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WASHINGTON, DC

WHEN: July 28 at 9:00 am

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–52–AD; Amendment 39–8971; AD 94–14–22]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to de Havilland DHC–6 series airplanes. This action requires repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. Several reports of cracks in the horizontal stabilizer center hinge bracket flange on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane.

DATES: Effective August 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; facsimile (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland DHC–6 series airplanes was published in the **Federal Register** on February 17, 1994 (59 FR 7913). The action proposed to require repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. The proposed action would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin 6/512, dated October 25, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 169 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,295. This figure only includes the cost for the initial inspection and does not include replacement costs if a center hinge bracket is found cracked nor does it include repetitive inspection costs. The FAA has no way to determine how many center hinge brackets may be cracked or how many repetitive inspections each owner/operator may incur.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

94–14–22 de Havilland: Amendment 39–8971; Docket No. 93–CE–52–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 250 hours time-in-service (TIS), unless already

accomplished, and thereafter at intervals not to exceed 1,200 hours TIS.

To prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer center hinge bracket for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin 6/512, dated October 25, 1991, except that where dye penetrant inspections are specified, accomplish visual inspections with a strong light source and 10X magnifying glass. If any cracks are found, prior to further flight, replace the center hinge bracket in accordance with the referenced service bulletin.

Note 1: The repetitive inspection requirement of this AD still applies if the center hinge bracket is replaced.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) The inspections required by this AD shall be done in accordance with de Havilland Service Bulletin 6/512, dated October 25, 1991. 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 de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8971) becomes effective on August 31, 1994.

Issued in Kansas City, Missouri, on July 1, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–16536 Filed 7–7–94; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 4

Procedures for Review of Compliance Reports and Delegation of Authority To Resolve Confidentiality Issues

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends 16 CFR Parts 2 and 4 to streamline the processing of compliance reports and to delegate to the General Counsel the authority to resolve confidentiality issues respecting information in compliance reports and in other documents subject to routine placement on the public record. These amendments are intended to improve efficiency and reduce delays in connection with the processing of compliance reports and the resolution of confidentiality issues by the agency.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, Bureau of Consumer Protection, 202–326–2098.

SUPPLEMENTARY INFORMATION:

Compliance Procedures

The Commission is revising its procedures for processing compliance reports submitted pursuant to Commission orders and pursuant to section 2.41(a) of the Commission's Rules of Practice, 16 CFR 2.41(a). Under former section 2.41(b) of the rules, most compliance reports were either "approved" or "rejected," although the Commission could bring a civil penalty case pursuant to section 5(l) of the FTC Act, 15 U.S.C. 45(l), without any prior notice to the respondents. *See* 16 CFR 2.41(a). Henceforth, there will be no provision for Commission approval or rejection of compliance reports; rather, staff will review these reports and determine whether to recommend that the Commission take further action, such as commencing a civil penalty case for failure to comply with the order.[1] Staff may also, in appropriate cases, advise a respondent that a compliance report appears inadequate and request that the report be supplemented with additional material that shall be deemed part of the report.

Under the former rules, there was a limited delegation by the Commission to the Directors and Deputy Directors of the Bureaus of Competition and Consumer Protection of the authority to approve or reject most types of compliance reports after five days notice to the Commission. However, the Commission had reserved for itself the authority to review, and if warranted to approve or reject four categories of reports: (1) Most reports involving section 7 of the Clayton Act; (2) reports in matters which had received previous Commission consideration as to compliance or in which the Commission or any Commissioner had expressed an interest; (3) reports in matters proposed to be closed by reason of expense of investigation or testing, and (4) reports in matters involving substantial questions as to the public interest, Commission policy or statutory construction.

Under the new rules, the Director, Deputy Directors, and Assistant Director for Compliance of the Bureau of Competition and the Director, Deputy Directors, and Associate Director for Enforcement of the Bureau of Consumer Protection will be delegated the authority to monitor compliance reports, and to open and close compliance investigations, subject to the requirement that staff submit an analysis regarding their intended actions to the Commission for any report falling within categories (2), (3), or (4) above. Many compliance reports involving section 7 of the Clayton Act do not raise issues that require Commission review. Therefore, the staff will not have to submit an analysis regarding their intended actions with respect to such reports unless they fall within categories (2), (3), or (4) above. The result of the new rules will be to continue to have the Commission advised of compliance matters of special priority, while promoting the efficient use of Commission resources.

Confidentiality Requests

The Commission is also amending its rules of practice to delegate to the General Counsel the authority to resolve confidentiality issues with respect to information in documents subject to disclosure on the public record. Section 4.9(b) of the Commission's Rules of Practice, 16 CFR 4.9(b), provides that certain categories of documents are routinely placed on the public record.[2] However, the rules also provide that portions of compliance reports and other documents subject to routine placement on the public record will be withheld from public disclosure if the submitter can make an adequate

[1] This amendment does not revise the approval process relating to proposed divestitures, acquisitions, or similar transactions subject to Commission review pursuant to 16 CFR 2.41(f).

[2] Section 4.9(b) sets forth a list of materials subject to public disclosure. Some of the public record requirements set forth in section 4.9(b) also appear in other rules. *See, e.g.*, 16 CFR 2.41(f).

showing of confidentiality, 16 CFR 2.41(f), 4.9(b)(7), 4.9(c)(1), or if the documents are otherwise exempt from mandatory public disclosure, 16 CFR 4.9(c)(3) and 4.10.[3] Under the revised rule, the General Counsel has the authority to resolve confidentiality issues respecting such materials. The General Counsel has substantial expertise in resolving confidentiality issues, and already resolves numerous other confidentiality issues. *See, e.g.*, 16 CFR 4.11(a)(2) (appeals under the Freedom of Information Act); 4.11(e) (subpoenas to Commission employees).

In addition, the Commission is amending section 4.9(b) of its rules to provide for placement on the public record of staff letters to respondents advising them that their compliance reports do not warrant any further action. This amendment will afford such letters the same treatment as closing letters sent to the targets of Commission law enforcement investigations—*See* 16 CFR 4.9(b)(4)(ii) (provides for placement of closing letters in initial and full phase investigations on the public record)—and the same treatment as the compliance reports themselves. *See* 16 CFR 4.9(b)(7)(i).

As required by the Regulatory Flexibility Act, 5 U.S.C. 604, it is hereby certified that this rule will not have a significant economic impact on small business entities. The agency did not seek or accept public comments on these amendments because they address rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A).

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Investigations, Reporting and recordkeeping requirements.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

2. Section 2.33 is revised to read as follows:

§ 2.33 Compliance procedure.

The Commission may in its discretion require that a proposed agreement containing an order to cease and desist be accompanied by an initial report signed by the respondent setting forth in precise detail the manner in which the respondent will comply with the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time any such report is submitted a respondent may request confidentiality for any portion thereof with a precise showing of justification therefore, and the General Counsel with due regard to statutory restrictions, the Commission's rules, and the public interest will act upon such request.

3. Sections 2.41 (a), (b), (e), and (f) are revised to read as follows:

§ 2.41 Reports of compliance.

(a) In every proceeding in which the Commission has issued an order, pursuant to the provisions of section 5 of the Federal Trade Commission Act or section 11 of the Clayton Act, as amended, and except as otherwise specifically provided in any such order, each respondent named in such order shall file with the Commission, within sixty (60) days after service thereof, or within such other time as may be provided by the order or the rules in this chapter, a report in writing, signed by the respondent, setting forth in detail the manner and form of his compliance with the order, and shall thereafter file with the Commission such further signed, written reports of compliance as it may require. Reports of compliance shall be under oath if so requested. Where the order prohibits the use of a false advertisement of a food, drug, device, or cosmetic which may be injurious to health because of results from its use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, or in any other case where the circumstances so warrant, the order may provide for an interim report stating whether and how respondents intend to comply to be filed within ten (10) days after service of the order. When court review of an order of the Commission is pending, the respondent shall file only such reports of compliance as the court may require. Thereafter, the time for filing a report of compliance shall begin to run de novo from the final judicial determination, except that if no petition for certiorari has been filed following affirmance of the order of the Commission by a court of appeals, the compliance report shall be due the day following the date on which the time expires for the filing of such petition. Staff of the Bureaus of Competition and Consumer Protection will review such reports of compliance and may advise each respondent whether the staff intends to recommend that the Commission take any enforcement action. The Commission may, however, institute proceedings, including certification of facts to the Attorney General pursuant to the provisions of section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) and section 11(1) of the Clayton Act, as amended (15 U.S.C. 21(1)), to enforce compliance with an order, without advising a respondent whether the actions set forth in a report of compliance evidence compliance with the Commission's order or without prior notice of any kind to a respondent.

(b) The Commission has delegated to the Director, the Deputy Directors, and the Assistant Director for Compliance of the Bureau of Competition, and to the Director, the Deputy Directors, and the Associate Director for Enforcement of the Bureau of Consumer Protection the authority to monitor compliance reports and to open and close compliance investigations. With respect to any compliance matter which has received previous Commission consideration as to compliance or in which the Commission or any Commissioner has expressed an interest, any matter proposed to be closed by reason of expense of investigation or testing, or any matter involving substantial questions as to the public interest, Commission policy or statutory construction, the Bureaus shall submit an analysis to the Commission regarding their intended actions.

* * * * *

(e) The Commission may at any time reconsider any advice given under this section and, where the public interest requires, rescind or revoke its prior advice. In such event the respondent will be given notice of the Commission's intent to revoke or rescind and will be given an opportunity to submit its views to the Commission. The Commission will not proceed against a respondent for violation of an order with respect to any action which was taken in good faith reliance upon the Commission's advice under this section, where all relevant facts were fully, completely,

[3] Although confidentiality issues will generally be raised by submitters, Bureau staff may identify a confidentiality issue that submitters failed to raise. For example, submitters may not identify as confidential information in a compliance report filed pursuant to a credit practices order that reveals personal information about debtors. Such materials may be withheld from the public record, under section 4.9(c)(3), to the extent that they are exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

and accurately presented to the Commission and where such action was promptly discontinued upon notification of rescission or revocation of the Commission's advice.

(f) All applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders, together with supporting materials, will be placed on the public record as soon after they are received as circumstances permit, except for information for which confidential classification has been requested, with a showing of justification therefor, and which the General Counsel, with due regard to statutory restrictions, the Commission's rules, and the public interest, has determined should not be made public. Within thirty (30) days after such requests and materials are placed on the public record, any person may file formal written objections or comments with the Secretary of the Commission. Such objections or comments shall be placed on the public record except for information for which confidentiality has been requested, with a showing of justification therefor, and which the General Counsel with due regard to statutory restrictions, the Commission's rules, and the public interest, has determined should not be made public. Additionally, any communications, written or oral, concerning such proposed transactions, received by any individual member of the Commission, or by any employee involved in the decisional process, will be placed on the public record immediately after their receipt. In the case of an oral communication, the member or employee shall immediately furnish the Commission with a memorandum setting forth the full contents of such communication and the circumstances thereof, and such memorandum will immediately be placed on the public record. All responses to applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders, together with a statement of supporting reasons, will be published when made.

