section 6(14) of this Appendix, be read as a reference to ''identical goods or similar goods, or any combination thereof'';

(b) for purposes of section 7(6) of this Appendix, be read as a reference to ''intermediate material'';

(c) for purposes of section 11 of this Appendix, be read as a reference to ''category of vehicles that is chosen pursuant to section 11(1) of this Appendix'';

(d) for purposes of section 12 of this Appendix, be read as a reference to ''category of goods chosen pursuant to section 12(1) of this Appendix'';

(e) for purposes of section 13(4) of this Appendix, be read as a reference to ''category of vehicles chosen pursuant to section 13(4) of this Appendix'';

(f) for purposes of section 4(7) of Schedule II, be read as a reference to ''packaging materials and containers or the elements''; and

(g) for purposes of section 5(7) of Schedule VIII, be read as a reference to ''elements''.

Methods to Reasonably Allocate Costs

SECTION 3.

(1) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(2) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(3) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

SECTION 4.

Where costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated,

(a) with respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;

(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and

(c) with respect to overhead, on the basis of any of the following methods:

(i) the method set out in Addendum A, Addendum B or Addendum C,

(ii) a method based on a combination of the methods set out in Addenda A and B or Addenda A and C, and

(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

SECTION 5.

Any cost allocation method referred to in section 3 or 4 that is used by a producer for the purposes of this Appendix shall be used throughout the producer's fiscal year.

Costs Not Reasonably Allocated

SECTION 6.

The allocation to a good of any of the following is considered not to be reasonably allocated to the good:

(a) costs of a service provided by a producer of a good to another person where the service is not related to the good;

(b) gains or losses resulting from the disposition of a discontinued operation;

(c) cumulative effects of accounting changes reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles; and''.

(d) gains or losses resulting from the sale of a capital asset of the producer.

SECTION 7.

Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

ADDENDUM A
COST RATIO METHOD

Calculation of Cost Ratio

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer in accordance with the following formula:

$$CR = \frac{AB}{TAB}$$

where

CR is the cost ratio with respect to the good;

AB is the allocation base for the good; and
TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs Included in Overhead

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where
CAG is the costs allocated to the good;
CA is the costs to be allocated; and
CR is the cost ratio with respect to the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

Allocation Bases for Costs

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:
Direct Labor Hours
Direct Labor Costs
Units Produced
Machine-hours
Sales Dollars or Pesos
Floor Space

''Examples''

The following examples illustrate the application of the cost ratio method to costs included in overhead.

Example 1: Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375
Allocation of overhead to Good A and Good B:
Good A: $6,000,000 × .625 = $3,750,000
Good B: $6,000,000 × .375 = $2,250,000

Example 2: Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .833 = $4,998,000
Good B: $6,000,000 × .167 = $1,002,000

Example 3: Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 x .667 = $4,002,000
Good B: $6,000,000 x .333 = $1,998,000

Example 4: Machine-hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60
Allocation of Machine-Related Overhead to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Example 5: Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total Sales Dollars for Good A and Good B:
Good A: $4,000 × 2,000 = $8,000,000
Good B: $3,000 × 200 = $600,000
Total Sales Dollars: $8,000,000 + $600,000 = $8,600,000
Calculation of the Ratios:

Good A: $8,000,000/$8,600,000 = .93
Good B: $600,000/$8,600,000 = .07
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .93 = $5,580,000
Good B: $6,000,000 × .07 = $420,000

Example 6: Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60
Allocation of Overhead (Utilities) to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

ADDENDUM B
DIRECT LABOR AND DIRECT MATERIAL RATIO METHOD

Calculation of Direct Labor and Direct Material Ratio

For each good produced by the producer, a direct labor and direct material ratio is calculated in accordance with the following formula:

$$\text{DLDMR} = \frac{\text{DLC} + \text{DMC}}{\text{TDLC} + \text{TDMC}}$$

where
DLDMR is the direct labor and direct material ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
TDLC is the total direct labor costs of all goods produced by the producer; and
TDMC is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good

Overhead is allocated to a good in accordance with the following formula:

$$\text{OAG} = \text{O} \times \text{DLDMR}$$

where
OAG is the overhead allocated to the good;
O is the overhead to be allocated; and
DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

"Examples"

Example 1:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Totals	$15	$10	$25

Overhead Allocated to Good A
OAG (Good A) = O ($30) × DLDMR ($15/$25)
OAG (Good A) = $18.00
Overhead Allocated to Good B
OAG (Good B) = O ($30) × DLDMR ($10/$25)
OAG (Good B) = $12.00

Example 2:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table of Example 1.

Overhead Allocated to Good A

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] − [EC ($20) × DLDMR ($15/$25)]
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = [O ($50) × DLDMR ($10/$25)] − [EC ($20) × DLDMR ($10/$25)]
OAG (Good B) = $12.00

ADDENDUM C
DIRECT COST RATIO METHOD

Direct Overhead

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio

For each good produced by the producer, a direct cost ratio is calculated in accordance with the following formula:

$$DCR = \frac{DLC + DMC + DO}{TDLC + TDMC + TDO}$$

where

DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer;

Allocation of Indirect Overhead to a Good

Indirect overhead is allocated to a good in accordance with the following formula:

IOAG = IO × DCR

where

IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

Excluded Costs

Under section 6(11)(b) of this Appendix, where excluded costs are included in

(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and

(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

"Examples"

Example 1:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this Appendix.

A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Direct overhead (DO)	8	2	10
Totals	$23	$12	$35

Indirect Overhead Allocated to Good A

IOAG (Good A) = IO ($30) × DCR ($23/$35)
IOAG (Good A) = $19.71

Indirect Overhead Allocated to Good B

IOAG (Good B) = IO ($30) × DCR ($12/$35)
IOAG (Good B) = $10.29

Example 2:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer has chosen to calculate the net cost of the good in accordance with section 6(11)(b) of this Appendix and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A

IOAG (Good A) = [IO ($50) × DCR ($23/$35)] − [EC ($20) × DCR ($23/$35)]

IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] − [EC ($20) × DCR ($12/$35)]

IOAG (Good B) = $10.28

SCHEDULE VIII
VALUE OF MATERIALS

SECTION 1. Definitions.

(1) For purposes of this Schedule, unless otherwise stated,

''buying commissions'' means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported;

''materials of the same class or kind'' means, with respect to materials being valued, materials that are within a group or range of materials that

(a) is produced by a particular industry or industry sector, and

(b) includes identical materials or similar materials;

''producer'' refers to

(a) in the case of section 10(1)(b)(i) of these Regulations, the producer of the listed material, and

(b) in any other case, the producer who used the material in the production of a good that is subject to a regional value-content requirement;

''seller'' refers to a person who sells the material being valued to the producer.

Interpretation

(2) Where it is to be determined under section 9(3) of these Regulations whether the customs value of a material was determined in a manner consistent with this Schedule for purposes of section 9(2) (c) or (d) of these Regulations, a reference in this Schedule to ''producer'' shall be read as a reference to ''person other than the producer who imports the traced material from outside the territories of the NAFTA countries.

SECTION 2.

(1) Except as provided under subsections (2) and (3), the transaction value of a material under Article 402(9)(a) of the Agreement, as implemented by section 7(1)(b) and sections 9(5) and 10(2) of this Appendix, shall be the price actually paid or payable for the material determined in accordance with section 4 and adjusted in accordance with section 5.

(2) There is no transaction value for a material where the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable where

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 5(1)(d); and

(d) except as provided in section 3, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The conditions or considerations referred to in subsection (3)(b) include the following circumstances:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that has been provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of subsection (3)(b), conditions or considerations relating to the use of the material shall not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 5(1), the transaction value cannot be determined under the provisions of section 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(3)(d), the fact that the seller and the producer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the seller and the producer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the seller and the producer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the seller and the producer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the seller and the producer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the seller and the producer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the seller and the producer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the seller and the producer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the seller and the producer, or it may already have detailed information concerning the relationship between the seller and the producer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the seller and the producer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the seller and the producer organize their commercial relations and the way in which the price actually paid or payable by that producer for the material being valued was arrived at, in order to determine whether the relationship between the seller and the producer influenced that price actually paid or payable. Where it can be shown that the seller and the producer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the material had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the seller. For another illustration of this, where it is shown that the price actually paid or payable for the material is adequate to ensure recovery of the total cost of producing the material plus a profit that is representative of the seller's overall profit realized over a representative period of time, such as on an annual basis, in sales of materials of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the seller and the producer.

(4) In a sale between a seller and a producer who are related persons, the transaction value shall be accepted and determined in accordance with section 2(1), wherever the seller or the producer demonstrates that the transaction value of the material in that sale closely approximates one of the following test values that occurs at or about the same time as the sale and is chosen by the seller or the producer:

(a) the transaction value in sales to unrelated buyers of identical materials or similar materials, as determined in accordance with section 2(1);

(b) the value of identical materials or similar materials, as determined in accordance with section 9; or

(c) the value of identical materials or similar materials, as determined in accordance with section 10.

(5) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 5(1)(b) and the costs incurred by the seller in sales to unrelated buyers that are not incurred by the seller in sales by the seller to a related person.

(6) The application of a test value referred to in subsection (4) shall be used at the initiative of the seller, or at the initiative of the producer with the consent of the seller, and shall be used only for comparison purposes to determine whether the transaction value of the material is acceptable. The test value shall not be used as the transaction value of that material.

(7) Subsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1). Where the application of a test value under subsection (4) demonstrates that the transaction value of the material being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the seller and the producer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates one of the test values determined under subsection (4), the seller or the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(8) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical materials or similar materials closely approximates the transaction value of the material being valued. These factors include the nature of the material, the nature of the industry itself, the season in which the material is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of material could be unacceptable, while a large difference in a case involving another type of material might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SECTION 4.

(1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money: it may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 5, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value shall not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

SECTION 5.

(1) In determining the transaction value of the material, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, molds and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this Appendix, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches performed outside the territory of the NAFTA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the NAFTA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2(1).

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsection (1)(a) shall be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are imported from outside the territory of the NAFTA country in which the seller is located, the customs value of the elements,

(b) where the producer, or a related person on behalf of the producer, purchases the elements from an unrelated person in the territory of the NAFTA country in which the seller is located, the price actually paid or payable for the elements,

(c) where the producer, or a related person on behalf of the producer, acquires the elements from an unrelated person in the territory of the NAFTA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or

(d) where the elements are produced by the producer, or by a related person, in the territory of the NAFTA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (7),

and shall include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraph (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(f) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(h) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.

(7) For the purposes of subsection (6)(d), the total cost of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII; and

(b) where the elements are produced by a person who is related to the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the producer; or

(b) where such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements shall be the cost of the lease that is recorded on the books of the producer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the material the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the material in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the producer or the seller.

SECTION 6.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 7.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 8.

If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6 or 7, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be determined under section 9 or, when the value cannot be determined under that section, under section 10 except that, at the request of the producer, the order of application of sections 9 and 10 shall be reversed.

SECTION 9.

(1) Under this section, if identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that NAFTA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that NAFTA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value shall, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the date the material being valued was received by the producer.

(3) The expression ''unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity'' in subsection (1) means the price at which the greatest number of units is sold in sales between unrelated persons. For an illustration of this, materials are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11–25 units	95	5 sales of 11 units	55
		1 sale of 20 units	
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in section 5(1)(b), shall not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole. The figure for the purposes of deducting an amount for profit and general expenses shall be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. Where the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses shall be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, ''materials of the same class or kind'' includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the NAFTA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date shall be the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the NAFTA country in which the producer is located.

SECTION 10.

(1) Under this section, the value of a material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be the sum of

(a) the cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales

(i) where the material being valued is imported by the producer into the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and

(ii) where the material being valued is acquired by the producer from another person located in the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located,

(d) the value of elements referred to in section 5(1)(b)(i), determined in accordance with section 5(6), and

(e) the value of elements referred to in sections 5(1)(b)(ii) through (iv), determined in accordance with section 5(8) and reasonably allocated to the material in accordance with section 5(12).

(2) For purposes of subsections (1)(a) and (b), where the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in subsections (1)(a) and (b) with respect to the material being valued shall be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule VII.

(3) The amount for profit and general expenses referred to in subsection (1)(c) shall be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied shall be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. Where the material is produced in the territory of a NAFTA country, the information shall be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that NAFTA country in Schedule XII.

(4) For purposes of subsection (1)(c) and subsection (3), general expenses means the direct and indirect costs of producing and selling the material that are not included under subsections (1)(a) and (b).

(5) For purposes of subsection (3), the amount for profit and general expenses shall be taken as a whole. Where, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. Where the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures shall be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is where a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(6) Where the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(7) Where a customs administration uses information other than that supplied by or on behalf of the producer of the material for the purposes of determining the value of a material under this section, the customs administration shall communicate to the producer, if that producer so requests, the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality under Article 507 of the Agreement, as implemented in each NAFTA country.