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

5. Section 4.9(b)(7)(i), (c)(1) and (c)(3) are revised to read as follows:

§ 4.9. Public records.

* * * * *

(b) * * *

(7) Compliance/Enforcement (16 CFR 2.33, 2.41). (i) Reports of compliance filed pursuant to the rules in this chapter or pursuant to a provision in a Commission order and supplemental materials filed in connection with these reports, except for reports of compliance, and supplemental materials filed in connection with Commission orders requiring divestitures or establishment of business enterprises or facilities, which are confidential until the last divestiture or establishment of a business enterprise or facility, as required by a particular order, has been finally approved by the Commission, and staff letters to respondents advising them that their compliance reports do not warrant any further action. At the time each such report is submitted the filing party may request confidential treatment in whole or in part and submit satisfactory reasons therefor, and the General Counsel with due regard for statutory restrictions, the Commission's rules and the public interest will pass upon such request;

* * * * *

(c) Confidentiality and in camera records. (1) Persons submitting documentary material to the Commission described in this section may designate that material or portions of it confidential and request that it be withheld from the public record. No such material or portions of material (including documents generated by the Commission or its staff containing or reflecting such material or portions of material) will be placed on the public record pursuant to this section until the General Counsel has ruled on the request for confidential treatment and provided any prior notice to the submitter required by law. All requests for confidential treatment shall be supported by a showing of justification in light of applicable statutes, rules, orders of the Commission or its administrative law judges, orders of the courts, or other relevant authority.

* * * * *

(3) To the extent that any documents or portions of documents otherwise falling within § 4.9(b) of this section contain information that would be exempt from mandatory public disclosure under § 4.10 of this part, the General Counsel may determine to withhold such materials from the public record.

By direction of the Commission, Commissioner Owen dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 94–16513 Filed 7–7–94; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 174

[T.D. 94–55]

RIN 1515–AB52

Permitted Forms of Signatures on Protests

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding what Customs will consider to be an acceptable method of identifying the filer of a protest filed to contest a Customs decision regarding imported merchandise. The current regulations require that a protest be signed by the person filing the protest. In light of advances in methods of communication and the movement of Customs toward automation in all aspects of its operations, Customs will now accept methods of identification on protests and amendments to protest forms other than those which are handwritten in ink. The document also amends the regulations to allow amendments of protests to have the same types of identification as original protests.

EFFECTIVE DATE: August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Johnson, Office of Trade Operations, (202) 927–0376.

SUPPLEMENTARY INFORMATION:

Background

Section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), establishes the procedures which the public can use to administratively contest Customs decisions with respect to imported merchandise. Procedures for filing protests of decisions of district directors, including the legality of all orders and findings, are set forth in §§ 174.11–174.16 of the Customs Regulations. Section 174.12 (c) currently requires that protests "be signed by the person filing the protest, or his agent, or attorney."

Customs has determined that requiring handwritten signatures on protests is unnecessary. Customs published a Notice of Proposed Rulemaking which appeared in the **Federal Register** (58 FR 50300) on September 27, 1993, proposing to permit filing of protests without requiring actual handwritten signatures on the protest. Customs stated, in the proposal, that as long as a protest contains all the pertinent information

(see § 174.13, Customs Regulations), and is filed in accordance with all other requirements of §§ 174.11 and 174.12, Customs Regulations, including identifying the filer, the requirement of a handwritten signature serves no other purpose than to sometimes delay the filing of an already prepared protest by a protestant. A protest must be submitted within the time limit set forth in § 174.12(e), Customs Regulations.

As indicated in the proposal, another reason for no longer requiring a handwritten signature on protests is that Customs is developing, as part of its Automated Commercial System (ACS), a protest module which will enable protests to be filed electronically. Requiring a handwritten signature on an electronic transmission would be self-defeating, if not impossible. Although the module is not presently available, reference to the module (electronic certification) was made in the proposal. This was done to prevent multiple changes to the same section within a short period of time. Before the ACS protest module does become available, another Notice of Proposed Rulemaking will be published which will provide detailed information and instructions for its use and how the electronic certification is intended to operate.

Analysis of Comments

In response to the Notice of Proposed Rulemaking, Customs received no comments which addressed the amendment as proposed. Customs did receive comments which anticipated the introduction of the protest module in ACS. Because that issue will be the subject of a different regulatory initiative before that particular module is activated, those comments are premature.

Amendment of the Regulations

In accordance with the above, Customs is now amending its regulations to permit the filing of a protest without requiring actual handwritten signatures on the protest. If the protest filer is not the importer of record or consignee, it will not be necessary, at this time for the protest filer to provide a filer number. Customs will accept protests which contain signatures which are facsimile, telefax, typed, or stamped, and, when the protest module is available for use, electronic certification in ACS.

Because Customs already accepts similar formats of signatures in certain situations, it is not anticipated that any abuses or great confusion will arise, nor should it create any increased burden of any segment of the public.

Customs is also amending § 174.14(d) so that the requirements which apply to signatures on amendments of protests will conform to those for the original protest.

Executive Order 12866 and Regulatory Flexibility Act

This document is not a "significant regulatory action" within the meaning of E.O. 12866. Based on the supplementary information set forth above and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection.

Amendment

Part 174, Customs Regulations (19 CFR part 174), is amended as set forth below.

PART 174—PROTESTS

1. The general authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

2. Paragraph (c) of § 174.12 is revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(c) *Identity of filer.* The identity of the person filing the protest or his agent, or attorney shall be noted on the protest. This may be accomplished through a signature which is handwritten in ink, stamped, typed, facsimile, telefax, or by electronic certification in ACS. If the person filing the protest is not the importer of record or consignee, the filer shall include his address and importer number, if any.

* * * * *

3. Paragraph (d) of § 174.14 is revised to read as follows:

§ 174.14 Amendment of protests.

* * * * *

(d) *Identification of filer.* An amendment to a protest may be filed only by the person who originally filed such protest or his agent or attorney subject to the provisions of § 174.3. The identity of the filer shall be noted on the amendment to a protest. Any acceptable method used to identify the filer described in § 174.12(c) as being acceptable on a protest will be acceptable on an amendment to a protest.

* * * * *

Approved: June 17, 1994.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–16544 Filed 7–7–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8552]

RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. These regulations reflect the changes made to section 482 by the Tax Reform Act of 1986, and provide guidance implementing the amendment.

EFFECTIVE DATES: Effective July 8, 1994, except §§ 1.482–OT through 1.482–6T are removed effective October 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), IRS. (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1364. The estimated average annual burden per recordkeeper is .8 hour. The estimated average annual reporting burden per respondent is 1 hour.

Comments concerning the accuracy of this burden estimate, and suggestions for reducing this burden, should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP,

Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Office for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Section 482 was amended by the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085, 2561, et. seq. On January 21, 1993, temporary regulations relating to the evaluation of intercompany transfer pricing under section 482 were published in the **Federal Register** (58 FR 5263). A notice of proposed rulemaking (INTL–401–88) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (58 FR 5310).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on August 16, 1993. After consideration of all the comments, the proposed regulations under section 482 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Revisions and Summary of Comments

Introduction

The Tax Reform Act of 1986 (the Act) amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The legislative history of the Act indicates that the change was intended to assure that the division of income between related parties reasonably reflects the economic activities that each undertakes. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–637. The legislative history also expresses concern that insufficiently stringent standards had been used in determining whether an uncontrolled transaction is sufficiently comparable to a controlled transaction. In particular, the legislative history observed that industry norms for transfers of less profitable intangibles frequently are not realistic comparables for transfers of so-called "high profit" intangibles. See H.R. Rep. 99–426, 99th Cong., 1st Sess. (1985) at 424. Finally, the Conference Committee report recommended that the IRS conduct a comprehensive study and consider whether the regulations under section 482, which had been issued in 1968 (the 1968 regulations) should be "modified in any respect."

The White Paper

In response to this directive, the IRS and the Treasury Department issued a study of intercompany pricing (Notice 88–123, 1988–2 C.B. 458) on October 18, 1988 (the White Paper). The White Paper proposed two approaches for implementing the "commensurate with income" standard with respect to transfers of intangible property. The first was based on either an "exact comparable" method or an "inexact comparable" method. The second was an income-based approach that also included two methods: the basic arm's length return method (the BALRM), and the BALRM with profit split. The BALRM generally assigned an average rate of return to the assets and functions devoted to the routine activities associated with the controlled transaction. When high profit intangibles were involved, any residual profit would be divided on the basis of the estimated relative values of the intangibles that each party contributed to the activity.

The 1992 Proposed Regulations

The IRS issued proposed regulations under section 482 on January 30, 1992 (INTL–0372–88; INTL–0401–88, 57 FR 3571) (the 1992 regulations). The most significant change proposed was the introduction of three new pricing methods for transfers of intangible property: the matching transaction method (the MTM), the comparable adjustable transaction method (the CATM) and the comparable profit interval (the CPI). The CPI also could be used with respect to transfers of tangible property.

The MTM and the CATM were based on exact and inexact comparable transactions, respectively. The CPI was an income-based method under which the operating income resulting from a controlled transaction was compared with the operating income of comparable uncontrolled taxpayers. The consideration charged in the controlled transaction would be considered arm's length if the taxpayer's operating income fell within a range of results derived from the uncontrolled taxpayers over a three-year period. Finally, the 1992 regulations required that the result derived from the CATM be verified by the CPI.

In addition to providing new methods for transfers of intangibles, the 1992 regulations implemented the "commensurate with income" standard by providing that these methods could be applied to adjust the consideration charged in the year of examination (periodic adjustments) unless one of three narrow exceptions applied.

Other changes made by the 1992 regulations included modification of the rules with respect to transfers of tangible property, principally by providing for the use of CPI with respect to tangible property, requiring that the results derived from the resale price or cost plus methods be verified by application of the CPI, introducing new cost sharing regulations, introducing a limited comparable profit split method, and relaxing the fixed priority of methods set forth in the 1968 regulations.

Commenters criticized several aspects of the 1992 regulations, including the inclusion of the CPI in the regulations, the requirement that the results of most methods be verified by the CPI, the tight standards of comparability for applying the MTM, the narrow scope of the exceptions from periodic adjustments, the narrow scope for the profit split method, and the lack of a safe harbor. Commenters generally approved of the introduction of a range of acceptable results and the use of a multi-year average under the CPI, and the relaxation of the strict priority of methods.