(8) Whether certain materials are of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

SECTION 11.

(1) Where there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the materials cannot be determined under sections 6 through 10, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of Part IV of this Appendix, shall be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section shall not be determined on the basis of

(a) a valuation system which provides for the acceptance of the higher of two alternative values;

(b) a cost of production other than the value determined in accordance with section 10;

(c) minimum values;

(d) arbitrary or fictitious values;

(e) where the material is produced in the territory of the NAFTA country in which the producer is located, the price of the material for export from that territory; or

(f) where the material is imported, the price of the material for export to a country other than to the territory of the NAFTA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section shall be based on the methods of valuation set out in sections 2 through 10, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 6, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 9 could be used. For another illustration, under section 7, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 9 could be used. For a further illustration, under section 9, the ninety days requirement could be administered flexibly.

SCHEDULE IX

METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Schedule,

''FIFO method'' means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

''identical materials'' means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

''LIFO method'' means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 7 of this Appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

''materials inventory'' means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good; and

''rolling average method'' means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

General

SECTION 2.

For purposes of sections 5(11) and (12) and 6(10) of this Appendix, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:

(a) FIFO method;

(b) LIFO method; and

(c) rolling average method.

SECTION 3.

(1) Where a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) Where a producer of a good produces the good in more than one plant, the method chosen by the producer shall be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

Average Value for Rolling Average Method

SECTION 4.

(1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing

(a) the total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 7 of this Appendix,

by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

ADDENDUM

"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;

(b) one unit of Materials A is used to produce one unit of Good A;

(c) all other materials used in the production of Good A are originating materials; and

(d) Good A is produced in a single plant.

Date (M/D/Y)	Materials inventory (Receipts of materials A)		Sales (Shipments of good A)
	Quantity (units)	Unit cost*	Quantity (units)
01/01/94	200	$1.05	
01/03/94	1,000	1.00	
01/05/94	1,000	1.10	
01/08/94			500
01/09/94			500
01/10/94	1,000	1.05	
01/14/94			1,500
01/16/94	2,000	1.10	
01/18/94			1,500

*Unit cost is determined in accordance with section 7 of this Appendix.

Example 1: FIFO method

By applying the FIFO method:

(1) the 200 units of Materials A received on 01/01/94 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 unit × $1.05) + ($300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 of Materials A received on 01/03/94 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit, and 300 units of the 1,000 Materials A received on 01/10/94 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units × $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 × $1.05) + (800 × $1.10)].

Example 2: LIFO method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);
(3) the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and
(4) 1,500 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).
Example 3: Rolling average method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

Materials inventory				
	Date (M/D/Y)	Quantity (units)	Unit cost*	Total value
Beginning Inventory	1/1/94	200	$1.05	$210
Receipt	1/3/94	1,000	1.00	1,000
AVERAGE VALUE		1,200	1.008	1,210
Receipt	1/5/94	1,000	1.10	1,100
AVERAGE VALUE		2,200	1.05	2,310
Shipment	1/8/94	500	1.05	525
AVERAGE VALUE		1,700	1.05	1,785
Shipment	1/9/94	500	1.05	525
AVERAGE VALUE		1,200	1.05	1,260
Receipt	1/16/94	2,000	1.10	2,200
AVERAGE VALUE		3,200	1.08	3,460

* Unit cost is determined in accordance with section 7 of this Appendix.

By applying the rolling average method:
(1) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/94 is considered to be $525 (500 units × $1.05); and
(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/94 is considered to be $525 (500 units × $1.05).

SCHEDULE X
INVENTORY MANAGEMENT METHODS

PART I
FUNGIBLE MATERIALS

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Part,
''average method'' means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;
''FIFO method'' means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
''LIFO method'' means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
''materials inventory'' means,

(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and
(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;

''opening inventory'' means the materials inventory at the time an inventory management method is chosen;
''origin identifier'' means any mark that identifies fungible materials as originating materials or non-originating materials.

General

SECTION 2.

The inventory management methods for determining whether fungible materials referred to in section 7(16)(a) of this Appendix are originating materials are the following:

(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

SECTION 3.

Where a producer of a good or a person from whom the producer acquired the materials that are used in the production of the good chooses an inventory management method referred to in section 2, that method, including the averaging period chosen in the case of the average method, shall be used from the time the choice is made until the end of the fiscal year of the producer or person.

Specific Identification Method

SECTION 4.

(1) Except as otherwise provided under subsection (2), where the producer or person referred to in section 3 chooses the specific identification method, the producer or person shall physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.

(2) Where originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

Average Method

SECTION 5.

Where the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

SECTION 6.

(1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

SECTION 7.

(1) Where the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under sections 6(15), 11(1), (3) or (6), 12(1) or 13(4) of this Appendix, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

SECTION 8.

(1) Where the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment,

by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

Manner of Dealing With Opening Inventory

SECTION 9.

(1) Except as otherwise provided under subsections (2) and (3), where the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) determining the origin of the fungible materials that make up those receipts; and

(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) Where the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

PART II
FUNGIBLE GOODS

Definitions and Interpretation

SECTION 10. Definitions.

For purposes of this Part,

''average method'' means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 12, of originating goods and non-originating goods in finished goods inventory;

''FIFO method'' means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

''finished goods inventory'' means an inventory from which fungible goods are sold or otherwise transferred to another person;

''LIFO method'' means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

''opening inventory'' means the finished goods inventory at the time an inventory management method is chosen; and

''origin identifier'' means any mark that identifies fungible goods as originating goods or non-originating goods.

General

SECTION 11.

The inventory management methods for determining whether fungible goods referred to in section 7(16)(b) of this Appendix are originating goods are the following:

(a) specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

SECTION 12.

Where an exporter of a good or a person from whom the exporter acquired the good chooses an inventory management method referred to in section 11, that method, including the averaging period chosen in the case of the average method, shall be used from the time the choice is made until the end of the fiscal year of the exporter or person.

Specific Identification Method

SECTION 13.

(1) Except as provided under subsection (2), where the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person shall physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.

(2) Where originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

Average Method

SECTION 14.

(1) Where the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of

(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The calculation with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

Manner of Dealing with Opening Inventory

SECTION 15.

(1) Except as otherwise provided under subsections (2) and (3), where the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;
(b) determining the origin of the fungible goods that make up those receipts; and
(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) Where the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

ADDENDUM A
"EXAMPLES" ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE MATERIALS

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:
(a) originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;
(b) one unit of Material A is used to produce one unit of Good A;
(c) Material A is only used in the production of Good A;
(d) all other materials used in the production of Good A are originating materials; and
(e) the producer of Good A exports all shipments of Good A to the territory of a NAFTA country.

Date (M/D/Y)	Materials inventory (Receipts of material A)			Sales (Shipments of good A)
	Quantity (units)	Unit cost*	Total value	Quantity (units)
12/18/93	100 (O[1])	$1.00	$100	
12/27/93	100 (N[2])	1.10	110	
01/01/94	200 (OI[3])			
01/01/94	1,000 (O)	1.00	1,000	
01/05/94	1,000 (N)	1.10	1,100	
01/10/94				100
01/10/94	1,000 (O)	1.05	1,050	
01/15/94				700
01/16/94	2,000 (N)	1.10	2,200	
01/20/94				1,000
01/23/94				900

*Unit cost is determined in accordance with section 7 of this Appendix.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

Example 1: FIFO method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) the 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/93 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/93 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units x $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units x $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units x $1.10).

Example 2: LIFO method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, where originating Material A is used in the production of Good A, Good A is an originating good and, where non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

	Date (M/D/Y)	Materials inventory						Sales (Shipments of good A)
		(Receipts of material A)			(Non-originating material)			
		Quantity (units)	Total value	Unit cost *	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/93	100 (O [1])	$100	$1.00				
Receipt	12/27/93	*100 (N [2])*	*110*	*1.10*	*100*	*$110.00*		
NEW AVERAGE INV. VALUE.		200 (OI [3])	210	1.05	100	105.00	0.50	
Receipt	01/01/94	*1,000 (O)*	*1,000*	*1.00*				
NEW AVERAGE INV. VALUE.		1,200	1,210	1.01	100	101.00	0.08	
Receipt	01/05/94	*1,000 (N)*	*1,100*	*1.10*	*1,000*	*1,100.00*		
NEW AVERAGE INV. VALUE.		2,200	2,310	1.05	1,100	1,155.00	0.50	
Shipment	01/10/94	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/94	*1,000 (O)*	*1,050*	*1.05*				
NEW AVERAGE INV. VALUE.		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/94	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/94	*2,000 (N)*	*2,200*	*1.10*	*2,000*	*2,000.00*		
NEW AVERAGE INV. VALUE.		4,400	4,720	1.07	2,816	3,013.20	0.64	
Shipment	01/20/94	(1,000)	(1,070)	1.07	(640)	(648.80)		1,000
Shipment	01/23/94	*(900)*	*(963)*	*1.07*	*(576)*	*(616.32)*		900
NEW AVERAGE INV. VALUE.		2,500	2,687	1.07	1,596	1,707.24	0.64	

* Unit cost is determined in accordance with section 7 of this Appendix.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

By applying the average method:

(1) before the shipment of the 100 units of Material A on 01/10/94, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units); based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units); based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units); based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units; based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

Example 4: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under section 6(15)(a) of this Appendix to determine the regional value content of Good A.

By applying the average method:

the ratio of units of originating Material A to total units of Material A in materials inventory for January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units-1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 1994; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/ $5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1-.404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units-1,010 units) are considered to be non-originating materials.

ADDENDUM B

''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE GOODS

The following ''examples'' are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

Date (M/D/Y)	Finished goods inventory (receipts of good A)	Sales (shipments of good A)
	Quantity (units)	Quantity (units)
12/18/93	100 (O [1])	
12/27/93	100 (N [2])	
01/01/94	200 (OI [3])	
01/01/94	1,000 (O)	
01/05/94	1,000 (N)	
01/10/94		100
01/15/94	1,000 (O)	
01/16/94		700
01/20/94	2,000 (N)	
01/20/94		1,000
01/23/94		900

[1] ''O'' denotes originating goods.
[2] ''N'' denotes non-originating goods.
[3] ''OI'' denotes opening inventory.

Example 1: FIFO method

By applying the FIFO method:

(1) the 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/93 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/93 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 2: LIFO method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 1994. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 1994.

By applying the average method:

the ratio of originating goods to all goods in finished goods inventory for the month of January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 1994 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

SCHEDULE XI
METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS

Definitions and Interpretation

SECTION 1. Definitions.

For purposes of this Schedule,

''fixed-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

''linear interpolation'' means, with respect to the yield on federal government debt obligations, the application of the following mathematical formula:

$$A+[((B-A)\times(E-D))/(C-D)]$$

where

A is the yield on federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the yield on federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule; ''payment schedule'' means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

''variable-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

''weighted average principal maturity'' means, with respect to fixed-rate contracts and variable-rate contracts, the number of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, where that amount is the midpoint between two such numbers, to the greater of those two numbers;

''weighted principal payment'' means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

''yield on federal government debt obligations'' means

(a) in the case of a producer located in Canada, the yield for federal government debt obligations set out in the Bank of Canada's *Weekly Financial Statistics*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''Treasury Bills'', and

(ii) in any other case, under the title ''Selected Government of Canada benchmark bond yields'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the title *''Certificados de la Tesoreria de la Federacion''* for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''U.S. government securities, Treasury bills, Secondary market'', and

(ii) in any other case, under the title ''U.S. Government Securities, Treasury constant maturities'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

General

SECTION 2.

For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract shall be compared to the yield on federal government debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

ADDENDUM

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a fixed-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year on the declining principal balance;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;

(d) there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and

(e) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 percent and 5.0 percent, respectively.

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135,867.96	1,281,773.22
					$5,977,993.19

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 percent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

Weighted Average Principal Maturity

$5,977,993.19/$1,000,000=5.977993 or 6 years [5]

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the 6 percent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 percent and 5.0 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 percent. This number is calculated as follows:

$4.7+[((5.0-4.7)\times(6-5))/(7-5)]$
$=4.7+0.15$
$=4.85\%$; and

(3) the producer's contract interest rate of 6 percent is within 700 basis points of the 4.85 percent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs.''

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a variable-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year for the first two years and 8 percent per year for the next two years on the principal balance, with rates adjusted each two years after that;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;

(d) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;

(e) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and

(f) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 percent and 3.5 percent respectively.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
	.....	.....	.....	.....	.....	$1,924,132.04

Weighted Average Principal Maturity

$1,924,132.04/$1,000,000=1.92413204 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$3.0+[((3.5-3.0)\times(1.9-1.0))/(2.0-1.0)]$
$=3.0+0.45$
$=3.45\%$; and

(3) the producer's contract rate of 6 percent for the first two years of the loan is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38
4	764,390.62	8.00	61,151.25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity

$1,608,102.62/$843,712.01=1.905985 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$$3.0+[((3.5-3.0)\times(1.9-1.0))/(2.0-1.0)]$$
$$=3.0+0.45$$
$$=3.45\%$$

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 percent is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

SCHEDULE XII
GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

SECTION 1.

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

SECTION 2.

For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) with respect to the territory of Canada, *The Canadian Institute of Chartered Accountants Handbook*, as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados*, issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP)*, including the *boletines complementarios*, as updated from time to time; and

(c) with respect to the territory of the United States,

(i) the following publications of the American Institute of Certified Public Accountants (AICPA), as updated from time to time:

(A) AICPA Professional Standards,
(B) Committee on Accounting Procedure Accounting Research Bulletins,
(C) Accounting Principles Board Opinions and Statements,
(D) APB Accounting and Auditing Guides,
(E) AICPA Statements of Position, and
(F) AICPA Issues Papers and Practice Bulletins,

(ii) the following publications of the Financial Accounting Standards Board (FASB), as updated from time to time:

(A) FASB Accounting Standards and Interpretations,
(B) FASB Technical Bulletins, and
(C) FASB Concepts Statements.

PART 191—DRAWBACK

1. The general authority citation for Part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

2. The last sentence of § 191.0 is republished to read as follows:

§ 191.0 Scope.

* * * Additional drawback provisions relating to the North American Free Trade Agreement are contained in subpart E of part 181 of this chapter.

Dated: August 16, 1995.

George J. Weise,

Commissioner of Customs.

Approved:

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–21716 Filed 8–30–95; 9:56 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Regulatory Standards for Implementation of the North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document publishes for the information of the general public the text of a document setting forth uniform regulatory standards adopted by the United States, Canada and Mexico for purposes of implementing the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA). The final Customs Regulations implementing the NAFTA, which are based in part on the standards set forth herein, also appear in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Myles Harmon, Office of Regulations and Rulings (202–482–7000).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico (the ''Parties'') entered into an agreement, the North American Free Trade Agreement (NAFTA). The stated objectives of the NAFTA included elimination of barriers to trade in, and facilitation of the cross-border movement of, goods and services between the territories of the Parties. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057.

Prior to the entry into force of the NAFTA on January 1, 1994, representatives of the Parties engaged in a series of trilateral discussions pursuant to Article 511 of the NAFTA for the purpose of formulating uniform regulatory texts or principles in respect of Chapters Four and Five of the NAFTA and in respect of certain provisions within Chapter Three of the NAFTA. As concerns Chapter Four which sets forth the rules of origin and related provisions for purposes of preferential duty treatment under the NAFTA, the Parties agreed, by an exchange of letters dated December 30, 1993, to implement substantively verbatim texts covering all of the provisions of that Chapter. However, in recognition of the different existing customs legal and procedural requirements in the three countries, in the case of Chapter Five and some provisions of Chapter Three the Parties agreed, by an exchange of letters dated December 30, 1993, to use a standards approach whereby agreement was reached on certain minimum principles to be reflected in each Party's regulations, with each Party being left free to implement those principles, and any other requirements not inconsistent therewith, in accordance with the needs of the Party's particular statutory and regulatory framework.

On December 30, 1993, Customs published T.D. 94–1 in the **Federal Register** (58 FR 69460) setting forth interim amendments to the Customs Regulations to implement the preferential tariff treatment and other Customs-related provisions of the NAFTA in accordance with the implementation principles agreed to by the Parties as discussed above. Subsequent to the publication of T.D. 94–1, the Parties engaged in additional trilateral discussions with a view to modifying the Chapter Four substantively verbatim texts and the standards adopted for purposes of Chapters Three and Five, and those modifications were formally agreed to by the Parties through an exchange of letters in June 1995. The substantively verbatim texts relating to Chapter Four and the standards adopted for purposes of Chapters Three and Five, as so modified, have been incorporated in the provisions of the Customs Regulations implementing the NAFTA that are published as a final rule also in this issue of the **Federal Register.**

The purpose of this document is to set forth for the information of the general public the current text of the NAFTA Chapter Three and Chapter Five regulatory standards document as agreed to by the Parties.

Dated: August 24, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

Accordingly, the document containing the regulatory standards relating to Chapters Three and Five of the NAFTA, as discussed above, is reproduced below:

Uniform Regulations for the Interpretation, Application, and Administration of Chapters Three (National Treatment and Market Access for Goods) and Five (Customs Procedures) of the North American Free Trade Agreement

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, pursuant to Article 511(1) of the North American Free Trade Agreement, adopt the following Uniform Regulations regarding the interpretation, application and administration of Chapters Three and Five of the North American Free Trade Agreement:

Section A—Certification of Origin

1. The Certificate of Origin referred to in Article 501(1) of the North American Free Trade Agreement (hereinafter ''the Agreement'') shall be:

(a) equivalent in substance to the Certificate of Origin set out in Annex I.1a;

(b) in a printed format or in such other medium or format as may be approved by the customs administration of the Party into whose territory the good is imported;

(c) completed by the exporter in accordance with these Uniform Regulations, including any instructions contained in the Certificate of Origin set out in Annex I.1a; and

(d) at the option of the exporter, completed in either the language of the Party into whose territory the good is imported or the language of the Party from whose territory the good is exported in accordance with Annex I.1d.

2. For purposes of Article 501(5)(a) of the Agreement, a single Certificate of Origin may be used for:

(a) a single shipment of goods that results in the filing of one or more entries on the importation of the goods into the territory of a Party; or

(b) more than one shipment of goods that result in the filing of one entry on the importation of the goods into the territory of a Party.

Article II: Obligations Regarding Importations

1. For purposes of Article 502(1)(a) of the Agreement, ''valid Certificate of Origin'' means a Certificate of Origin that the exporter of the good in a territory of a Party completes in accordance with the requirements set out in Article I of these Uniform Regulations.

2. For purposes of Article 502(1)(c) of the Agreement:

(a) the importer shall, upon the request of the customs administration of the Party into whose territory the good is imported, provide a written translation of the Certificate of Origin in the language of that Party; and

(b) where the customs administration of the Party into whose territory the good is imported determines that a Certificate of Origin is illegible, defective on its face or has not been completed in accordance with Article I

of these Uniform Regulations, the importer shall be granted a period of not less than five working days to provide the customs administration with a copy of the corrected Certificate.

3. An importer that makes a corrected declaration of origin pursuant to Article 502(1)(d) and (2)(b) of the Agreement and pays any duties owing shall not, in accordance with Article 502(2)(b), be subject to penalties, as set out in Annex II.3.

4. Where as a result of an origin verification conducted under Article 506 of the Agreement, the customs administration of a Party determines that a good that is covered by a Certificate of Origin that is applicable to multiple importations of identical goods in accordance with Article 501(5)(b) does not qualify as an originating good, such Certificate may not be used to claim preferential tariff treatment for those identical goods after the date that the written determination is provided under Article 506(9).

Article III: Exceptions

1. The statement referred to in Article 503(a) of the Agreement shall, where required by the customs administration of the Party into whose territory the good is imported, be attached to, or handwritten, stamped or typed on, the commercial invoice covering the good.

2. For purposes of Article 503 of the Agreement, ''series of importations'' is defined in Annex III.2.

Article IV: Obligations Regarding Exportations

1. For purposes of Article 504(1)(b) of the Agreement, ''promptly'' is defined in Annex IV.1.

2. For purposes of Article 504(3) of the Agreement, no Party may impose civil or administrative penalties on an exporter or producer of a good in its territory where the exporter or producer, prior to the commencement of an investigation by officials of that Party with authority to conduct a criminal investigation regarding the Certificate of Origin, provides the written notification referred to in Article 504(1)(b).

3. For purposes of Article 504(1)(b) of the Agreement, where the customs administration of a Party provides an exporter or producer of a good with a determination under Article 506(9) that the good is a non-originating good, the exporter or producer shall notify all persons to whom it gave a Certificate of Origin in respect of that good of the determination.

Section B—Administration and Enforcement

Article V: Records

1. The documentation and records required to be maintained under Article 505 of the Agreement shall be kept in such a manner as to enable an officer of the customs administration of a Party, in conducting a verification of origin under Article 506, to perform detailed verifications of the documentation and records to verify the information on the basis of which:

(a) in the case of an importer, a claim for preferential tariff treatment was made with respect to a good imported into its territory; and

(b) in the case of an exporter or producer, a Certificate of Origin was completed with respect to a good exported to the territory of another Party.

2. Importers, exporters and producers in the territory of a Party that are required to maintain documentation or records under Article 505 of the Agreement shall be permitted, in accordance with that Party's law, to maintain such documentation and records in machine-readable form, provided that the documentation or records can be retrieved and printed.

3. Exporters and producers that are required to maintain records pursuant to Article 505(a) of the Agreement shall, subject to the notification and consent requirements provided for in Article 506(2), make those records available for inspection by an officer of the customs administration of a Party conducting a verification visit and provide facilities for inspection thereof.

4. A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the exporter, producer or importer of the good that is required to maintain records or documentation under Article 505 of the Agreement:

(a) subject to paragraph 5, fails to maintain records or documentation relevant to determine the origin of the good in accordance with the requirements of the Agreement, these Uniform Regulations or the Uniform Regulations under Chapter Four of the Agreement; or

(b) denies access to the records or documentation.

5. Where the customs administration of a Party finds during the course of an origin verification that a producer of a good in the territory of another Party has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the territory of the Party in which the good is produced as required by Article 413(e) of the Agreement, the producer shall be given an opportunity to record its costs in accordance with those Generally Accepted Accounting Principles within 60 days of being informed in writing by the customs administration that the records have not been maintained in accordance with those Generally Accepted Accounting Principles.

6. For purposes of Article 505 of the Agreement and these Uniform Regulations, ''records'' include books as referenced in the Uniform Regulations under Chapter Four.

Article VI: Origin Verifications

1. For purposes of Article 506(1)(c) of the Agreement, the customs administration of a Party may conduct a verification of origin with respect to a good that is imported into its territory by means of:

(a) A verification letter that requests information from the exporter or producer of the good in the territory of another Party, provided that it contains specific reference to the good that is the subject of the verification; or

(b) any other method of communication customarily used by the customs administration of the Party in conducting a verification.

2. Subject to paragraph 3, where the customs administration of a Party conducts a verification under paragraph 1(b), it may, on the basis of a response of an exporter or producer to a communication referred to in paragraph 1(b), issue a determination under Article 506(9) of the Agreement:

(a) that the good does not qualify as an originating good, provided that the response is in writing and is signed by that exporter or producer; or

(b) that the good qualifies as an originating good.

3. Where the producer of a good chooses to calculate the regional value content of a good under that net cost method as set out in the Uniform Regulations under Chapter Four of the Agreement, the customs administration of the Party into whose territory the good was imported may not, during the time period over which the net cost has been calculated, verify the regional value content in respect of that good.

4. The customs administration of a Party, in conducting a verification visit under Article 506(1)(b) of the Agreement, shall send the notice referred to in Article 506(2)(a) by certified or registered mail, or any other method that produces a confirmation of receipt by the exporter or producer whose premises are to be visited.

5. When the exporter or producer of a good that is the subject of a proposed

verification visit by the customs administration of a Party has not given its written consent to a visit under Article 506(4) of the Agreement, the customs administration may determine that the good does not qualify as an originating good and may deny preferential tariff treatment to that good.

6. For purposes of Article 506(7) of the Agreement, an exporter or producer of a good shall identify to the customs administration conducting a verification visit any observers designated to be present during such visit.

7. Each Party shall identify to the other Parties, by January 1, 1994, the office to which notice shall be sent under Article 506(2)(a)(ii) of the Agreement.

8. For purposes of Article 506(5) of the Agreement, a notice of postponement of a verification visit shall be made in writing and shall be sent to the address of the customs office that sent the notice of intention to conduct a verification visit.

9. The common standards for the written questionnaires referred to in Article 506(1)(a) of the Agreement are set out in Annex VI.9.

10. Where, pursuant to Article 403(3) of the Agreement, a producer of a motor vehicle identified in Article 403 (1) or (2) elects to average its regional value-content calculation over its fiscal year, the customs administration of the Party into whose territory the motor vehicle was imported may request, in writing, that the producer submit a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made.

11. Where the customs administration of a Party requests that a cost submission be submitted by the producer of a motor vehicle under paragraph 10, such cost submission shall be submitted within 180 days after the close of that producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

12. Where the customs administration of a Party sends a written request under paragraph 10, such request shall constitute a verification letter under paragraph 1(a).