The 1993 Temporary and Proposed Regulations

In response to comments, the IRS issued revised temporary and proposed regulations on January 21, 1993 (TD 8470; INTL 401–88, 58 FR 5263) (the 1993 regulations). With the exception of the provisions on cost sharing, the 1993 regulations replaced all the provisions contained in the 1992 regulations and added some new provisions. In addition, the 1993 regulations also modified other provisions under the 1968 regulations that had not been affected by the 1992 regulations. The 1993 regulations also adopted a structure different from that set forth under the 1968 regulations. Section 1.482–1T sets forth general rules applicable to all the subsequent provisions of the regulations under section 482. Most important of these rules is extensive guidance to be applied in determining whether an uncontrolled transaction is sufficiently comparable to serve as a basis for application of a pricing method. Determining comparability under these rules generally requires consideration of functions, risks, contractual terms, economic conditions and products. Detailed guidance is provided as to how these factors are to be assessed. Finally, the relative importance of any of these factors varies depending upon the method applied.

Section 1.482–1T also provides a "best method rule" to be used in determining which method provides the most accurate measure of an arm's length result in a given case. The best method rule adopts a flexible approach under which the determination of which method is most accurate depends on the facts and circumstances of the case. Factors to take into account in this determination include the completeness and accuracy of available data, the degree of comparability between the controlled and uncontrolled transactions, and the extent of adjustments required to apply a method. The best method rule also provides that when two methods provide inconsistent results and the best method rule does not otherwise indicate which of the two analyses should be preferred, an additional factor to take into account is whether a third method provides a result that is consistent with the result of one of the first two methods.

Section 1.482–1T also sets forth special rules to deal with issues presented by market penetration strategies, different geographic markets, "location savings," aggregation of transactions, analysis of contractual terms, multiple year analyses, collateral adjustments, coordination with section 936, and consideration of alternatives. Under the latter rule, the district director is instructed to determine an arm's length price based upon the structure actually adopted, and not to restructure the transaction as long as its form was consistent with its substance. The district director may, however, consider alternatives reasonably available to the taxpayer in determining whether a purported comparable transaction actually represents a reliable indicator of the terms to which the taxpayer would have agreed under arm's length conditions.

In addition, § 1.482–1T provides that no allocation will be made if the taxpayer's result falls within a range of arm's length results. Under this rule, two or more valid applications of any single method create a range of acceptable results within which the taxpayer's result are considered to satisfy the arm's length standard. Results falling outside the range are subject to adjustment to any point within the range (generally the midpoint).

Section 1.482–1T also provides a safe harbor for small taxpayers. That provision would permit a small taxpayer (generally defined as a group having less than $10 million in U.S. or foreign sales) to elect to determine its U.S. taxable income in accordance with annual published measures of profitability.

Finally, the 1993 regulations include proposed regulations to be added to § 1.482–1 dealing with foreign legal restrictions. In general, this rule provides that a foreign legal restriction preventing or limiting payment of an arm's length amount will be respected for purposes of determining an arm's length consideration only if there is evidence of a comparable uncontrolled transaction in which unrelated parties agreed to enter a similar transaction subject to the restriction. In other cases, the foreign legal restriction will be disregarded in determining an arm's length amount, but the taxpayer is permitted to elect a deferred method of accounting to defer recognition of additional income until such time as the restriction is lifted, subject to the consistent deferral of related expenses.

In addition to revising § 1.482–1, the 1993 regulations restructured the rules relating to transfers of tangible and intangible property. The 1993 regulations contain separate subsections for these rules, which were all contained in § 1.482–2 in the 1968 regulations. Specifically, § 1.482–3T governs transfers of tangible property, § 1.482–4T governs transfers of intangible property, and § 1.482–5T sets forth the comparable profit method (the CPM), which, as under the 1993 regulations, applies to transfers of tangibles or intangibles. In addition, the 1993 regulations contain a proposed set of profit split rules (to be added as § 1.482–6).

The section on transfers of tangible property provides five principal methods: The comparable uncontrolled price (CUP) method, the resale price method, the cost plus method, the CPM, and (when authorized by the regulations) profit split. The CUP method was modified to provide that this method may be applied only if there are at most minor differences between the controlled and uncontrolled transactions. The 1968 regulations provided that CUP could be used only if the transactions were "so nearly identical" that any differences could be reflected by a reasonable number of adjustments. Since the CUP method is likely to achieve the highest degree of comparability of any method potentially applicable to a transfer of tangible property, the 1993 regulations state that the CUP method generally provides the most reliable measure of an arm's length result when it can be applied. The rules under the resale price and cost plus methods were not substantially changed from their predecessors in the 1968 regulations.

Section 1.482–3T also provides that when none of the enumerated methods can be applied, other (unspecified) methods may be used. In order to employ an unspecified method, taxpayers are required to disclose the use of such method on the tax return and to prepare contemporaneous documentation explaining why the method provides the most accurate measure of an arm's length result. Finally, § 1.482–3T provides rules coordinating the application of the tangible and intangible rules in cases involving transfers of so-called imbedded intangibles.

Section 1.482–4T combine the MTM and CATM from the 1992 regulations into a single method known as the comparable uncontrolled transaction (CUT) method. Unlike the CATM, the results of the CUT method are not subject to mandatory check by the CPI. As with the CUP method under § 1.482–3T, the regulations provide that this method ordinarily provides the most reliable measure of an arm's length result. The mandatory CPI check in the 1992 regulations is replaced in the 1993 regulations by requiring that the intangibles transferred in the controlled and uncontrolled transactions have substantially the same profit potential. In addition, to apply this method, the property transferred must be from the same class of intangible property and relate to the same class of products or services. Further, the underlying circumstances of the two transactions must be sufficiently similar that reliable adjustments may be made to account for the effect of any differences.

Section 1.482–4T also permits the application of unspecified methods, subject to the same constraints on taxpayer use that are imposed under § 1.482–3T. The preamble of the proposed regulation also requested comment on the merits of including a method that would measure an arm's length result for the transfer of an intangible by discounting the projected costs and benefits to the licensor or licensee, employing valid measures of the cost of capital such as those derived from the capital asset pricing model.

The 1993 regulations broaden the exceptions from periodic adjustments that were contained in the 1992 regulations by providing two exceptions. The first applies if the consideration for the intangible was determined to be arm's length under the CUT Method in the first year when substantial periodic consideration was paid, the taxpayer's actual profits from the intangible remained within a band between 80 and 120 percent of the profits projected at the time of the

controlled transactions, and certain other conditions are met. The second exception is similar but applies to methods other than the CUT Method.

The 1993 regulations also provide rules for identifying the owner of an intangible for purposes of section 482 (the developer-assister rule). These rules generally track rules provided in prior regulations, under which the owner normally is considered to be the controlled taxpayer that bears the greatest share of the risk of developing the intangible. The party that bears the greatest risk of development generally is determined by identifying costs of development. Under this rule the owner for purposes of income allocation under section 482 would not necessarily be the legal owner.

Section 1.482–5T describes the CPM. The CPM may be applied to transfers of tangible and intangible property. In broad terms the CPM is similar to the CPI set out in the 1992 regulations. However, it no longer serves as a mandatory check on the results provided by certain other methods. In addition to the general comparability factors and other considerations that must be applied before a method can be considered to provide a reasonable and reliable benchmark, § 1.482–5T provides that CPM ordinarily is inappropriate if the tested party owns "valuable non-routine intangible" property. This limitation was added to the other limitations generally applicable to all methods because CPM could be expected to understate the income attributable to such property due to the difficulty in locating uncontrolled taxpayers that possess comparable intangible property.

The 1993 regulations do not define the term "valuable non-routine intangible." The preamble to the regulations, however, states that in general the term would encompass intangible property "that is central to the conduct of a business activity and without which the business activity could not be conducted." The preamble to the proposed regulations requested comment on possible more precise definitions.

The CPM generally is applied to the taxpayer with the simplest and most easily compared operations (the tested party). In identifying potential comparables, the regulations provide that the standard of comparability is not as strict as other methods. Some diversity in terms of the functions and products is permitted, although the degree of comparability affects the reliability of the results in relation to the results of other methods under the best method rule. It also affects the derivation of the arm's length range under this method. In addition, the regulations describe a number of adjustments, including adjustments to achieve accounting consistency, that should be made when possible to the results of the uncontrolled comparables to enhance comparability.

Like the CPI under the 1992 regulations, a result will satisfy the arm's length standard under the CPM if it falls within a range of results, based on a single profit level indicator derived from uncontrolled comparables. Profit level indicators include the rate of return on capital employed (i.e., rate of return on assets) and financial ratios such as operating profit to gross sales and gross profit to operating expenses (Berry ratio).

Unlike the other methods in the 1993 regulations, the arm's length range may be constructed under the CPM in one of two ways. First, if reliable adjustments for all material differences that would affect profitability are made, the arm's length range includes all the results obtained, as under the other methods. In other cases, however, the range is limited by statistical methods. The range so determined consists either of the interquartile range or the range constructed under some other statistically valid method. No additional guidance was provided as to how the range would be established if the interquartile range were not used.

The 1993 regulations also contain a set of proposed regulations (§ 1.482–6) providing profit split methodologies. Three methods are described: the residual allocation rule, the capital employed allocation rule and the comparable profit split. In addition, other profit splits may be used if they provide an economically valid basis for the allocation of the combined profit or loss of the relevant business activity. The basic objective of the profit split methods is to estimate an arm's length return by comparing the relative economic contributions that two parties make to the success of an activity (the relevant business activity), and dividing the returns from the relevant business activity between them on the basis of the value of such contributions.

The residual allocation rule is similar to the BALRM with profit split described in the White Paper. It consists of two basic steps. First, using other methods such as the CPM, market returns for routine functions are estimated and allocated to the parties that performed them. The remaining, residual amount then is allocated between the parties on the assumption that this residual is attributable to intangible property contributed to the activity by the controlled taxpayers. Based on this assumption, the residual is divided based on the estimate of the relative value of the parties' contributions of such property. Since fair market value of the intangible property usually would not be readily ascertainable, the regulations permit use of other measures of the relative values of intangible property, including capitalized research and development expenses.

The capital employed allocation rule may be applied only if all the controlled taxpayers participating in the relevant business activity assumed an approximately equal level of risk with respect to their capital employed. Comment was requested on the feasibility of measuring relative levels of risk. This method divides the combined operating profit from the relevant business activity by allocating an equal return to each controlled taxpayer's capital employed. Capital employed may be measured by either book or fair market value, as long as all assets are valued on the same basis. Further, if book value is used and there are intangible assets that have no book value, some other measure (such as capitalized research and development expense) must be used.