13. The customs administration of a Party may, for purposes of verifying the origin of a good, request that the importer of the good voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of another Party, provided that the failure or refusal of the importer to obtain and supply such information shall not be considered as a failure of the exporter or producer to supply the information or as a ground for denying preferential tariff treatment.

14. Nothing in this Article shall limit any right accorded under Chapter Five of the Agreement to the exporter or producer of a good in the territory of a Party by virtue of the fact that such exporter or producer is also the importer of the good in the territory of the Party in which preferential tariff treatment is claimed.

15. Where a customs administration conducts a verification of origin of a good under Article 506(1)(a) of the Agreement or paragraph 1(a), it may send the verification letter or questionnaire by:

(a) certified or registered mail, or any other method that produces confirmation of receipt by the exporter or producer; or

(b) any other method, regardless of whether it produces proof of receipt from the exporter or producer of the good.

16. Where the customs administration of a Party has sent a verification letter or questionnaire to an exporter or producer of a good in the territory of another Party and such exporter or producer fails to respond within the period specified therein, which shall be no less than 30 days from the date on which the verification letter or questionnaire was sent, the customs administration:

(a) shall send a subsequent verification letter or questionnaire:

(i) if requested by the Party from whose territory the good was exported, by the method set out in paragraph 15(a), or

(ii) if not requested by the Party from whose territory the good was exported, by the method set out in paragraph 15 (a) or (b); and

(b) may send, with that subsequent verification letter or questionnaire, the written determination referred to in Article 506(9) of the Agreement, including a notice of intent to deny preferential tariff treatment referred to in paragraph 19.

17. Where the customs administration of a Party sends a written determination under paragraph 16(b) and the exporter or producer fails to respond to the subsequent verification letter or questionnaire within 30 days:

(a) from the date of its receipt by the exporter or producer, where it was sent in accordance with paragraph 16(a)(i); or

(b) from the date of its receipt by the exporter or producer or from the date it was sent by the customs administration, as the case may be, in accordance with paragraph 16(a)(ii),

the customs administration may deny preferential tariff treatment to the good.

18. Where the customs administration of a Party does not send a written determination under paragraph 16(b) and the exporter or producer fails to respond to the subsequent verification letter or questionnaire within 30 days:

(a) from the date of its receipt by the exporter or producer, where it was sent in accordance with paragraph 16(a)(i), or

(b) from the date of its receipt by the exporter or producer or from the date it was sent by the customs administration, as the case may be, in accordance with paragraph 16(a)(ii),

the customs administration may deny preferential tariff treatment to the good in accordance with paragraph 19.

19. Where the customs administration of a Party determines, as a result of an origin verification, that a good that is the subject of the verification does not qualify as an originating good, the written determination provided for under Article 506(9) of the Agreement shall:

(a) include a notice of intent to deny preferential tariff treatment with respect to that good that specifies the date after which preferential tariff treatment will be denied and the period during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(b) if requested by the Party from whose territory the good is exported, be sent by certified or registered mail or by any other method that produces confirmation of receipt by the exporter or producer of the good.

20. Where the customs administration of a Party determines on the basis of information obtained during a verification that a good does not qualify as an originating good:

(a) the date on which preferential tariff treatment may be denied pursuant to the notice referred to in paragraph 19, shall be no earlier than 30 days from the date on which

(i) receipt of the written determination is confirmed by the exporter or producer, if a request has been made under subparagraph 19(b), and

(ii) the customs administration sends the written determination, if no such request has been made; and

(b) before denying preferential tariff treatment, the customs administration shall take into account any comments or additional information provided by the exporter or producer during the period referred to in subparagraph (a).

21. For purposes of Article 506(10) of the Agreement, ''pattern of conduct''

means repeated instances of false or unsupported representations by an exporter or producer of a good in the territory of a Party that are established by the customs administration of another Party on the basis of not fewer than two origin verifications of two or more importations of the goods that result in not fewer than two written determinations being sent to that exporter or producer pursuant to Article 506(9) that conclude, as a finding of fact, that Certificates of Origin completed by that exporter or producer with respect to identical goods contain false or unsupported representations.

22. For purposes of Article 506(12) of the Agreement, ''consistent treatment'' means the established application by the customs administration of a Party that can be substantiated by the continued acceptance by that customs administration of the tariff classification or value of identical materials on importations of the materials into its territory by the same importer over a period of not less than two years immediately prior to the date that the Certificate of Origin for the good that is the subject of the determination under Article 506(11) was completed, provided that with respect to those importations:

(a) such materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of such determination; and

(b) the tariff classification or value of such materials is not the subject of a verification, review or appeal by that customs administration on the date of such determination.

23. For purposes of Article 506(12) of the Agreement, a person shall be entitled to rely on a ruling or advance ruling in accordance with Annex VI.23.

24. A ruling or advance ruling referred to in paragraph 23 that is issued by the customs administration of a Party shall remain in force until modified or revoked.

25. No modification or revocation of a ruling referred to in paragraph 23, other than an advance ruling, may be applied to a good that was the subject of the ruling and that was imported prior to the date of such modification or revocation unless:

(a) the person to whom the ruling was issued has not acted in accordance with its terms and conditions; or

(b) there has been a change in the material facts or circumstances on which the ruling was based.

26. For purposes of Article 506(11) of the Agreement, reference to the phrase, ''one or more materials used in the production of the good'' means materials that are used in the production of the good or that are used in the production of a material that is used in the production of the good.

27. Article 506(12)(a) of the Agreement in relation to Article 506(11) includes:

(a) a ruling or advance ruling that is issued with respect to a material that is used in the production of the good or that is used in the production of a material that is used in the production of the good; or

(b) the consistent treatment given on the entry of a material that is used in the production of the good or that is used in the production of a material used in the production of the good.

28. Where the customs administration of a Party, in conducting a verification of origin of a good imported into its territory under Article 506 of the Agreement, conducts a verification of the origin of a material that is used in the production of the good, the verification of the material shall be conducted in accordance with the procedures set out in:

(a) Article 506 (1), (2), (3), (5), (7) and (8); and

(b) paragraphs 1, 2, 3, 4, 6, 8, 13, 14, 15 and 16(a).

29. The customs administration of a Party, in conducting a verification of a material that is used in the production of a good pursuant to paragraph 28, may consider the material to be non-originating in determining whether the good is an originating good where the producer or supplier of that material does not allow the customs administration access to information required to make a determination of whether the material is an originating material by the following or other means:

(a) denial of access to its records;

(b) failure to respond to a verification questionnaire or letter; or

(c) refusal to consent to a verification visit within 30 days of receipt of notification under Article 506(2) of the Agreement, as made applicable by paragraph 28.

30. A Party shall not consider a material that is used in the production of a good to be a non-originating material solely on the basis of a postponement of a verification visit under Article 506(5) of the Agreement as made applicable by paragraph 28(a).

31. Where the customs administration of a Party conducts a verification under Article 506 of the Agreement, it may also verify:

(a) the applicable rate of customs duty applied to an originating good in accordance with the rules set out in Annex 302.2 of the Agreement; and

(b) whether a good is a qualifying good for the purposes of Annex 703.2 of the Agreement.

Section C—Advance Rulings

Article VII: Advance Rulings

1. For purposes of Article 509 of the Agreement, the customs administration of a Party shall issue an advance ruling to a producer in the territory of another Party of a material that is used in the production of a good in the territory of another Party, provided that the good is to be subsequently imported into the territory of the Party issuing the ruling, concerning any matter covered by Article 509(1) (a) through (e) and (g) with respect to that material.

2. The common standards regarding the information to be submitted in an application for an advance ruling are set out in Annex VII.2.

3. For purposes of Article 509 of the Agreement, an application to the customs administration of a Party for an advance ruling shall be completed in the language of that Party as set out in Annex I.1d.

4. Subject to paragraph 5 and 6, the customs administration to which the application is made shall issue an advance ruling within 120 days of its receipt of all information reasonably required to process the application, including any supplemental information that may be requested.

5. Each Party may provide that where an application for an advance ruling is made to its customs administration that involves an issue that is the subject of:

(a) a verification of origin,

(b) a review by or appeal to the customs administration, or

(c) judicial or quasi-judicial review in its territory,

the customs administration may decline to issue the ruling.

6. For purposes of Article 509(3) of the Agreement, where the customs administration of a Party determines that an application for an advance ruling is incomplete, it may decline to further process the application provided that:

(a) it has notified the applicant of any supplemental information required and of the period, which shall not be less than 30 days, within which the applicant must provide the information; and

(b) the applicant has failed to provide the information within the period specified.

7. Nothing in paragraph 5 or 6 shall be construed so as to prevent a person from re-applying for an advance ruling.

8. For purposes of Article 509(7) of the Agreement, ''importations of a good'' is defined in Annex VII.8.

Section D—Review and Appeal

Article VIII: Review and Appeal

1. A denial of preferential tariff treatment to a good by the customs administration of a Party under these Uniform Regulations may be appealed under Article 510 of the Agreement by the exporter or producer of the good who completed the Certificate of Origin for the good in respect of which a claim for preferential tariff treatment was denied, including a denial of preferential tariff treatment under Article 506(4).

2. Where an advance ruling is issued under Article 509 of the Agreement or paragraph 1 of Article VII of these Uniform Regulations, a modification or revocation of the advance ruling shall be subject to review and appeal under Article 510.

3. Where a Party denies preferential tariff treatment to a good on the basis:

(a) that a corrected Certificate of Origin has not been provided within that period set out in Article II(2)(b) of these Uniform Regulations, or

(b) of a failure to comply with a time limit under these Uniform Regulations or under the Agreement, except for the time limit under Article 502(3) of the Agreement, with respect to the furnishing of records or other information to the customs administration of that Party,

the decision rendered on review and appeal under Article 510(2)(a) of that determination shall be on the merits of whether the good qualifies as an originating good, provided that in the case of subparagraph (a) above, a corrected Certificate of Origin is provided to the customs administration of the Party.

Section E—Tariff Elimination

Article IX: Tariff Elimination

1. For purposes of Annex 302.2 and Annex 300–B of the Agreement, Annex 302.2 (4), (5), (6), (8), (10), (11), (12) and (13) and Annex 300–B, Section 2, paragraph 2(b) do not apply where a Party gives duty free treatment to all other Parties in respect of an originating good imported into its territory.

2. For purposes of Annex 302.2 and Annex 300–B of the Agreement, the customs administration of the Party into whose territory an originating good is imported shall determine the applicable preferential tariff rate of duty under Annex 302.2 (8), (10), (11), (12) and (13) and Annex 300–B, Section 2, paragraph 2(b) on the basis of the Marking Rules established under Annex 311 only where:

(a) materials used in the production of the good are obtained from, or

(b) processing of the good occurs in,

the territory of a Party other than the Party from whose territory the good is exported or the Party into whose territory the good is imported, provided that the good has been improved in condition or advanced in value in the territory of the Party from which it is exported. Otherwise, the customs administration shall apply the preferential tariff rate of duty that is applicable to the Party from whose territory the good is exported, provided that the good has been improved in condition or advanced in value in that territory.

3. For purposes of Annex 302.2 of the Agreement, each Party may, notwithstanding that the requirements of Article 502 and any other legal requirements imposed under its law have been satisfied, deny the applicable preferential tariff rate of duty set out in that Annex to an originating good imported into its territory:

(a) if, where contrary to the laws of that Party, the claim for preferential tariff treatment for the good is not supported by documentary evidence such as invoices, bills of lading or waybills that indicate the shipping route and all points of shipment and transshipment prior to the importation of the good into its territory, and

(b) if, where the good is shipped through or transshipped in the territory of a country that is not a Party under the NAFTA, the importer of the good does not provide, on the request of that Party's customs administration, a copy of the customs control documents that indicate, to the satisfaction of the customs administration, that the good remained under customs control while in the territory of such country,

Section F—Drawback and Duty Deferral Programs

Article X: Drawback and Duty Deferral Programs

1. For purposes of Article 303 of the Agreement, ''identical or similar'' means ''identical'' and ''similar'' as defined in Article 15, subsections 2 (a) and (b) of the Customs Valuation Code, and as further defined in Annex IX.1.

2. For purposes of Article 303(1) of the Agreement, ''the total amount of customs duties paid to another Party on the good that has been subsequently exported to the territory of that other Party'' means the customs duties that are paid in respect of the entry for consumption of the good in the customs territory of a Party, including any change referred to under paragraph 7(b).

3. For purposes of Article 303(1) of the Agreement, where a good is exported from the territory of a Party to the territory of another Party and entered into a duty deferral program in that other Party:

(a) the good shall not be considered to have been exported to the territory of that other Party unless and until such time as the good is withdrawn from the duty deferral program for consumption in the customs territory of that other Party, and

(b) where the good or another good incorporating that good is subsequently exported directly from the duty deferral program to a non-NAFTA country, Article 303 shall not apply to the good, and a refund, waiver or reduction of duties may be granted upon presentation of satisfactory evidence of the exportation of the good or that other good to the non-NAFTA country.

4. In accordance with paragraph (d) of the definition of ''satisfactory evidence'' under Article 318, ''satisfactory evidence'' includes an affidavit from the person claiming, subject to Article 303 of the Agreement, a refund, waiver or reduction of customs duties, where such affidavit is based on information received from the importer of the good in the territory of the Party into which the good was subsequently exported.

5. Satisfactory evidence, in the form of one or more of the documents referred to in the definition in Article 318 of the Agreement and paragraph 4, shall contain:

(a) the import entry number,

(b) the date of importation,

(c) the tariff classification number,

(d) the rate of duty, and

(e) the amount of duties paid,

in respect of the importation of the good into the territory of the Party to which the good was subsequently exported.

6. The Party to whom a claim for refund of the amount of customs duties paid, or a waiver or reduction of the amount of customs duties owed, is made may request that the Party to whose territory the good was subsequently exported examine the information referred to under paragraph 5 (a) through (e) that was provided in connection with that claim.

7. The Party to whom a request was made under paragraph 6 shall:

(a) where it determines that the information referred to under paragraph 5 is not correct at the time of the request, provide the requesting Party with the corrected information, and

(b) monitor the importations in respect of the goods that were the

subject of a request and notify the requesting Party of any change in respect of the duties paid in connection therewith.

8. For purposes of Article 303.6(b) of the Agreement, the circumstances under which a good shall be considered to be in same condition include the following:

(a) mere dilution with water or another substance;

(b) cleaning, including removal of rust, grease, paint or other coatings;

(c) application of preservative, including lubricants, protective encapsulation, or preservation paint;

(d) trimming, filing, slitting or cutting;

(e) putting up in measured doses, or packing, repacking, packaging ; repackaging; or

(f) testing, marking, labelling, sorting, or grading,

provided that such operations do not materially alter the characteristics of the good.

Section G—Final Provisions

Article XI: Final Provisions

1. For purposes of Chapter Five of the Agreement and these Uniform Regulations, ''completed'' means completed, signed and dated.

2. Each Party shall ensure that its customs procedures governed by the Agreement are in accordance with Chapter Five of the Agreement and these Uniform Regulations.

3. These Uniform Regulations shall enter into force on the date of the entry into force of the Agreement.

4. For purposes of Chapter Five of the Agreement and these Uniform Regulations, any reference to ''materials that are used in the production of the good'' or ''that are used in the production of a material that is used in the production of the good'' shall include materials that are incorporated into a good or material as defined in the Uniform Regulations for Chapter Four.

BILLING CODE 4820–02–M

Annex I.1a

North American Free Trade Agreement
Certificate of Origin
(Instructions Attached)

Please print or type

1.EXPORTER NAME AND ADDRESS: TAX IDENTIFICATION NUMBER:	2.BLANKET PERIOD (DD/MM/YR) FROM: TO:
3. PRODUCER NAME AND ADDRESS: TAX IDENTIFICATION NUMBER:	4.IMPORTER NAME AND ADDRESS: TAX IDENTIFICATION NUMBER:

5.DESCRIPTION OF GOOD(S):	6.H.S. TARIFF CLASSIFICATION NUMBER	7.PREFERENCE CRITERION	8.PRODUCER	9.NET COST	10.COUNTRY OF ORIGIN

I CERTIFY THAT:

- THE INFORMATION ON THIS DOCUMENT IS TRUE AND ACCURATE AND I ASSUME THE RESPONSIBILITY FOR PROVING SUCH REPRESENTATIONS. I UNDERSTAND THAT I AM LIABLE FOR ANY FALSE STATEMENTS OR MATERIAL OMISSIONS MADE ON OR IN CONNECTION WITH THIS DOCUMENT;

- I AGREE TO MAINTAIN, AND PRESENT UPON REQUEST, DOCUMENTATION NECESSARY TO SUPPORT THIS CERTIFICATE, AND TO INFORM, IN WRITING, ALL PERSONS TO WHOM THE CERTIFICATE WAS GIVEN OF ANY CHANGES THAT COULD AFFECT THE ACCURACY OR VALIDITY OF THIS CERTIFICATE;

- THE GOODS ORIGINATED IN THE TERRITORY OF ONE OR MORE OF THE PARTIES, AND COMPLY WITH THE ORIGIN REQUIREMENTS SPECIFIED FOR THOSE GOODS IN THE NORTH AMERICAN FREE TRADE AGREEMENT, AND UNLESS SPECIFICALLY EXEMPTED IN ARTICLE 411 OR ANNEX 401, THERE HAS BEEN NO FURTHER PRODUCTION OR ANY OTHER OPERATION OUTSIDE THE TERRITORIES OF THE PARTIES; AND

- THIS CERTIFICATE CONSISTS OF _____ PAGES, INCLUDING ALL ATTACHMENTS.

11. AUTHORIZED SIGNATURE:		COMPANY:
NAME (PRINT OR TYPE):		TITLE:
DATE: (DD/MM/YR)	TELEPHONE:	FAX:

BILLING CODE 4820–02–C

NORTH AMERICAN FREE TRADE AGREEMENT

CERTIFICATE OF ORIGIN INSTRUCTIONS

For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the declaration is made. This document may also be completed voluntarily by the producer for use by the exporter. Please print or type:

Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. Legal tax identification number is: in Canada, employer number or importer/exporter number assigned by Revenue Canada; in Mexico, federal taxpayer's registry number (RFC); and in the United States, employer's identification number or Social Security number.

Field 2: Complete field if the Certificate covers multiple shipments of identical goods as described in Field #5 that are imported into a NAFTA country for a specified period of up to one year (blanket period). ''FROM'' is the date upon which the Certificate becomes applicable to the good covered by the blanket Certificate (it may be prior to the date of signing this Certificate). ''TO'' is the date upon which the blanket period expires. The importation of a good for which preferential tariff treatment is claimed based on this Certificate must occur between these dates.

Field 3: State and full legal name, address (including country) and legal tax identification number, as defined in field #1, of the producer. If more than one producer's good is included on the Certificate, attach a list of the additional producers, including the legal name, address (including country) and legal tax identification number, cross referenced to the good described in field #5. If you wish this information to be confidential, it is acceptable to state ''Available to Customs upon request''. If the producer and the exporter are the same, complete field with ''SAME''. If the producer is unknown, it is acceptable to state ''UNKNOWN''.

Field 4: State the full legal name, address (including country) and legal tax identification number, as defined in field #1, of the importer. If the importer is not known, state ''UNKNOWN''; if multiple importers, state ''VARIOUS''.

Field 5: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (H.S.) description of the good. If the Certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number.

Field 6: For each good described in field #5, identify the H.S. tariff classification to six digits. If the good is subject to a specific rule of origin in Annex 401 that requires eight digits, identify to eight digits, using the H.S. tariff classification of the country into whose territory the good is imported.

Field 7: For each good described in field #5, state which criterion (A through F) is applicable. The rules of origin are contained in Chapter Four and Annex 401. Additional rules are described in Annex 703.2 (certain agricultural goods), Annex 300–B, Appendix 6A (certain textile goods) and Annex 308.1 (certain automatic data processing goods and their parts). NOTE: In order to be entitled to preferential tariff treatment, each good must meet at least one of the criteria below.

Preference Criteria

A—The good is ''wholly obtained or produced entirely'' in the territory of one or more of the NAFTA countries, as referred to in Article 415. NOTE: The purchase of a good in the territory does not necessarily render it ''wholly obtained or produced''. If the good is an agricultural good, see also criterion F and Annex 703.2. *(Reference: Article 401(a) and 415)*

B—The good is produced entirely in the territory of one or more of the NAFTA countries and satisfies the specific rule of origin, set out in Annex 401, that applies to its tariff classification. The rule may include a tariff classification change, regional value-content requirement or a combination thereof. The good must also satisfy all other applicable requirements of Chapter Four. If the good is an agricultural good, see also criterion F and Annex 703.2 *(Reference: Article 401(b))*

C—The good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials. Under this criterion, one or more of the materials may not fall within the definition of ''wholly produced or obtained'', as set out in Article 415. All materials used in the production of the good must qualify as ''originating'' by meeting the rules of Article 401(a) through (d). If the good is an agricultural good, see also criterion F and Annex 703.2 *(Reference: Article 401(c))*

D—Goods are produced in the territory of one or more of the NAFTA countries but do not meet the applicable rule of origin, set out in Annex 401, because certain non-originating materials do not undergo the required change in tariff classification. The goods do nonetheless meet the regional value-content requirement specified in Article 401(d). This criterion is limited to the following two circumstances:

1. The good was imported into the territory of a NAFTA country in an unassembled or disassembled form but was classified as an assembled good, pursuant to H.S. General Rule of Interpretation 2(a); or

2. The good incorporated one or more non-originating materials, provided for as parts under the H.S., which could not undergo a change in tariff classification because the heading provided for both the good and its parts and was not further subdivided into subheadings, *or* the subheading provided for both the good and its parts and was not further subdivided. NOTE: This criterion does not apply to Chapters 61 through 63 of the H.S. *(Reference: Article 401(d))*

E—Certain automatic data processing goods and their parts, specified in Annex 308.1 that do not originate in the territory are considered originating upon importation into the territory of a NAFTA country from the territory of another NAFTA country when the most-favoured-nation tariff rate of the good conforms to the rate established in Annex 308.1 and is common to all NAFTA countries *(Reference: Annex 308.1)*

F—The good is an originating agricultural good under preference criterion A, B, or C above and is not subject to a quantitative restriction in the importing NAFTA country because it is a ''qualifying good'' as defined in Annex 703.2, Section A or B (please specify). A good listed in Appendix 703.2.B.7 is also exempt from quantitative restrictions

and is eligible for NAFTA preferential tariff treatment if it meets the definition of ''qualifying good'' in Section A of Annex 703.2. NOTE 1: This criterion does not apply to goods that wholly originate in Canada or the United States and are imported into either country. NOTE 2: A tariff rate quota is not a quantitative restriction.

Field 8: For each good described in field #5, state ''YES'' if you are the producer of the good. If you are not the producer of the good, state ''NO'' followed by (1), (2) or (3), depending on whether this certificate was based upon: (1) your knowledge of whether the good qualifies as an originating good; (2) your reliance on the producer's written representation (other than a Certificate of Origin) that the good qualifies as an originating good; or (3) a completed and signed Certificate for the good, voluntarily provided to the exporter by the producer.

Field 9: For each good described in field #5, where the good is subject to a regional value content (RVC) requirement, indicate ''NC'' if the RVC is calculated according to the net cost method; otherwise, indicate ''NO''. If the RVC is calculated according to the net cost method over a period of time, further identify the beginning and ending date (DD/MM/YR) of that period. *(Reference: Articles 402.1, and 402.5)*

Field 10: Identify the name of the country (''MX'' or ''US'' for agricultural and textile goods exported to Canada; ''US'' or ''CA'' for all goods exported to Mexico; or ''CA'' or ''MX'' for all goods exported to the United States) to which the preferential rate of customs duty applies, as set our in Annex 302.2, in accordance with the Marketing Rules or in each Party's schedule of tariff elimination.

For all other originating goods exported to Canada, indicate appropriately ''MX'' or ''US'' if the goods originate in that NAFTA country, within the meaning of the NAFTA Rules of Origin Regulations,, and any subsequent processing in the other NAFTA country does not increase the transaction value of the goods by more than seven percent; otherwise indicate ''JNT'' for joint production. (*Reference: Annex 302.2).*

Field 11: This field must be completed, signed and dated by the exporter. When the Certificate is completed by the producer for use by the exporter, it must be completed, signed and dated by the producer. The date must be the date the Certificate was completed and signed.

Annex I.1d

Language of a Party

For purposes of these Uniform Regulations the language of a Party shall be, in the case of:
(a) Canada, English or French;
(b) Mexico, Spanish; and
(c) the United States, English.

Annex II.3

Corrected Declaration of Origin

An importer shall not be subject to penalties if, in the case of:

(a) Canada, the importer makes the corrected declaration within ninety days from the date on which the importer has reason to believe that the declaration is incorrect;

(b) Mexico, the importer makes the corrected declaration before the customs administration begins an investigation regarding an incorrect declaration or initiates the exercise of its auditing powers on the accuracy of a declaration or an inspection pursuant to the application of the random selection procedures; and

(c) United States, the importer makes the corrected declaration within thirty days from the date on which the importer has reason to believe that the declaration is incorrect and such corrected declaration is make before the commencement of a formal investigation of the incorrect declaration.