The comparable profit split rule is similar to the profit split rule set forth in the 1992 regulations. It essentially may be applied only if it is possible to locate two unrelated parties that are each comparable to one of the controlled taxpayers and that deal with one another in a comparable manner. In such a case the combined operating profit from the relevant business activity is divided among the controlled taxpayers in the same percentage as it was divided among the unrelated parties.

There are a number of substantive and procedural restrictions on the use of the profit split method. These restrictions were imposed because the profit split method relies either wholly or in part on internal data rather than data derived from uncontrolled taxpayers, and it is therefore likely that other methods will provide a more reliable measure of an arm's length result under the best method rule.

There are three substantive limitations on the use of the profit split method. The profit split method may be applied only if both controlled taxpayers own valuable non-routine intangible property, the intangibles contribute significantly to the combined operating profit derived from the relevant business activity, and there were significant transactions between the controlled taxpayers.

The most important administrative requirement is that the taxpayer must make a binding election to apply the profit split method, which can be revoked only with the consent of the Commissioner. In addition, the taxpayer also is required to document the combined profit or loss attributable to the relevant business activity to the satisfaction of the district director and explain in such documentation why the profit split method provides the best method for determining an arm's length result. Further, prior to electing the profit split method the taxpayer must execute a pricing agreement setting forth the method chosen, and the method must be applied consistently from year to year. The district director also is required to meet all of the substantive, but not the procedural requirements, to apply the profit split method.

Comments on the 1993 Regulations

The IRS received comments on the 1993 regulations from many taxpayers and industry and professional groups. In addition, comments were received from several tax treaty partners, both individually and through the international forum of the Organization for Economic Cooperation and Development (OECD).

The commenters generally approved of the introduction of the best method rule and the flexibility implied by reliance on comparability, rather than a hierarchy of methods, to identify the method that would provide the most accurate measure of an arm's length result. Commenters also generally approved of the extension of the concept of an arm's length range to all the methods, the proposal of a set of profit split methods, the inclusion of exceptions from periodic adjustments that were broader than the exceptions provided under the 1992 regulations, and the elimination of the requirement that the CPM be a mandatory check on the results of most other methods.

Commenters also expressed concerns with various aspects of the 1993 regulations. In particular, the most critical comments focused on the CPM and profit split portions of the regulation. With respect to the CPM, some commenters expressed a belief that the method was inconsistent with the arm's length standard and should be eliminated. Others felt that it could provide useful evidence in certain cases and therefore should be retained, but the scope for its application should be circumscribed further than it was in the 1993 regulations. In addition, some commenters were concerned that examiners might apply the CPM without regard to the evidence provided by other methods. Contributing to this concern was the fact that the comparability standards under other methods were generally tighter than under the CPM, potentially making the CPM more readily available. Finally, commenters evidenced some confusion over certain language in § 1.482–5T; some interpreted the scope language under that section as indicating that the CPM was preferred to other methods, in contradiction to the best method rule.

With respect to the profit split method, many commenters urged that the elective and other procedural requirements for its use by taxpayers be eliminated. Commenters expressed some ambivalence with respect to the requirement that both parties to the transaction own valuable non-routine intangibles in order to employ the profit split method. Some were concerned that this requirement would make profit split unavailable in some cases in which it might otherwise provide the most reliable measure of an arm's length result. Others were uncertain of its effect given the absence of an explicit definition of the term in the regulations. Many suggestions were received as to possible definitions of this term, which was relevant not only under profit split but also under the CPM.

In addition to the comments received on the CPM and profit split methods, numerous concerns were expressed with regard to other aspects of the regulations. The most significant of these included the following. In connection with the provisions relating to tangible property, a large number of commenters expressed concerns about the limited role accorded to evidence provided by "inexact comparables," particularly under the CUP method, arguing that in some instances the evidence provided by an "inexact comparable" would be more reliable than other available information. Some also perceived the modified comparability standard under the CUP method as being more restrictive than the standard under the 1968 regulations, and several comments objected to the restrictions placed on the use of unspecified methods.

In connection with the provisions relating to intangibles, several commenters objected to the high comparability standard under the CUT method, particularly the requirement that profit potential of the controlled transaction and the uncontrolled transaction be substantially the same. Further, the continued availability of periodic adjustments was viewed by some as potentially conflicting with the arm's length standard. Others criticized the failure of the developer-assister rule to give sufficient weight to legal ownership in identifying the owner of an intangible, and objected to an example illustrating the potential use of alternatives in applying the arm's length standard.

Commenters also requested further guidance as to the interaction of the tangible and intangible property rules. Finally, some commenters requested that the thresholds for application of the safe harbor be liberalized to make it more widely available, and others requested that the published measures of profitability allow electing taxpayers to report less income than they would be expected to report under the otherwise applicable methods.

Further discussion of the comments received is included in the following description of the changes reflected in the final regulations.

The Final Regulations

While the final regulations reflect numerous modifications in response to the comments received on the 1993 regulations, both the format and the substance of the final regulations are generally consistent with the 1993 regulations. The changes adopted are intended to clarify and refine those provisions of the 1993 regulations that required improvement, without fundamentally altering the basic policies reflected in the 1993 regulations.

The most noteworthy feature of the 1993 regulations in comparison to earlier versions of the regulations under section 482 was the emphasis on comparability, and the resulting flexibility. This feature of the 1993 regulations was generally well received by taxpayers and foreign governments. The final regulations adhere to this emphasis, and in some cases increase it. For instance, so-called "inexact" comparables potentially may be used under all the methods in the final regulations, while they were generally not taken into account under the 1993 regulations. Further, the elective and other procedural barriers to the use of profit split and "other" (i.e., unspecified) methods have been removed, and the limitations regarding the presence of valuable non-routine intangibles under CPM and profit split have been eliminated. These restrictive rules were contained in the 1993 regulations primarily out of a concern that in their absence taxpayers or the IRS might employ methods that did not provide the best measure of an arm's length result.

By removing these restrictions, the final regulations are intended to maximize the extent to which relevant

information may be taken into account in evaluating taxpayers' results under the arm's length standard. As a consequence, however, the emphasis on comparability and the importance of the best method rule are increased; because *ex ante* restrictions will no longer prohibit the use of potentially less reliable information or methodologies, it is critically important that the best method rule be properly applied to select the most reliable measure of an arm's length result from the available evidence. Thus, taxpayers and the IRS will be required to exercise considerable judgment in applying the arm's length standard. To assist taxpayers and the IRS in exercising this judgment, the discussion of the factors to consider in applying the best method rule has been substantially expanded. Set forth below is a more detailed explanation of the provisions in the final regulations.

Section 1.482–1

With one exception, the scope and purpose provision of the regulations (§ 1.482–1(a)(1)) is substantially similar to its counterpart in the 1993 regulations. The final regulations delete the statement that section 482 places uncontrolled and controlled taxpayers on a parity by determining the controlled taxpayer's true taxable income "in a manner that reasonably reflects the relative economic activity undertaken by each taxpayer." The definition of true taxable income in § 1.482–1(i)(9) already incorporates the notion that, under section 482, the controlled taxpayer should earn the amount of income that would have resulted had it dealt with other controlled taxpayers at arm's length. Because a transaction at arm's length naturally would reflect the "relative economic activity undertaken," this definition incorporates that concept, and it is unnecessary to include the additional language in this provision.

The provision authorizing the IRS to make allocations (§ 1.482–1(a)(2)) is unchanged from the 1993 regulations.

The provision regarding the taxpayer's use of section 482 (§ 1.482–1(a)(3)) has been revised to clarify that, although the taxpayer is generally barred from invoking the provisions of section 482, the taxpayer may report an arm's length result on its original tax return, even if such result reflects prices that are different from the prices originally set forth in the taxpayer's books and records. In response to comments, the requirement in the 1993 regulations that such differences be eliminated through the use of "compensating adjustments" has been deleted. Section 482 is concerned only with whether the taxpayer reports its true taxable income, and whether or not this result is consistent with the taxpayer's books, or is corrected in the books, is generally irrelevant to this inquiry. However, the absence of a requirement to eliminate book and tax differences for section 482 purposes has no effect on the mechanisms otherwise provided for reporting and reconciling such differences (e.g., Schedule M–1 of Form 1120). Further, the limited exception provided by this rule does not permit taxpayers to apply section 482 at will; thus, for example, a taxpayer may not rely on section 482 to reduce its taxable income on an amended return.

Section 1.482–1(b) summarizes some key principles that guide application of section 482. Section 1.482–1(b)(1) states that the governing principle under section 482 is the arm's length standard. Under this standard controlled taxpayers are expected to realize from their controlled transactions the results that would have been realized if uncontrolled taxpayers had engaged in the same transactions under the same circumstances. This expression of the arm's length standard differs from that set forth in the 1993 regulations, which stated that the arm's length standard was satisfied if the results of a controlled transaction were consistent with the results of "comparable transactions between uncontrolled taxpayers." The latter definition has been replaced because it is inconsistent with the notion underlying the arm's length standard that controlled and uncontrolled taxpayers should be placed on the same (rather than a merely similar) footing. However, this provision recognizes that in most cases identical transactions between unrelated parties will not be located, and it therefore will be appropriate to consider uncontrolled transactions that are comparable rather than identical.

Section 1.482–1(b)(2) provides rules for determining the type of method that will be applied to evaluate whether controlled transactions are at arm's length, given that different methods apply to different types of transactions (e.g., transfers of property or services). In some cases it may be necessary to apply more than one method to a single transaction when the transaction is most reliably evaluated under more than one method. This provision is identical to its counterpart in the 1993 regulations, except that it, along with a number of other provisions, has been revised in response to comments to make clear that it applies to taxpayers as well as the district director. Thus, such provisions apply with equal force to the district director and to a taxpayer that seeks to apply the final regulations for purposes of determining and reporting its true taxable income on its original return, consistent with § 1.482–1(a)(3).

Section 1.482–1(c) contains the best method rule. Although similar in purpose and substance to its counterpart in the 1993 regulations, this provision contains considerably more detail and guidance for application than its predecessor, and has been given more prominence in the structure of the regulation. The best method rule guides the application of all the methods in the final regulations. Whenever the available data creates the possibility that more than one method could be applied to a controlled transaction (or that one method could be applied in more than one way), the best method rule must be applied to determine which of those methods (or applications) will be selected.

The best method rule provides that an arm's length result must be determined under the method that, given the facts and circumstances, provides the "most reliable measure" of an arm's length result. This formulation modifies the 1993 regulation's reference to the "most *accurate* measure," to conform to the factors that are taken into account in applying the best method rule. These considerations are couched in terms of reliability rather than accuracy.

In deciding which of two or more methods provides the most reliable measure of an arm's length result, § 1.482–1(c)(2) provides that there are two primary factors to consider: comparability and the quality of data and assumptions. In addition, as under the 1993 regulations, in some cases it may be relevant to consider whether the results of a particular method are consistent with the results under another method.

Section 1.482–1(c)(2)(i) discusses the role of comparability under the best method rule. Although the results of identical transactions between unrelated parties under identical circumstances provide the most objective basis for determining the true taxable income of a controlled taxpayer, it rarely is possible to locate uncontrolled transactions with this degree of similarity to the controlled transactions. Therefore, the regulations contemplate use of uncontrolled transactions that are comparable, rather than identical, to the controlled transaction.

In most cases there will be more than one potential comparable uncontrolled transaction to which the controlled transaction may be compared, and it will be possible to apply more than one method. In such cases it is necessary to evaluate the relative degree of

comparability of each such uncontrolled transaction under the comparability criteria relevant to the application of the method; the method that employs the uncontrolled comparables with the highest degree of comparability to the controlled transaction is more reliable than methods that employ uncontrolled comparables with a lesser degree of comparability, assuming data and assumptions of equal quality. Methods relying on uncontrolled transactions with the highest degree of comparability are preferred because, as the degree of comparability is improved, the number of differences that could render the analysis unreliable is reduced. Adjustments can and should be made for any differences if the reliability of the analysis is improved by making the adjustment. Under this approach, the comparable uncontrolled price and comparable uncontrolled transaction methods ordinarily will provide the most reliable measure of true taxable income when they can be applied to closely comparable uncontrolled transactions, because such analyses can be expected to achieve a higher degree of comparability than other methods.

In determining which method provides the highest degree of comparability, it is necessary to consider the comparability factors discussed in § 1.482–1(d) (Comparability). In addition, it is necessary to consider further guidance on comparability set out under each method, as certain differences have a greater effect on comparability under some methods than under others. Finally, the reliability of data and assumptions, discussed below, will affect the ability to determine the degree of comparability between an uncontrolled transaction and the controlled transaction.

Section 1.482–1(c)(2)(ii) discusses data and assumptions, which constitute the second factor that must be considered in applying the best method rule. This provision is divided into three components: completeness and accuracy of data, reliability of assumptions, and sensitivity of results to deficiencies in data and assumptions.

Completeness and accuracy of data defines the ability to identify and quantify material differences. When data regarding a controlled or uncontrolled transaction is relatively incomplete, it is more difficult to determine if there are material differences between the transactions. Thus, the fact that no material difference between an uncontrolled and a controlled transaction has been identified does not necessarily mean that the two transactions are highly comparable unless the data on both transactions is sufficiently comprehensive that it is possible to conclude that it is unlikely that any such differences exist. In addition, the completeness and accuracy of data will affect the ability to reliably estimate the effect of a material difference once such a difference is identified. Thus, merely identifying and adjusting for the effect of a material difference does not render the controlled and uncontrolled transactions highly comparable unless the data on both transactions is sufficiently complete and accurate that the difference has a definite and reasonably ascertainable effect.

Another factor that affects the reliability of an analysis is the reliability of the assumptions upon which the analysis is based. All methods rely on assumptions. For instance, adjustments for differences in payment terms reflect the assumption that such differences would have an effect on price at arm's length. While this assumption is relatively sound, other assumptions may be less reliable. In particular, assumptions under the profit split method (such as the assumption that the value of intangible assets is related to the cost of development) may not always be as reliable as the assumptions under methods that rely more closely on direct market indicators.

After assessing the completeness and accuracy of data and the reliability of the assumptions upon which the analysis is based, § 1.482–1(c)(2)(ii)(C) provides that it is necessary to determine the effect that any deficiencies in the data and assumptions have on the reliability of the result. Some deficiencies will be more important than others. Thus, a difference in risks borne might be expected to affect all methods to some extent. Further, some deficiencies will have a more adverse impact on some methods than on other methods, because different methods rely more heavily on different types of comparability. Thus, an inability to reliably allocate research and development expenses would have a serious effect on the reliability of a residual profit split under § 1.482–6(c)(3), but would have little effect on an analysis under the CUT method.

Finally, § 1.482–1(c)(2)(iii) provides that in some cases it may be relevant to consider whether the results obtained under a method are consistent with the results obtained under another method. This situation will arise when, after considering the comparability and the quality of the data and assumptions under two different methods (or under two different applications of the same method), it is not possible to determine which of the competing analyses provides a more reliable measure of an arm's length result. In such a case, it may be relevant to compare the results with the result obtained under a third method (or, given two applications of a single method, a third application of that method).

Section 1.482–1(d) provides general guidance for determining comparability. General guidance on comparability is provided in this section of the regulations because the factors described are relevant under all the methods. This provision is substantially similar to the guidance provided in § 1.482–1T(c) of the 1993 regulations. It provides that in determining the degree of comparability between a controlled and uncontrolled transaction, the functions, contractual terms, risks, economic conditions, and property or services in the two transactions must be compared.

Section 1.482–1(d)(2) provides that for two transactions to be considered comparable, they need not be identical, but must be sufficiently similar that the uncontrolled transaction provides a reliable measure of an arm's length result. Further, if there are material differences between the transactions, adjustments must be made to account for such differences if the effect of the differences can be ascertained with sufficient accuracy to improve the reliability of the results. A "material difference" is defined as a difference that would materially affect price or profit. Thus, adjustments for differences that would have only a *de minimis* or minor effect on price or profit are not required (although such adjustments will tend to increase the reliability of the result). Further, the extent (i.e., the number and magnitude) and reliability of any adjustments will affect the reliability of the result. The number and magnitude of adjustments affects reliability because as the number or magnitude of adjustments increases, the potential for error also increases. Although the standard of comparability under § 1.482–1(d)(2) creates the possibility that there may be a material difference between the controlled and uncontrolled transactions for which an adjustment has not been made, this only would occur if an adjustment was not possible and no better analysis could be employed.

There are several differences between § 1.482–1(d)(2) and its counterpart in the 1993 regulations (§ 1.482–1T(c)(2)(i)). First, in response to comments, the definition of comparability in the final regulations contemplates the use of so-called

"inexact" comparables under all methods. The 1993 regulations only contemplated the use of such analyses under the CPM. Of course, inexact comparables only will be used if the best method rule indicates that these analyses provide the most reliable measure of an arm's length result.

A second difference between the final and 1993 regulations is the standard for making adjustments. The 1993 regulations provided that adjustments "may" be made to account for material differences if such differences have a "definite and reasonably ascertainable effect" on prices or profits, and that if such differences can be reflected by such adjustments, the result constitutes an arm's length result for the controlled transaction. This language therefore seemed to preclude adjustments when the effect of the difference did not have a definite and reasonably ascertainable effect. Interpreted literally, this standard could prevent adjustments that, although not perfectly precise, nonetheless would improve the reliability of the analysis.

Accordingly, the final regulations provide that adjustments for material differences should be made to the extent that they improve the reliability of a result. In some cases it may be possible to make adjustments that improve reliability even though the difference for which the adjustment is made does not have a "definite and reasonably ascertainable" effect on price or profit. Such adjustments nevertheless should be made. The provision adds that the extent and reliability of the adjustments will affect the reliability of the result in relation to the reliability of applications of other methods.

A third important difference between the 1993 regulations and the final regulations is the definition of the minimum level of comparability. The 1993 regulations provided that an uncontrolled comparable could be used to determine an arm's length result only if it provided a "reasonable and reliable benchmark." This phrase has been replaced by the phrase "a reliable measure" of an arm's length result. To some readers the word "benchmark" indicated that unadjusted industry averages could serve as the basis for adjustments. This concern was most evident with respect to the comments received with respect to the CPM.

Section 1.482–1(d)(3) discusses the five factors that affect comparability: functions, contractual terms, risks, economic conditions and property or services. Of these factors, the discussions of functions, economic conditions and property or services are substantially similar to the discussions of these factors in the 1993 regulations. The discussions of contractual terms and risks differ in some respects from the discussions of these factors in the 1993 regulations.

Contractual terms were covered in two provisions of the 1993 regulations: § 1.482–1T (c)(3)(iii) and (d)(3)(ii). The final regulations consolidate the discussion of these provisions into § 1.482–1(d)(3)(ii) and make some clarifying changes.

The discussion of risk in § 1.482–1(d)(3)(iii), particularly as it relates to identifying the party that bears a risk, is somewhat different from its predecessor in the 1993 regulations (§ 1.482–1T(c)(3)(ii)). In general, the determination of which party bears a risk will be made in accordance with the provisions of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). Thus, to the extent that taxpayers allocate risks by contract and their conduct is consistent with such contract, their allocation of risk will be respected, unless the contract is executed after the impact of the risk is known or knowable. In cases where the allocation of risk is not clear from the parties' contractual arrangements, several factors may be particularly relevant to determine which party bore the risk. These factors include whether the parties' conduct is consistent over time; which controlled taxpayer would ultimately bear the consequences of a risk; and the extent to which each taxpayer controls any activities that influence the outcome of a particular risk. The rules on documentation of risks contained in the 1993 regulations has been revised because some readers thought they implied that the district director could arbitrarily allocate risks in the absence of express documentation allocating the risk.

Section 1.482–1(d)(4) sets forth rules for certain special circumstances affecting comparability. First, § 1.482–1(d)(4)(i) describes the extent to which market share strategies will be respected in determining an arm's length result for a controlled transaction. As under the 1993 regulations, these strategies may be recognized in certain situations in which a company is attempting to gain entry into a market or to increase market share. In such circumstances the amount charged in the controlled transaction, or the expenses borne by a controlled taxpayer, may for a short time differ from what normally would be observed at arm's length. The reference in the 1993 regulations to using such strategies to meet competition in an existing market has not been included in the final regulations because companies in competitive markets are routinely faced with the problem of meeting competition, which is reflected in a normal arm's length price.

A market share strategy will be respected only if certain conditions are satisfied. These conditions are that the costs incurred to implement the strategy are borne by the controlled taxpayer that would derive the benefits from engaging in the strategy (and there is a reasonable likelihood that the strategy will bear fruit), the strategy is pursued for a reasonable period of time given the industry in question, and the strategy and related matters are documented before the strategy was implemented. The taxpayer must provide documentation establishing that it has satisfied these conditions. These conditions and the documentation requirement are similar to those imposed under the 1993 regulations. In addition, a market share strategy "will be taken into account only if it can be shown that an uncontrolled taxpayer engaged in a comparable strategy under comparable circumstances for a comparable period of time. . . ." This requirement ensures that the strategy is consistent with the behavior of parties operating at arm's length. It does not, however, require that the taxpayer locate a comparable uncontrolled transaction that would satisfy the standards of the CUP method in order to take advantage of this rule. The critical component of this requirement is that there be evidence that uncontrolled taxpayers engage in similar behavior under comparable circumstances. A taxpayer could, for example, satisfy this requirement by providing evidence of an uncontrolled taxpayer in a different industry engaging in such a strategy, given evidence that the circumstances otherwise were comparable.