Annex III.2

Country-Specific Definitions of ''Series of Importations''

For purposes of Article 503 of the Agreement, ''series of importations'' means, in the case of:

(a) Canada, two or more importations of a good accounted for separately but covered by one commercial invoice issued by the seller of the good to the purchaser of the good;

(b) Mexico, two or more customs entries covering a good arriving the same day or released the same day, and consigned to, or imported by any person, but covered by one commercial invoice; and

(c) the United States, two or more customs entries covering a good arriving the same day from the same exporter and consigned to the same person.

Annex IV.1

Country-Specific Definitions of ''Promptly''

For purposes of Article 504(1)(b) of the Agreement, ''promptly'' means, in the case of:

(a) Canada, immediately;

(b) Mexico, prior to the commencement of an investigation by officials with authority to conduct criminal investigations regarding the Certificate of Origin; and

(c) the United States, within 30 days.

Annex VI.9

Common Standards for Written Questionnaires

1. For purposes of Article VI.9 of these Uniform Regulations, the Parties will seek to agree on uniform questions to be included in a general questionnaire.

2. Subject to paragraph 3, where the customs administration of a Party conducts a verification under Article 506(1)(a) of the Agreement, it shall send the general questionnaire referred to in paragraph 1 of this Annex.

3. For purposes of Article 506(1)(a) of the Agreement, where the customs administration of a Party requires specific information not reflected in the general questionnaire, it may send a more specific questionnaire, according to the information required to determine whether the good that is the subject of the verification is an originating good.

4. For purposes of Article VI of these Uniform Regulations, the verification questionnaires may, at the option of the exporter or producer, be completed in either the language of the Party into whose territory the good is imported, or the language of the Party in the territory in which the exporter or producer is located.

5. Nothing in this Annex shall be interpreted to constrain the customs administration of a Party from requesting additional information in accordance with Article 506(1)(a) of the Agreement and these Uniform Regulations.

Annex VI.23

Rulings and Advance Rulings

A person shall be entitled to rely on a ruling or advance ruling that is issued, in the case of:

(a) Canada, in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) or pursuant to section 43.1(1) of the Customs Act (Advance Rulings);

(b) Mexico, pursuant to Article 34 of the Código Fiscal de la Federación and to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the Agreement; and

(c) the United States, pursuant to 5 U.S.C. 301, 19 U.S.C. 66, or 19 U.S.C. 1624.

Annex VII.2

Common Standards for Information Required in the Application for an Advance Ruling

1. For purposes of Article 509(2) of the Agreement, each Party shall provide that a request for an advance ruling shall contain:

(a) the name and address of the exporter, producer or importer of the good requesting the issuance of the ruling, as the case may be, hereinafter referred to as the applicant,

(b) where the applicant is

(i) the exporter of the good, the name and address of the producer and importer of the good, if known,

(ii) the producer of the good, the name and address of the exporter and importer of the good, if known, or

(iii) the importer of the good, the name and address of the exporter and, if known, the producer of the good.

(c) where the request is made on behalf of an applicant, the name and address of the person requesting the issuance of the advance ruling and either

(i) a written statement from the person requesting the issuance of the advance ruling, or

(ii) upon the request of the customs administration of that Party, such person provide, in accordance with its laws, evidence from the applicant on whose behalf the ruling is being requested,

that indicates that the person is duly authorized to transact business as the agent of the applicant.

(d) a statement, on the basis of the applicant's knowledge, as to whether the issue that is the subject of the request for an advance ruling is, or has been, the subject of

(i) a verification of origin

(ii) an administrative review or appeal

(iii) a judicial or quasi-judicial review, or

(iv) a request for an advance ruling

in the territory of any Party, and if so, a brief statement setting forth the status or disposition of the matter.

(e) a statement, on the basis of the applicant's knowledge, as to whether the good that is the subject of the request for an advance ruling has previously been imported into the territory of the Party to whom the request for the advance ruling has been made.

(f) a statement that the information presented is accurate and complete, and

(g) a complete description of all relevant facts and circumstances relating to the issue that is the subject of the request for the advance ruling, including,

(i) a concise statement, within the scope of Article 509(1) of the Agreement, setting forth the issue on which the advance ruling is sought, and

(ii) a general description of the good.

2. Where relevant to the issue that is the subject of the request for an advance ruling, the request shall include, in addition to the information referred to in paragraph 1,

(a) a copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued to the applicant by the Party to whom the request for an advance ruling is made, and

(b) if no previous advance ruling or other ruling with respect to the tariff classification of the good has been issued by the Party to whom the request for the advance ruling is made, sufficient information to enable the customs administration of that Party to classify the good, including,

(i) a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, product literature, drawings, photographs, or schematics, and

(ii) where practical and useful, a sample of the good.

3. Where the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of the good undergo an applicable change in tariff classification, the request shall include:

(a) a listing of each material that is used in the production of the good,

(b) with respect to each material referred to in paragraph (a) that is claimed to be an originating material, a complete description of the material, including the basis on which it is considered that the material originates,

(c) with respect to each material referred to in paragraph (a) that is a non-originating material or the origin of which is unknown, a complete description of the material, including its tariff classification, if known, and

(d) a description of all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

4. Where the request for an advance ruling involves the application of a regional value-content requirement, the applicant shall indicate whether the request is based on the use of the transaction value or the net cost method, or both.

5. Where the request for an advance ruling involves the use of the transaction value method, the request shall include:

(a) information sufficient to calculate the transaction value of the good in accordance with Schedule II of the NAFTA Rules of Origin Regulations with respect to the transaction of the producer of the good, adjusted to a F.O.B. basis,

(b) information sufficient to calculate the value of each material that is a non-originating material or the origin of which is unknown that is used in the production of the good in accordance with Section 7, and, where applicable, section 6(10) of the NAFTA Rules of Origin Regulations, and

(c) with respect to each material that is claimed to be an originating material that is used in the production of the good, a complete description of the material including the basis on which it is considered that the material originates.

6. Where the request for an advance ruling involves the use of the net cost method, the request shall include:

(a) a listing of all product, period and other costs relevant to determining the total cost of the good referred to under the NAFTA Rules of Origin Regulations,

(b) a listing of all excluded costs to be subtracted from the total cost referred to under the NAFTA Rules of Origin Regulations,

(c) information sufficient to calculate the value of each material that is a non-originating material or the origin of which is unknown that is used in the production of the good in accordance with section 7 of the NAFTA Rules of Origin Regulation,

(d) the basis for any allocation of costs in accordance with Schedule VII of the NAFTA Rules of Origin Regulations, and

(e) the period over which the net cost calculation is to be made.

7. Where the request for an advance ruling involves an issue of whether, with respect to a good or a material that is used in the production of a good, the transaction value of the good or the material is acceptable, the request shall include information sufficient to permit an examination of the factors enumerated in Schedules III or VIII of the NAFTA Rules of Origin Regulations, as applicable.

8. Where the request for an advance ruling involves an issue with respect to an intermediate material under Article 402(10) of the Agreement, the request shall contain sufficient information to determine the origin and value of the material in accordance with Article 402(11).

9. Where the request for an advance ruling is limited to the calculation of an element of a regional value content formula, in addition to the information required under paragraph 1, only that information set out under paragraph 4, 5 and 6 which is relevant to the issue that is the subject of the request for an advance ruling need be contained in the request.

10. Where the request for an advance ruling is limited to the origin of a material that is used in the production of a good in accordance with Article VII.1 of these Uniform Regulations, in addition to the information required under paragraph 1, only that information set out under paragraph 2 and 3 which is relevant to the issue that is the subject of the advance ruling need be contained in the request.

Annex VII.8

Country-Specific Definitions of ''importations of a good''

For purposes of Article 509(7) of the Agreement, ''importations of a good'' means importations of a good:

(a) which, in the case of Canada, has been released pursuant to section 31 of the Customs Act;

(b) for which, in the case of Mexico, an entry document has been presented pursuant to Article 25 of the Ley Aduanera (Customs Act); and

(c) which, in the case of the United States, has been entered pursuant to section 1484 of title 19, United States Code.

Annex IX.1

United States Definition of ''identical or similar''

For purposes of Article 303 of the Agreement, in the case of the United States ''identical or similar'' shall have the same meaning as ''same kind and quality'' as set forth in 19 U.S.C. § 1313(b).

[FR Doc. 95–21717 Filed 9–5–95; 8:45 am]

BILLING CODE 4820–02–M

federal register

Wednesday
September 6, 1995

Part III

Department of Justice

Bureau of Prisons

28 CFR Parts 541 and 548

Control Unit Programs; Religious Beliefs and Practices: Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

[BOP–1025–F]

Control Unit Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on Control Unit Programs to reflect changes in staffing assignments or the mission of specific institutions, to conform to revisions for Federal Prison Industries work assignments, and to make an editorial amendment.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Control Unit Programs. A final rule on this subject was published in the **Federal Register** August 17, 1984 (49 FR 32991) and was amended June 20, 1985 (50 FR 25662).

This document makes the following changes to the Bureau's regulations on control unit programs to reflect changes in staffing assignments or the mission of specific institutions, and changes in the Bureau's regulations on Federal Prison Industries work assignments.

In § 541.46, paragraph (c), obsolete references to Federal Prison Industries industrial good time have been removed. Regulations on Federal Prison Industries work programs (28 CFR part 345) were revised on March 27, 1995 (60 FR 15826). Paragraph (g) is revised for the sake of clarity by dividing the existing text into two sentences. There is no change in the intent of this paragraph.

In § 541.48, paragraph (b) is revised to remove specific reference to the Marion Control Unit, which is currently being deactivated. The procedures in revised paragraph (a) for the inmate's request that an X-ray be taken in lieu of digital search are therefore applicable for any control unit. Revised paragraph (b) now specifies the institution's Clinical Director or Acting Clinical Director (rather than the Chief or Acting Chief of Health Programs) as the official responsible for making a medical determination regarding cumulative X-ray exposure for the requesting inmate. This change is intended to make more efficient use of Bureau staff.

In § 541.49, paragraph (a) is revised to specify additional staff (namely, the officer-in-charge or lieutenant) on the control unit team.

In § 541.50, paragraph (b)(2) is revised for editorial purposes. There is no change in the intent of this section.

Because these changes are administrative in nature and are not more restrictive on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 541

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 541.46, paragraph (c) is amended by revising the first sentence (the paragraph heading is republished) and paragraph (g) is revised to read as follows:

§ 541.46 Programs and services.

* * * * *

(c) *Industries (UNICOR).* If an industry program exists in a control unit each inmate participating in this program may earn industrial pay, subject to the regulations of Federal Prison Industries, Inc. (UNICOR). * * *

* * * * *

(g) *Counselor services.* The unit counselor ordinarily handles phone call requests, special concerns and requests of inmates, and requests for administrative remedy forms. The unit counselor is also available for consultation and for counseling as recommended in the mental health evaluation (see paragraph (i) of this section—Mental Health Services).

* * * * *

3. In § 541.48, paragraph (b) is revised to read as follows:

§ 541.48 Search of control unit inmates.

* * * * *

(b) An inmate in a control unit may request in writing that an X-ray be taken in lieu of the digital search discussed in paragraph (a) of this section. The Warden shall approve this request, provided it is determined and stated in writing by the institution's Clinical Director or Acting Clinical Director (may not be further delegated) that the amount of X-ray exposure previously received by the inmate, or anticipated to be given the inmate in the immediate future, does not make the proposed X-ray medically unwise. Staff are to place documentation of the X-ray, and the inmate's signed request for it, in the inmate's central and medical files. The Warden's authority may not be delegated below the level of Acting Warden.

* * * * *

4. In § 541.49, paragraph (a) is amended by revising the second sentence to read as follows:

§ 541.49 Review of control unit placement.

(a) * * * Once every 30 days, the control unit team, comprised of the control unit manager and other members designated by the Warden (ordinarily to include the officer-in-charge or lieutenant, case manager, and education staff member assigned to the unit), shall meet with an inmate in the control unit. * * *

* * * * *

5. In § 541.50, paragraph (b)(2) is revised to read as follows:

§ 541.50 Release from a control unit.

* * * * *

(b) * * *

(2) To another federal or non-federal institution; or

* * * * *

[FR Doc. 95–21933 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

[BOP 1011–I]

RIN 1120–AA17

Religious Beliefs and Practices

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this interim rule, the Bureau of Prisons is amending its regulations on Religious Beliefs and Practices in order to provide for the uniform implementation of a common fare religious diet menu and to simplify and update procedures relating to religious beliefs and practices.

DATES: Effective September 6, 1995; comments due by November 6, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Religious Beliefs and Practices. A final rule on this subject was published in the **Federal Register** December 14, 1984 (49 FR 48902).

The Bureau of Prisons is updating its regulations on Religious Beliefs and Practices to include provisions for the implementation of a common fare religious diet. In addition, the regulations have been revised and reorganized for the sake of clarity. A discussion of the specific changes follows.