Section 1.482–1(d)(4)(ii) addresses certain issues presented by differences in geographic markets. This section generally conforms to the analogous provision in the 1993 regulations by providing that while it is permissible to derive uncontrolled comparables from geographic markets that are different from the market in which the controlled transaction occurred, adjustments must be made to the extent possible to reflect the effect of any differences between the markets, and the failure to accurately adjust for such differences will affect the reliability of the analysis under the best method rule. In addition, § 1.482–1(d)(4)(ii)(C) provides that "location savings" from operating in a low-cost jurisdiction must be allocated among controlled taxpayers consistent with the allocation of such savings that would

occur between unrelated parties, taking into account the competitive conditions in the low-cost market. As a result, some or all of the location savings might inure to the benefit of the other party to the controlled transaction.

Finally, § 1.482–1(d)(4)(iii) describes certain transactions that are not ordinarily accepted as comparables. Transactions not in the ordinary course of business, and transactions arranged with a principal purpose of establishing an arm's length result, ordinarily will not constitute comparable transactions for purposes of section 482. This provision is generally consistent with § 1.482–1T(c)(4)(iii), except that the reference to "isolated transactions" has been deleted, as most transactions involving intangible property may be viewed as isolated. In addition, the statement that transfers of tangibles should be significant in number and amount in order to constitute comparables has also been deleted. Transfers of some property may be few in volume, but nonetheless be in the ordinary course of business and provide a useful basis for determining an arm's length result. Moreover, even large differences in volume are not per se bars to the use of a potential comparable. Rather, such differences should be taken into account as comparability factors under § 1.482–1(d)(3).

Section 1.482–1(e) describes the arm's length range. This provision corresponds to § 1.482–1T(d)(2)(i) of the 1993 regulations. As under the 1993 regulations, the arm's length range is derived from two or more uncontrolled transactions. Under the 1993 regulations the range included all valid applications of a particular method. A modified rule has been included in the final regulations to reflect the possible use of inexact comparables under all of the methods. Given this relaxed standard of comparability, it would be inappropriate to derive a range from a mix of exact and inexact comparables, because to do so would accord the same weight to results with potentially widely varying degrees of reliability. Therefore, § 1.482–1(e)(2)(i) provides that the range is derived from two or more uncontrolled transactions "of similar comparability and reliability."

Section 1.482–1(e)(2)(ii) expands upon this rule, providing that uncontrolled comparables with significantly lower levels of comparability and reliability than others will be disregarded. Thus, it is necessary in every case in which more than one uncontrolled transaction is available to compare the relative levels of comparability and reliability of the uncontrolled transactions, and to discard those uncontrolled transactions that do not have approximately the same level of comparability and reliability as the most comparable and reliable of the uncontrolled transactions.

Under § 1.482–1(e)(2)(iii), the arm's length range will be established in one of two ways, depending upon the extent to which material differences between the uncontrolled comparables and the controlled transaction can be identified, and the reliability of adjustments made to account for such differences. First, under § 1.482–1(e)(2)(iii)(A), the arm's length range will consist of the results of all the uncontrolled comparables (i.e., all the uncontrolled comparables of similar comparability and reliability) if certain requirements are met. These requirements are that every identified material difference have a definite and reasonably ascertainable effect on prices or profits; that appropriate adjustments for such differences be made; and that the data be sufficiently complete that it is likely that there are no unidentified material differences. Given equal degrees of high comparability, it is impossible to conclude which of the uncontrolled comparables provides a more reliable measure of an arm's length result, and it is inappropriate to draw distinctions between them by excluding some from the range. Therefore all the results are included in the arm's length range.

Second, § 1.482–1(e)(2)(iii)(B) provides that if the standards of § 1.482–1(e)(2)(iii)(A) are not met, then the reliability of the analysis must be enhanced, if possible, by applying valid statistical techniques to the uncontrolled comparables that are of similar comparability and reliability. In this case the range generally consists of the interquartile range, i.e., the 25th to the 75th percentile of the results derived from the uncontrolled comparables, or an equivalent range determined pursuant to other valid statistical methods corresponding to a level of confidence equal to that provided by the interquartile range. Finally, this section reemphasizes that all adjustments for material differences that improve the reliability of the result must be made to the extent possible. Section 1.482–1(e)(2)(iii)(C) provides guidance for determining the interquartile range.

The 1993 regulations contemplated the use of statistical techniques to derive the arm's length range only under the CPM. The use of these techniques has been extended to all methods under the final regulations to reflect the fact that the standards of comparability have been relaxed to permit the use of inexact comparables.

Unlike the uncontrolled comparables used in establishing the range under § 1.482–1(e)(2)(iii)(A), the comparables under § 1.482–1(e)(2)(iii)(B) have, or may have, material differences for which adjustments have not been made. The justification for including all the results in the arm's length range under § 1.482–1(e)(2)(iii)(A) is that all the uncontrolled comparables are of approximately equal comparability, and it is inappropriate to draw distinctions between them by excluding some from the range. This is not true, however, of the comparables used to derive the arm's length range under § 1.482–1(e)(2)(iii)(B). Although these comparables will appear to be of equal comparability, the presence of either unidentified material differences or identified material differences that do not have a definite and reasonably ascertainable effect, means that they are actually unlikely to be equally comparable. Therefore, to include all the results in the arm's length range under § 1.482–1(e)(2)(iii)(B) would mean that uncontrolled comparables of differing degrees of comparability and reliability would be included in the range, violating the rule set forth in § 1.482–1(e)(2)(ii) (Selection of comparables). If results of varying degrees of comparability and reliability were included in the range, the analysis would be distorted, because results with different degrees of comparability and reliability would be accorded equal weight.

Since it is impossible to directly identify and quantify these material differences, the regulations require that they be taken into account indirectly through the use of a statistical range. Results that differ widely from one another have significant, unaccounted for, differences. Therefore when it is highly probable that the uncontrolled comparables are not of roughly equal comparability (it being impossible to identify all material differences), it is reasonable to assume that the results diverging significantly from the norm are not comparable to the controlled taxpayer.

If results fall outside the arm's length range, § 1.482–1(e)(3) provides that the district director may make adjustments so that the taxpayer's result falls at any point within the range. When the interquartile range is used, this point generally will be the median of the results. In other cases, this point will normally be the mean of the results.

Section 1.482–1(e)(4) states that the district director may properly propose an adjustment based on a single comparable uncontrolled price. However, if the taxpayer subsequently

demonstrates that its results are within a range established by additional equally comparable transactions, no allocation will be made.

Section 1.482–1(f) sets forth several rules relating to the scope of review under section 482 that correspond closely to rules provided under § 1.482–1T(d) of the 1993 regulations. This section provides that a section 482 allocation may be made whenever the taxable income of a controlled taxpayer differs from an arm's length amount. Further, § 1.482–1(f)(1)(i) provides that the discretion of the district director to utilize section 482 is not limited to cases in which the taxpayer intentionally distorted its taxable income. Section 1.482–1(f)(1)(ii) provides that the district director may make an allocation even if the ultimate income anticipated from a series of transactions is not realized. Sections 1.482–1(f)(1) (iii) and (iv) relate to the interaction between section 482 and the nonrecognition and consolidated return provisions, respectively. They are consistent with guidance set forth in the 1968 and 1993 regulations.

Section 1.482–1(f)(2) contains rules relating to the determination of true taxable income. These rules are substantially similar to rules set forth in § 1.482–1T(d)(3) of the 1993 regulations. Section 1.482–1(f)(2)(i) provides that multiple transactions (generally within the same product grouping) may be aggregated when they are so interrelated that it is necessary to view them as a whole. Section 1.482–1(f)(2)(ii) provides that the district director ordinarily will evaluate controlled transactions based on the structure of the actual transaction, and will not treat the transaction as if it had been structured differently. The district director may, however, consider the alternatives that were available to the taxpayer in determining whether the terms of the controlled transactions would be acceptable to an uncontrolled taxpayer faced with similar alternatives. Adjustments should be made in such cases to reflect material differences between the alternative and the controlled transactions. As under the 1993 regulations, this authority to examine alternatives is limited to the determination of an arm's length price, and does not permit the district director to treat a controlled transaction as if it actually had been structured differently.

Section 1.482–1(f)(2)(iii) provides that the results of controlled transactions ordinarily will be compared with the results of uncontrolled taxpayers derived from the same period as the controlled transactions. Data from different years may be used, however, under certain conditions. If data from other years is employed, such data should be compared to the controlled taxpayer's results from the same years. Data from multiple years also may be relevant for purposes of certain enumerated provisions, including analysis of risk, market share strategy, periodic adjustments, and the CPM. Section 1.482–1(f)(2)(iii)(C) provides that results from other years may be examined to determine if the same economic conditions that caused the taxpayer's result also caused the uncontrolled taxpayer's result. For example, in determining whether a loss from a controlled transaction is within an arm's length range based upon losses realized by uncontrolled taxpayers, it may be relevant to consider data from other taxable years to determine whether the same conditions that caused the controlled taxpayer's loss had a similar effect on the controlled taxpayer.

Section 1.482–1(f)(2)(iii)(D) provides that if the application of a method is based on a multiple year analysis, the district director may make an adjustment if the taxpayer's average result for the period is outside the range of average results derived from uncontrolled comparables for the same period. Comparison of multiple year averages may provide a more accurate reflection of a taxpayer's transfer pricing practices over a period than an analysis based on a single year and reduces the effect of short-term variations that may be unrelated to transfer pricing. The determination of whether the taxpayer is within the arm's length range is based on a comparison of the taxpayer's average result for the relevant years to the results of the uncontrolled comparables over the same period, which indicates whether the taxpayer had similar results over a similar period. An adjustment ordinarily will be equal to the difference, if any, between the taxpayer's result for the taxable year and the mid-point (generally the median) of the uncontrolled comparables' results for the taxable year. However, an adjustment will be made only to the extent that it would move the controlled taxpayer's multiple year average closer to the arm's length range for the multiple year period or to any point within such range. Thus, for example, if a method is applied to a U.S. taxpayer, and the taxpayer's average result for the multiple year period is below the arm's length range of average results derived from uncontrolled comparables for the same period, an adjustment may be made that is equal to the difference between the controlled taxpayer's result for the taxable year and the mid-point of the results of the uncontrolled comparables for that year. However, the adjustment would not be made to the extent that the adjustment would cause the taxpayer to have an average result for the multiple year period that exceeds any point within the arm's length range derived from the average results of the uncontrolled comparables.

Section 1.482–1(f)(2)(iv) permits evaluation of product lines and statistical groupings in a manner analogous to that permitted under the 1968 and 1993 regulations. Finally, § 1.482–1(f)(2)(v) follows the 1993 regulations in providing that it is not necessary for the district director to determine whether the method that a taxpayer employs to determine the amounts charged in its controlled transactions correspond to the method that the taxpayer might have used in uncontrolled transactions. In other words, the focus of this evaluation is the result achieved rather than the method employed in reaching that result.

Section 1.482–1(g) provides procedural rules relating to collateral adjustments. Such adjustments include correlative allocations, conforming adjustments, and set-offs. Section 1.482–1(g)(2) provides rules regarding correlative allocations that are generally similar to the rules provided under the 1968 and 1993 regulations.

Section 1.482–1(g)(3) provides that appropriate adjustments must be made to conform a taxpayer's accounts to reflect allocations under section 482. Such adjustments may include the treatment of an allocated amount as a dividend or a capital contribution. In other cases, pursuant to applicable revenue procedures (see, e.g., Rev. Proc. 65–17), amounts may be repaid without further income tax consequences.

Section 1.482–1(g)(4) provides rules relating to setoffs that are similar to the rules provided under the 1993 regulations and the 1968 regulations. Several requirements are imposed on taxpayers that claim setoffs. First, as in the 1993 regulations, the taxpayer must establish that the transaction that is the basis of the set-off was not at arm's length. Second, the taxpayer must document all adjustments resulting from the proposed set-off. Finally, the taxpayer must notify the district director of any claimed set-off within 30 days after the earlier of the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments or the date of the issuance of the notice of deficiency. This requirement corresponds to § 1.482–1A(d)(3) of the 1968 regulations.

In addition to set-offs arising from transactions between the controlled taxpayers that were the parties to the transaction giving rise to the original allocation, the temporary regulations permitted set-offs arising from transactions between one of these controlled taxpayers and a third controlled taxpayer. In discussions with treaty partners it proved impossible to reach an acceptable consensus on this issue, and no such rule was included in the final regulations. Therefore, as under the 1968 regulations and in accordance with the practice of most treaty partners, set-offs are permitted only for transactions between the same two controlled taxpayers that were parties to the transactions giving rise to the original allocation.

The 1993 regulations contained a provision on compensating adjustments that has not been included in the final regulations. The provision in the 1993 regulations (§ 1.482–1T(e)(2)) imposed several restrictions on the ability of taxpayers to adjust reported results to reflect an arm's length result. This requirement was deleted because it was not appropriate to impose such restrictions given the penalties that could be imposed under section 6662(e) on taxpayers that fail to make such adjustments in certain circumstances. The final regulations therefore impose no restrictions on taxpayers' ability to report a result on their original tax return that differs from the result reflected in the taxpayer's books and records. However, as provided in § 1.482–1(a)(3), taxpayers may not use section 482 to decrease their taxable income on an amended return.

Section 1.482–1(h) provides special rules relating to a small taxpayer safe harbor, foreign legal restrictions and coordination with section 936. Under § 1.482–1(h)(1), the small taxpayer safe harbor is reserved. The 1993 regulations contained a small taxpayer safe harbor that has not been included in the final regulations. This provision was never implemented because the IRS did not issue the profit level indicators required to apply the provisions of the safe harbor. There are three reasons why this provision was not included. First, treaty partners had expressed concern that the safe harbor might cause taxpayers to overreport their U.S. taxable income and underreport their foreign taxable income. They requested that the safe harbor provide that electing taxpayers be required to report an amount of profit in the United States that was less than that expected under a strict application of the arm's length standard. Such an approach was not acceptable. Second, it would have been necessary to add a number of anti-abuse provisions in order to eliminate the possibility of inappropriate use of the provision by large taxpayers. Commenters had already expressed concern that the existing restrictions were excessively complex and burdensome given the level of sophistication of its intended beneficiaries. The final concern was that both taxpayers and the IRS might give undue weight to the published measures of profitability in cases not governed by the safe harbor. It was not possible to address these problems consistently with the overall objective of alleviating the compliance burden for small taxpayers. Moreover, the concern regarding the compliance burden on small taxpayers has been addressed to some extent by the regulations under section 6662(e), which provide that one of the factors to be taken into account in determining whether a taxpayer reasonably applied a method to determine its transfer prices is the taxpayer's experience and knowledge. Comment is requested on alternative approaches to the small taxpayer safe harbor that would not suffer from the deficiencies noted above.

The rules on foreign legal restrictions were originally issued in proposed form in the 1993 regulations. Section 1.482–1(h)(2) modifies and finalizes that provision. It provides that a foreign legal restriction will be taken into account to the extent that such restriction affects the results of transactions at arm's length. If there is no evidence that the restriction affected uncontrolled taxpayers the restriction will be disregarded in determining an arm's length result, and it will be taken into account only to the extent provided in §§ 1.482–1(h)(2) (iii) and (iv), relating to the deferred income method of accounting. A foreign legal restriction is generally defined under § 1.482–1(h)(2)(ii) as a restriction that is publicly promulgated and generally applicable, not imposed as part of a commercial transaction between the taxpayer and the foreign government, with respect to which the taxpayer has exhausted all practicable legal remedies afforded under foreign law, expressly prevents the payment, in any form, of an arm's length amount within the meaning of section 482, and was not otherwise circumvented by the controlled taxpayers.

Section 1.482–1(h)(2)(iii) provides that if a provision meets the definition of a foreign legal restriction and the taxpayer has elected the deferred income method of accounting, any section 482 allocation connected with the transaction will be deferrable until the restriction is removed.

Section 1.482–1(h)(2)(iv) provides that if the requirements of § 1.482–1(h)(2)(iii) are satisfied, the amount subject to the restriction will be treated as deferrable until payment or receipt of the relevant item ceases to be prevented by the foreign legal restriction. Deductions and credits incurred in open years and that are chargeable against a deferred amount are subject to deferral under § 1.461–1(a)(4).

Section 1.482–1(h)(3) provides a coordination rule for section 936 that is identical to § 1.482–1T(f)(3) of the 1993 regulations.

Section 1.482–1(i) defines ten terms that are employed in the regulations. These are generally identical to their definitions under the 1993 regulations, with the following exceptions. The definition of trade or business under § 1.482–1(i)(2) clarifies that employment for compensation will constitute a separate trade or business from the employing trade or business. The definition of "controlled" in § 1.482–1(i)(4) has been modified. The definition in the 1993 regulations was misinterpreted to provide that a presumption of control arises only if income or deductions have been arbitrarily shifted "as a result of the actions of two or more taxpayers acting in concert or with a common goal or purpose." This phrase was added to the 1993 regulations as an example of the type of control that could be considered control for purposes of section 482. The definition has been amended to make clear that this addition is only an example. The definition of the term "controlled taxpayer" has been clarified to include the taxpayer that owns or controls other taxpayers.

Section 1.482–1(j)(1) provides that these regulations generally are effective for taxable years beginning 90 days after publication in the **Federal Register**. Section 1.482–1(j)(2) provides that taxpayers may elect to apply these regulations retroactively to all open years (in which case they also must be applied to all subsequent years). Section 1.482–1(j)(3) provides that the last sentence of section 482 is generally effective for taxable years beginning after December 31, 1986, and this sentence, prior to the effective date of the final regulations, must be applied using any reasonable method not inconsistent with the statute (including these regulations). Finally, § 1.482–1(j)(4) provides that the final regulations will not apply to transfers made or licenses granted prior to November 17, 1985 (in the case of a foreign transferee) or August 17, 1986 (in the case of other transferees), unless the property was not in existence on the relevant date.

Section 1.482–2

The regulations under section 1.482–2 have not been changed. Section 1.482–2(d), providing that guidance with respect to transfers of property is set forth in §§ 1.482–3 through 1.482–6, is now part of the final regulations.

Section 1.482–3

Section 1.482–3 provides rules for transfers of tangible property. Six methods are provided: the CUP method; the resale price method; the cost plus method; the CPM; the profit split method; and unspecified methods. The method that will be applied in a particular case will be selected in accordance with § 1.482–1(c) (Best method rule).

Section 1.482–3(b) describes the CUP method. Consistent with the best method rule, § 1.482–3(b)(2)(ii) provides that the CUP method generally provides the most direct and reliable measure of an arm's length result if an uncontrolled transaction either has no differences from the controlled transaction or there are only minor differences that have a definite and reasonably ascertainable effect on price, and appropriate adjustments are made for such differences. Further, unlike the 1993 regulations, the CUP method potentially may be used when there are more than minor differences between the controlled and uncontrolled transactions, or when adjustments for minor differences cannot be made. In such cases, the method may be employed, but its reliability for purposes of the best method rule will be reduced.

In determining comparability under this method, product similarity is the most important factor to consider. Indeed, § 1.482–3(b)(2)(ii) provides that if there are material product differences for which reliable adjustments cannot be made, this method ordinarily will not provide a reliable basis for determining an arm's length result. Comparability also will be reduced if either the uncontrolled taxpayer or the controlled taxpayer owns a trademark that is exploited in connection with the sale of the product. Minor differences in contractual terms and economic conditions also can have a material effect on price, so comparability under this method also depends on close similarity with respect to these factors.

Although all the comparability factors described in § 1.482–1(d) must be considered, § 1.482–3(b)(2)(ii)(B) provides examples of several factors that may be particularly relevant to the application of the CUP method.

Section 1.482–3(b)(2)(iii) provides that the data and assumptions used to apply the CUP method also will affect the reliability of the result. This method assumes that a very similar transaction between uncontrolled taxpayers is a reliable basis for determining the price that would have been agreed between the controlled taxpayers had they been dealing at arm's length. Given reasonably complete and accurate data, this assumption is usually very reliable.

Section 1.482–3(b)(5) describes the use of indirect evidence derived from public exchanges or quotation media to establish a comparable uncontrolled price under this method. This provision had been added in response to comments that in some industries in which commodities are traded in large quantities, it is common for unrelated parties to set prices based upon publicly available prices or quotations. Since these quoted prices are not themselves transactional prices, but may be averages based upon actual transactions, they do not qualify as applications of the CUP method as that method is otherwise described in the regulations. This section has been added to permit use of such indicators in appropriate circumstances.

Such indicators may be employed only if the data is widely and routinely used in the ordinary course of business in the industry to establish prices in uncontrolled transactions, the data is used in the same way by uncontrolled and controlled taxpayers, and adjustments are made for differences that affect price. Further, such indicators may not be employed under extraordinary market conditions.