In § 548.10, paragraph (a) has been revised for the sake of clarity. Paragraph (b) has been revised for the sake of clarity and to provide examples of religious activity or practice. Paragraph (c) has been revised to clarify that an inmate may request at any time to change religious preference by notifying the chaplain in writing. This revision is necessary to provide for adequate documentation (i.e., requiring the notification in writing) of the inmate's request. The change will then be effected in a timely fashion.

The material in §§ 548.12 through 548.15 has been revised and reorganized as §§ 548.12 through 548.20.

New § 548.12 restates material formerly in old § 548.12(a). As revised, this section on chaplains now also specifies that pastoral care and counseling from representatives in the community are available in accordance with the provisions of new §§ 548.14 and 548.19.

New § 548.13 restates material formerly in old §§ 548.12 (b) and 548.15 (b). As revised, new § 548.13 emphasizes that chaplains are responsible for directing the institution's religious activities and that each institution shall have space designated for the conduct of religious activities.

New § 548.14 restates material formerly in old § 548.12 (c) regarding pastoral care and counseling available from representatives in the community. As revised these provisions may require verification of a volunteer's or contractor's religious credentials from a recognized member of the faith group.

New § 548.15 consolidates material from old § 548.12 (d) and (e). As revised, this section now specifies that attendance at religious activities is voluntary and, unless otherwise specifically determined by the Warden, is open to all.

New § 548.16 consolidates material from old § 548.12 (f) and (g). As revised, paragraph (a) of new § 548.16 clarifies that religious items are considered to be part of the inmate's personal property and are subject to normal considerations of safety and security. This paragraph also provides that the chaplain is to verify the religious significance for the Warden's approval. Paragraph (b) restates the provisions of former § 548.12(f) regarding the wearing of religious items during religious services, ceremonies, and meetings in the chapel or within the institution. Paragraph (c) of new § 548.16 restates the provisions of former § 548.12(g). Revised paragraph (c) also requires that the distribution to inmates of religious literature purchased by or donated to the Bureau is contingent upon the approval of the institution's chaplain. This change is intended to ensure that inmates are not coerced or harassed to change religious affiliation.

New § 548.17 restates provisions from former § 548.14 covering work assignments. As revised, this section broadens applicability by covering instances where a religious tenet is jeopardized by a particular work assignment and designates the chaplain as being responsible for verifying the specific religious tenets. The revised section clarifies procedures by specifying that the inmate makes the request in writing.

New § 548.18 restates provisions from former § 548.15(a) regarding religious observances. As revised, this section clarifies procedures for the submission of an inmate's request for time off from work to observe a religious holy day and requires that the chaplain work with requesting inmates to accommodate a proper observance of the holy day celebration.

New § 548.19 derives from an expansion of provisions from former § 548.12(c) regarding pastoral visits. As added, this section requires that the chaplain facilitate arrangements for pastoral visits by a clergyperson or representative of the inmate's faith if requested by an inmate and gives the chaplain the discretion to request an NCIC check and documentation of such person's religious credentials when necessary. The revised section specifies that such visits are not considered social visits, in accordance with existing Bureau policy on visiting regulations (see 28 CFR 540.48), and provides for administrative details on the location of such visits.

New § 548.20 restates provisions contained in former § 548.13 (a) and (b) on dietary practices, including religious diets. In the past, religious diets offered by the Bureau were limited to kosher diets and a pilot program offering a common fare menu (i.e., a diet designed to meet nutritional standards and the basic requirements of religious dietary norms).

As revised, paragraph (a) of new § 548.20 specifies procedures for consideration of requests for a religious diet under a common fare menu. References to nutritional standards have been removed because the Bureau believes it is unnecessary in this regulation to restate its basic policy of providing nutritionally adequate meals. The Bureau initially piloted operation of a common fare menu at institutions in its South Central Region and gradually expanded operation of the program nationwide. Review of the small number of inmate complaints on this subject filed under the Administrative Remedy Program has demonstrated the benefits and practicability of the common fare menu. Documentation requirements for processing a request include a written statement from the inmate articulating the religious motivation for participating in the common fare program. Paragraph (b) specifies procedures for withdrawal or removal

from a requested religious diet. The process of reapproving a religious diet ordinarily may extend up to thirty days. Repeated withdrawals may result in longer waiting periods (up to one year). This delay for reinstatement is intended to preserve the integrity and orderly operation of the religious diet program and to prevent fraud. Paragraph (c) contains provisions for accommodations to be made for an annual ceremonial or commemorative meal which specify that such meal is for the members of the particular religious group. The discretionary provisions contained in former § 548.13(b) on the purchase of food to be used for these meals have been removed from the revised regulations because the Bureau believes them to be administrative in nature. Internal staff guidelines specify that Bureau Food Service staff are responsible for procuring such special foods.

Because implementation of a common fare menu provides wider accommodation to the religious needs of inmates and has generally shown its benefits and practicability (based upon the small number of Administrative Remedy filings), the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, and delay in effective date, and is implementing this change as an interim rule. Other regulatory changes in this document are administrative in nature or are restatements or reorganizations made for the sake of clarity. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 548

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 548 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Subchapter C—Institutional Management

PART 548—RELIGIOUS PROGRAMS

1. The authority citation for 28 CFR part 548 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95–0.99.

2. Subpart B, consisting of §§ 548.10 through 548.15, is revised to consist of §§ 548.10 through 548.20 as follows:

Subpart B—Religious Beliefs and Practices of Committed Offenders

Sec.
548.10 Purpose and scope.
548.11 Definition.
548.12 Chaplains.
548.13 Schedules and facilities.
548.14 Community involvement (volunteers, contractors).
548.15 Equity.
548.16 Inmate religious property.
548.17 Work assignments.
548.18 Observance of religious holy days.
548.19 Pastoral visits.
548.20 Dietary practices.

Subpart B—Religious Beliefs and Practices of Committed Offenders

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons provides inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, within the constraints of budgetary limitations and consistent with the security and orderly running of the institution and the Bureau of Prisons.

(b) When considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue a religious activity. Opportunities for religious activities are open to the entire inmate population, without regard to race, color, nationality, or ordinarily, creed. The Warden, after consulting with the institution chaplain, may limit participation in a particular religious activity or practice to the members of that religious group. Ordinarily, when the nature of the activity or practice (e.g., religious fasts, wearing of headwear, work proscription, ceremonial meals) indicates a need for such a limitation, only those inmates whose files reflect the pertinent religious preference will be included.

(c) The Bureau of Prisons does not require an inmate to profess a religious belief. An inmate may designate any or no religious preference at his/her initial team screening. By notifying the chaplain in writing, an inmate may request to change this designation at any time, and the change will be effected in a timely fashion.

§ 548.11 Definition.

For purposes of this subpart, the term ''religious activity'' includes religious diets, services, ceremonies, and meetings.

§ 548.12 Chaplains.

Institution chaplains are available upon request to provide pastoral care and counseling to inmates through group programs and individual services. Pastoral care and counseling from representatives in the community are available in accordance with the provisions of §§ 548.14 and 548.19.

§ 548.13 Schedules and facilities.

(a) Under the general supervision of the Warden, chaplains shall schedule and direct the institution's religious activities.

(b) The Warden may relieve an inmate from an institution program or assignment if a religious activity is also scheduled at that time.

(c) Institutions shall have space designated for the conduct of religious activities.

§ 548.14 Community involvement (volunteers, contractors).

(a) The institution's chaplain may contract with representatives of faith groups in the community to provide specific religious services which the chaplain cannot personally deliver due to, ordinarily, religious prescriptions or ecclesiastical constraints to which the chaplain adheres.

(b) The institution's chaplain may secure the services of volunteers to assist inmates in observing their religious beliefs.

(c) The Warden or the Warden's designee (ordinarily the chaplain) may require a recognized representative of the faith group to verify a volunteer's or contractor's religious credentials prior to approving his or her entry into the institution.

§ 548.15 Equity.

No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation. Attendance at all religious activities is voluntary and, unless otherwise specifically determined by the Warden, open to all.

§ 548.16 Inmate religious property.

(a) Inmate religious property includes but is not limited to rosaries and prayer beads, oils, prayer rugs, phylacteries, medicine pouches, and religious medallions. Such items, which become part of an inmate's personal property, are subject to normal considerations of safety and security. If necessary, their religious significance shall be verified by the chaplain prior to the Warden's approval.

(b) An inmate ordinarily shall be allowed to wear or use personal religious items during religious services, ceremonies, and meetings in the chapel, unless the Warden determines that the wearing or use of such items would threaten institution security, safety, or good order. Upon request of the inmate, the Warden may allow the wearing or use of certain religious items throughout the institution, consistent with considerations of security, safety, or good order. The Warden may request the chaplain to obtain direction from representatives of the inmate's faith group or other appropriate sources concerning the religious significance of the items.

(c) An inmate who wishes to have religious books, magazines or periodicals must comply with the general rules of the institution regarding ordering, purchasing, retaining and accumulating personal property. Religious literature is permitted in accordance with the procedures governing incoming publications. Distribution to inmates of religious literature purchased by or donated to the Bureau of Prisons is contingent upon the chaplain's granting his or her approval.

§ 548.17 Work assignments.

When the religious tenets of an inmate's faith are violated or jeopardized by a particular work assignment, a different work assignment ordinarily shall be made after it is requested in writing by the inmate, and the specific religious tenets have been verified by the chaplain. Maintaining security, safety, and good order in the institution are grounds for denial of such request for a different work assignment.

§ 548.18 Observance of religious holy days.

Consistent with maintaining security, safety, and good order in the institution, the Warden shall endeavor to facilitate the observance of important religious holy days which involve special fasts, dietary regulations, worship, or work proscription. The inmate must submit a written request to the chaplain for time off from work to observe a religious holy day. The Warden may request the chaplain to consult with community representatives of the inmate's faith group and/or other appropriate sources to verify the religious significance of the requested observance. The chaplain will work with requesting inmates to accommodate a proper observance of the holy day. The Warden will ordinarily allow an inmate to take earned vacation days, or to make up for missed work, or to change work assignments in order to facilitate the observance of the religious holy day.

§ 548.19 Pastoral visits.

If requested by an inmate, the chaplain shall facilitate arrangements for pastoral visits by a clergyperson or representative of the inmate's faith.

(a) The chaplain may request an NCIC check and documentation of such clergyperson's or faith group representative's credentials.

(b) Pastoral visits may not be counted as social visits. They will ordinarily take place in the visiting room during regular visiting hours.

§ 548.20 Dietary practices.

(a) The Bureau provides inmates requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the institution and the Bureau through a common fare menu. The inmate will provide a written statement articulating the religious motivation for participation in the common fare program. Any approval of a request for religious diets must be documented in writing by the chaplain, who will forward a copy of the approval form to the food service administrator.

(b) An inmate who has been approved for a common fare menu must notify the chaplain in writing if the inmate wishes to withdraw from the religious diet. Approval for an inmate's religious diet may be withdrawn by the chaplain if the inmate is documented as being in violation of the terms of the religious diet program to which the inmate has agreed to in writing. In order to preserve the integrity and orderly operation of the religious diet program and to prevent fraud, inmates who withdraw (or are removed) may not be immediately reestablished back into the program. The process of reapproving a religious diet for an inmate who voluntarily withdraws or who is removed ordinarily may extend up to thirty days. Repeated withdrawals (voluntary or otherwise), however, may result in inmates being subjected to a waiting period of up to one year.

(c) The chaplain may arrange for inmate religious groups to have one appropriate ceremonial or commemorative meal each year for their members as identified by the religious preference reflected in the inmate's file. An inmate may attend one religious ceremonial meal in a calendar year.

[FR Doc. 95–21934 Filed 9–5–95; 8:45 am]

BILLING CODE 4410–05–P

federal register

Wednesday
September 6, 1995

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal/State Compact; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Skokomish Indian Tribe and the State of Washington, which was executed on May 25, 1995.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: August 25, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–22046 Filed 9–5–95; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
September 6, 1995

Part V

Department of Education

34 CFR Parts 74, 75, 76, and 81

Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations; Direct Grant Programs; State-Administered Programs; and General Provisions Act Enforcement: Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 74, 75, 76, and 81

RIN 1880–AA64

Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations; Direct Grant Programs; State-Administered Programs; and General Provisions Act—Enforcement

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary makes technical amendments to the Education Department General Administrative Regulations (EDGAR) to implement amendments to the General Education Provisions Act (GEPA) made by the Improving America's Schools Act (IASA). The provisions will diminish the paperwork burden for recipients, permit the Secretary to approve State plans for a period longer than three years, authorize the Secretary to take actions other than termination actions if, after a hearing, the Secretary determines that a State plan is not substantially approvable, improve the procedures and requirements governing hearings for the recovery of funds, implement other statutory requirements and make other technical changes to EDGAR.

EFFECTIVE DATE: These regulations take effect October 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, SW., Room 3636, ROB–3, Washington, DC 20202–4700. Telephone: (202) 205–3501. 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: The Secretary is amending sections in 34 CFR Parts 74, 75, 76, and 81 to implement the Improving America's Schools Act of 1994 (Pub. L. 103–382), enacted October 20, 1994, and to make other technical changes. The Improving America's Schools Act extends the authorization for programs under the Elementary and Secondary Education Act of 1965 and, as it relates to these amendments, diminishes paperwork burden for educators and clarifies procedures handled by the Office of Administrative Law Judges. Other technical changes to EDGAR are also being made.

Section-by-Section Analysis

Section 74.53 establishes record retention and access requirements for discretionary grants and cooperative agreements awarded on or after October 1, 1994. The section is amended by removing ''five'' and adding in its place ''three'' in all appropriate places to reflect IASA removal of the GEPA requirement that recipients under applicable programs maintain records for five years. In addition, the remaining paragraphs are revised by removing ''5'' wherever it appears and adding in its place ''3''.

Section 75.125 is amended by revising the heading and authority citation to eliminate reference to the Joint Funding Simplification Act which no longer exists.

Section 75.734 is removed because the IASA amended GEPA to remove the former requirement that recipients under applicable programs maintain records for five years. The removal of § 75.734 allows recipients of discretionary grant programs to rely on the rules in Parts 74 and 80, which require that records be maintained for only three years.

Section 76.101 is amended to reflect the new section number for the section of the General Education provisions Act (GEPA) that specifies the content of the single State application.

Section 76.103 is revised to change the effective period for a state plan from a three-year State plan to give the Secretary the flexibility to establish a multi-year State plan period. Under the amended regulation, the Secretary could establish a State plan period for more than three years.

Section 76.301 is amended to reflect the new section number for the section of GEPA that authorizes the single State application.

Section 76.401 specifies procedures that States must follow in disapproving local applications and specifies actions the Secretary may take if it's determined that a State did not comply with any of the provisions in § 76.401. The section is amended by revising paragraph (d)(8) to include language that will allow the Secretary additional measures to achieve compliance other than immediate termination of assistance to the State.

Section 76.734 is removed because the IASA amended GEPA to remove the former requirement that recipients maintain records for five years. The removal of § 76.734 allows recipients under state administered programs to rely on the rules in Parts 74 and 80, which require that records be maintained for only three years.

Section 81.24 is amended to implement section 250(a)(1) of the IASA by revising § 81.24(b)(1) to require the Secretary, in issuing a notice of a preliminary departmental decision, to establish a prima facie case.

Section 81.27 is amended to implement section 250(a)(1) of the IASA, to allow a recipient 60 days to file an application for review of a preliminary departmental decision in place of the 30 days allowed in the current requirement.

Section 81.33 is amended to implement section 250(a)(3)(B) of the IASA so that, during the Secretary's review of a decision of the Office of Administrative Law Judges, ex parte communication between employees of the Secretary's office and individuals representing the Department or the recipient are prohibited.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

Some programs affected by these regulations 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 the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary has determined that this document does not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement policy changes over which the Secretary has discretion, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C.

553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

List of Subjects

34 CFR Part 74

Administrative practice and procedure, Education Department, Grant programs-education, Grant Administration, Hospitals, Institutions of higher education, Non-profit organizations, Reporting and recordkeeping requirements.

34 CFR Part 75

Education Department, Grant programs-education, Grant administration, Incorporation by reference.

34 CFR Part 76

Education Department, Grant programs-education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 81

Enforcement, General Education Provisions Act.

Dated: August 30, 1995.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Parts 74, 75, 76, and 81 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND OTHER NON-PROFIT ORGANIZATIONS

1. The authority citation for Part 74 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; OMB Circular A–110, unless otherwise noted.

2. In section 74.53, the introduction to paragraph (b) is amended by removing ''five'' and adding in its place, ''three'', in paragraph (b) (1) and (3) and (g) (1) and (2) removing ''5–'' and adding, in its place, ''3–''; in paragraph (b)(3) by removing ''5'' and adding in its place ''3''; and by revising the authority citation to read as follows:

§ 74.53 Qualifications and exceptions

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474; OMB Circular A–110)

3. The authority citation for sections 74.1, 74.2, 74.3, 74.4, 74.5, 74.10, 74.11, 74.12, 74.13, 74.14, 74.15, 74.16, 74.17, 74.20, 74.21, 74.22, 74.23, 74.24, 74.25, 74.26, 74.27, 74.28, 74.30, 74.31, 74.32, 74.33, 74.34, 74.35, 74.36, 74.37, 74.40, 74.41, 74.42, 74.43, 74.44, 74.45, 74.46, 74.47, 74.48, 74.50, 74.51, 74.52, 74.60, 74.61, 74.62, 74.70, 74.71, 74.72, and 74.73 and Appendix A to Part 74 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474; OMB Circular A–110)

PART 75—DIRECT GRANT PROGRAMS

4. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

5. Section 75.125 is amended by revising the heading and the authority citation to read as follows:

§ 75.125 Submit a separate application to each program.

* * * * *

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.734 [Removed]

6. Section 75.734 and the note and cross-reference following the section are removed.

7. Section 75.740 is amended in paragraph (a) by removing the number ''438'' and adding in its place the number ''444'' and in paragraph (b) by removing the number ''439'' and adding in its place the number ''445'' and revising the authority citation to read as follows:

§ 75.740 Protection of and access to student records; student rights in research, experimental programs, and testing.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1232g, 1232h, and 3474)

8. The authority citation for sections 75.1, 75.2, 75.4, 75.50, 75.51, 75.60, 75.61, 75.62, 75.100, 75.101, 75.102, 75.103, 75.104, 75.105, 75.109, 75.112, 75.117, 75.119, 75.125, 75.126, 75.127, 75.128, 75.129, 75.155, 75.156, 75.158, 75.159, 75.190, 75.191, 75.192, 75.200, 75.201, 75.210, 75.215, 75.216, 75.217, 75.218, 75.219, 75.220, 75.222, 75.230, 75.231, 75.232, 75.233, 75.234, 75.235, 75.236, 75.250, 75.251, 75.253, 75.260, 75.261, 75.262, 75.500, 75.511, 75.515, 75.516, 75.517, 75.519, 75.524, 75.525, 75.530, 75.531, 75.532, 75.533, 75.534, 75.560, 75.561, 75.562, 75.563, 75.564, 75.590, 75.591, 75.592, 75.600, 75.601, 75.602, 75.603, 75.604, 75.605, 75.606, 75.607. 75.608, 75.609, 75.610, 75.611, 75.612, 75.613, 75.614, 75.615, 75.618, 75.620, 75.621, 75.622, 75.626, 75.650, 75.681, 75.682, 75.683, 75.700, 75.701, 75.702, 75.703, 75.707, 75.708, 75.720, 75.730, 75.731, 75.732, 75.900, 75.901, 75.903, and 75.910 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474)

9. The authority citation for section 75.580 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 2890, and 3474)

10. The authority citation for section 75.616 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474, 42 U.S.C. 8373(b), and E.O. 12185)

11. The authority citation for section 75.617 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474, 31 U.S.C. 3504, 3505)

PART 76—STATE-ADMINISTERED PROGRAMS

12. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a) unless otherwise noted.

13. Section 76.101 is amended by removing ''Section 435'' and adding, in its place, ''Section 441'' and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232d, and 3474)

14. Section 76.103 is amended by revising the heading and paragraph (a); and by removing ''three-year'' in paragraph (b) and adding, in its place, ''multi-year'' to read as follows:

§ 76.103 Multi-year State plans.

(a) Beginning with fiscal year 1996, each State plan will be effective for a period of more than one fiscal year, to be determined by the Secretary or by regulations.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1231g(a), and 3474)

15. Section 76.301 is amended by removing ''Section 436'' and adding, in its place, ''Section 442'' and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232d, and 3474)

16. Section 76.401 is amended by revising paragraph (d)(8) and the authority citation to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

* * * * *

(d) * * *

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1231b–2, 3474, and 6511(a))

§ 76.734 [Removed]

17. Section 76.734 and the note following the section are removed.

18. The authority citation for § 76.1 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

19. The authority citation for §§ 76.2, 76.50, 76.51, 76.500, 76.532, 76.533, 76.534, 76.563, 76.600, 76.703, 76.704, and 76.707 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

20. The authority citation for §§ 76.100, 76.102, 76.104, 76.106, 76.125, 76.141, 76.142, 76.201, 76.202, 76.235, 76.261, 76.300, 76.302, 76.303, 76.400, 76.650, 76.651, 76.652, 76.653, 76.654, 76.655, 76.656, 76.657, 76.658, 76.659, 76.660, 76.661, 76.662, and 76.770 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3 and 3474)

21. The authority citation for § 76.140 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1231g(a), and 3474)

22. The authority citation for § 76.304 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232e, and 3474)

23. The authority citation for §§ 76.530, 76.560, 76.561, 76.681, 76.683, 76.700, 76.701, 76.702, 76.720, 76.722, 76.731, 76.760, 76.761, and 76.902 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 3474, and 6511(a))

24. The authority citation for § 76.580 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 2890, and 3474)

25. The authority citation for § 76.591 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1226c, 1231a, 3474, and 6511(a))

26. The authority citation for § 76.677 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 2727(b)(3)(D), 2972(f), and 3474)

27. The authority citation for § 76.705 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1225(b), and 3474)

28. The authority citation for § 76.740 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1232g, 1232h, 3474, and 6511(a))

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

29. The authority citation for part 81 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3, 1234–1234i, and 3474(a), unless otherwise noted.

30. Section 81.24 is amended by revising paragraph (b)(1) and the authority citation to read as follows:

§ 81.34 Notice of a disallowance decision.

* * * * *

(b)(1) The notice must establish a prima facie case for the recovery of funds, including an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest.

* * * * *

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(a), and 3474(a))

31. Section 81.37 is amended by removing ''30'' in paragraph (b) and adding, in its place, ''60'' and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(b)(1), and 3474(a))

32. Section 81.43 is amended by redesignating paragraph (a) as paragraph (a)(1); adding a new paragraph (a)(2); and revising the authority citation to read as follows:

§ 81.43 Review by the Secretary.

(a)(1) * * *

(2) During the Secretary's review of the initial decision there shall not be any *ex parte* contact between the Secretary and individuals representing the Department or the recipient.

* * * * *

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(d), and 3474(a))

33. The authority citation for sections 81.1, 81.7, 81.8, 81.11, 81.12, 81.17, and 81.19 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

34. The authority citation for section 81.2 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (b), (c), and (f)(1), 1234a(a)(1), 1234i, and 3474(a))

35. The authority citation for section 81.4 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (b) and (c), and 3474(a))

36. The authority citation for section 81.5 is revised to read as follows:

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e–3, 1234 (d), (f)(1) and (g)(1), and 3474(a))

37. The authority citation for section 81.6 is revised to read as follows:

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474)

38. The authority citation for section 81.9 is revised to read as follows:

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

39. The authority citation for section 81.10 is revised to read as follows:

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

40. The authority citation for section 81.13 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (f)(1) and (h), and 3474(a))

41. The authority citation for section 81.14 is revised to read as follows:

(Authority: 20 U.S.C. 554(c)(1), 1221e–3, 1234(f)(1), and 3474(a))

42. The authority citation for section 81.15 is revised to read as follows:

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

43. The authority citation for section 81.21 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(k), 1234b (a) and (b), and 3474(a))

44. The authority citation for section 81.22 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(a), and 3474(a))

45. The authority citation for section 81.23 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(b), and 3474(a))

46. The authority citation for section 81.24 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(a), and 3474(a))

47. The authority citation for section 81.25 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(j), and 3474(a); 31 U.S.C. 3711)

48. The authority citation for section 81.26 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a (j), and 3474(a))

49. The authority citation for section 81.27 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(b)(1), and 3474(a))

50. The authority citation for section 81.28 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234 (e) and (f)(1), 1234a(b), and 3474(a))

51. The authority citation for section 81.29 is revised to read as follows:

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(c), and 3474(a))

52. The authority citation for section 81.30 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(b)(3), 1234b(b)(1), and 3474(a))

53. The authority citation for section 81.31 is revised to read as follows:

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e–3, 1234(f)(1), and 3474(a))

54. The authority citation for section 81.32 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(e), and 3474(a))

55. The authority citation for section 81.33 is revised to read as follows:

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(d), and 3474(a))

56. The authority citation for section 81.34 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234a(g), and 3474(a))

57. The authority citation for the appendix to Part 81 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3, 1234(f)(1), 1234b(a), and 3474(a))

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