Section 1.482–3(c) describes the resale price method. It is generally similar to the resale price method provisions of the 1968 and 1993 regulations, although greater guidance has been provided on comparability factors to consider in applying the method, and the standards of comparability expressly permit use of "inexact comparables" under this method.

The discussion of comparability considerations emphasizes that, although all the factors described in § 1.482–1(d)(3) must be considered, this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms. Further, although close product similarity will tend to improve the reliability of the result, reliable application of the resale price method is less dependent on product similarity than the CUP method. The reliability of the analysis also would be reduced if the uncontrolled taxpayer sells goods that are significantly more (or less) valuable than the goods in the controlled transaction, or if either the uncontrolled taxpayer or the controlled taxpayer owns a trademark that is exploited in connection with the resale of the product. In addition, it may be necessary to consider certain factors, such as management efficiency and differences in business experience, that would normally have little effect on comparability under the CUP method.

The final regulations do not include the statement that in the absence of comparable transactions, prevailing gross profit margins in the general industry may be appropriate. Although this statement was included in the 1968 and 1993 regulations, such a measure of an arm's length result would be contrary to the rule under § 1.482–1(d)(2) that unadjusted industry average returns cannot independently establish an arm's length result.

Section 1.482–3(d) describes the cost plus method. It is generally similar to the cost plus method provisions of the 1968 and 1993 regulations, although additional guidance has been provided on comparability factors to consider in applying the method, the rules for computing the arm's length price and appropriate gross profit have been clarified, and the standards of comparability expressly permit use of "inexact comparables" under this method.

As under the resale price method, the discussion of comparability considerations emphasizes that, although all the factors described in § 1.482–1(d)(3) must be considered, this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms. Further, although close product similarity will tend to improve the reliability of the result, reliable application of the cost plus method is less dependent on product similarity than the CUP method. As under the resale price method, it may be necessary to consider certain factors, such as management efficiency and differences in business experience, that would normally have little effect on comparability under the CUP method.

Section 1.482–3(d)(3)(iii)(B) emphasizes that in computing the gross profit markup, items such as inventory and cost allocation must be accounted for consistently.

Section 1.482–3(e) provides that in addition to the methods specifically enumerated in § 1.482–3, unspecified methods may be employed. This provision differs from its counterpart in the 1993 regulations in two significant respects. First, in response to comments, the procedural requirements that the 1993 regulations imposed in connection

with the use of an unspecified method by the taxpayer have been deleted.

Second, guidance has been provided on considerations that should be taken into account in applying an unspecified method. Such methods should reflect the principle underlying the arm's length standard that uncontrolled taxpayers compare the terms of a transaction to their realistic alternatives to the transaction. Therefore, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. This guidance has been included because it is a principle that is consistent with all methods that apply the arm's length standard. For example, the CUP method identifies an alternative price at which the controlled taxpayer could have completed the controlled transaction. An example of the application of this principle is provided in which a *bona fide* offer is used to establish an arm's length price. Unspecified methods are not, however, limited to examination of potential transactions that did not occur. They should, in general, be based on actual transactions and other indicia derived from actual or potential market transactions.

Section 1.482–3(f) provides rules coordinating the application of the tangible property rules with the rules governing transfers of intangible property. This provision provides more guidance than its predecessor in the 1993 regulations. It provides that in most cases the transfer of tangible property with a so-called "embedded intangible" will not be considered a transfer of the intangible if the purchaser does not acquire the right to exploit the intangible other than in connection with the resale of the tangible property. This provision responds to commenters who expressed concern that sales of branded products to controlled taxpayers for resale would routinely have to be evaluated under the provisions of both §§ 1.482–3 and 1.482–4. While in such a case the transaction may be evaluated under § 1.482–3, the presence of the intangible will affect the analysis of comparability, because the value of the product may be increased by the presence of an embedded intangible.

Finally, when a purchaser of a tangible product acquires the right to commercially exploit an embedded intangible, it may be necessary to apply § 1.482–3 to determine the arm's length consideration for the tangible property transferred and § 1.482–4 to determine the arm's length consideration for the embedded intangible. An example of this type of transaction could include the transfer of a machine incorporating a valuable manufacturing process that the purchaser will exploit in connection with the operation of the machine.

Section 1.482–4

Section 1.482–4 provides rules with respect to the transfer of intangible property. Four methods are provided: the comparable uncontrolled transaction (CUT) method, the CPM, the profit split method, and unspecified methods. The method that will be applied in a particular case will be selected in accordance with § 1.482–1(c) (Best method rule).

Section 1.482–4(b) provides a definition of intangible property that is similar to that provided in the 1968 regulations. It differs from the 1993 regulations in that the requirement that the property be "commercially transferrable" has been deleted. This language was not included in the definition because it was superfluous: if the property was not commercially transferrable, then it could not have been transferred in a controlled transaction. In addition, the reference to "other similar items" under § 1.482–4(b)(6) has been clarified to refer to items that derive their value from intellectual content or other intangible properties rather than physical attributes.

Section 1.482–4(c) describes the CUT method. This method is similar but not identical to the CUT method under the 1993 regulations. The CUT method determines an arm's length royalty for an intangible by reference to uncontrolled transfers of comparable intangible property under comparable circumstances. An important comparability factor under this method is the profit potential of the intangibles in the controlled and uncontrolled transactions. In response to comments, the requirement that the profit potential of the intangibles transferred in the controlled and uncontrolled transactions be "substantially the same" has been relaxed to permit more frequent use of this method, as long as it provides the most reliable measure of an arm's length result under the best method rule. In addition, as under all methods, the discussion of the comparability factors under this method has been expanded.

As under the 1993 regulations, § 1.482–4(c)(2)(ii) provides, consistent with the best method rule, that the CUT method generally provides the most direct and reliable measure of an arm's length result if the same intangible is transferred in the controlled and uncontrolled transactions, and there are, at most, only minor differences between the uncontrolled and the controlled transaction, these differences have a definite and reasonably ascertainable effect on price, and appropriate adjustments are made for such differences. The CUT method also may provide the most reliable measure of an arm's length result in other cases, as determined under the best method rule in § 1.482–1(c).

Section 1.482–4(c)(2)(ii) emphasizes that, although all the factors described in § 1.482–1(d)(3) must be considered, this method is particularly dependent on similarity in terms of contractual arrangements and economic conditions. Further, this method cannot be applied unless the intangible property involved in the controlled and uncontrolled transactions is comparable within the meaning of § 1.482–4(c)(2)(iii)(B)(*1*).

Section 1.482–4(c)(2)(iii)(B)(*1*) provides that two requirements must be satisfied in order for the intangible property involved in two transactions to be comparable. First, as under the 1993 regulations, the intangibles must be used in connection with similar products or processes within the same general industry or market. Second, the intangibles must have similar profit potential. As indicated, this requirement is not as strict as the profit potential requirement under the 1993 regulations. Additional guidance is provided concerning the analysis applied in determining whether the profit potential of two intangibles is similar within the meaning of this provision.

In order to conclude that the profit potential of two intangibles is similar, it is necessary to have an acceptably reliable measure of the profit potential of the two intangibles. Profit potential is most reliably measured by direct calculations, based on reliable projections, of the net present value of the benefits to be realized through use of the intangible. While this information frequently will be available with respect to the controlled transaction, it normally will not be available with respect to an uncontrolled transaction unless one of the controlled taxpayers was a party to it. In recognition of this difficulty, the regulations provide that in certain cases it may be acceptable to refer to evidence other than projections to compare profit potential. Such indirect comparisons of profit potential will be most useful in cases where it is not possible to directly calculate the profit potential of the intangibles in either the controlled or uncontrolled transaction. An example of such a case could include a transfer of an intangible that relates to a component of an asset consisting of

many components (such as an airplane or automobile). In such a case it would be difficult to reliably calculate the net present value of the profit attributable to the intangible that was transferred in the controlled transaction, because the profit attributable to the intangible will be difficult to isolate from the overall profit attributable to the final asset.

As the profit potential increases, the importance of reliably measuring the profit potential also increases, because the effects of errors may increase as the overall profitability of the intangible increases. The reliability of indirect comparisons of profit potential therefore decreases as the profit potential in the controlled transaction increases. Consequently, given an indirect measure of profit potential, it might be concluded that the profit potential of the intangible property involved in the uncontrolled transaction might be similar to that of the controlled transaction within the meaning of this provision when the overall profitability of the intangibles is relatively small, but the profit potential might not be similar under the same circumstances if the overall profitability was much greater. The ultimate determination will depend on the facts and circumstances of each case.

Finally, § 1.482–4(c)(2)(iii)(B)(*2*) provides that to apply the CUT method the circumstances involved in the controlled and uncontrolled transactions must be similar. This provision is substantially the same as its counterpart in the 1993 regulations.

Section 1.482–4(d) provides a rule for the use of unspecified methods that is analogous to the rule on unspecified methods provided for tangible property under § 1.482–3(e). To the extent that a method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Reliability also will be affected by the reliability of the data and assumptions used to apply the method, including any projections.

Section 1.482–4(e) provides a rule for coordination with the tangible property rules that is analogous to the rule provided under § 1.482–3(f).

Section 1.482–4(f) provides special rules for transfers of intangible property. Section 1.482–4(f)(1) provides that when a controlled taxpayer pays nominal or no consideration for the right to exploit an intangible, and the transferor retains a substantial interest in the intangible, the arm's length consideration shall be in the form of a royalty, unless a different form is more appropriate.

Section 1.482–4(f)(2) provides that if an intangible is transferred for a period in excess of one year, the consideration charged is generally subject to an annual adjustment to ensure that it is commensurate with the income attributable to the intangible. This provision is required by the 1986 amendment to section 482.

The 1993 regulations contained two exceptions to this rule. The final regulations retain these exceptions and add three additional exceptions in response to comments. First, § 1.482–4(f)(2)(ii)(A) provides that no periodic adjustments will be made if the consideration for the transfer of an intangible is determined to be an arm's length amount under the CUT method, and if the uncontrolled transaction that serves as the basis for the application of the CUT method involved the transfer of the same intangible under substantially the same circumstances as those of the controlled transaction. Thus, for example, the consideration for the transfer of an intangible to a controlled taxpayer in one country could be determined to be arm's length based on the transfer of the same intangible to an uncontrolled taxpayer in another country in which the relevant economic conditions were substantially similar to those in the first country. In such case no periodic adjustment would be made if the two transactions occurred under substantially similar circumstances.

Section 1.482–4(f)(2)(ii)(B) provides an exception, based on the CUT method, that is similar to the exception provided in § 1.482–4T(e)(2)(ii)(A) of the 1993 regulations. Section 1.482–4(f)(2)(ii)(C) provides an exception based on other methods that is similar to the exception provided in § 1.482–4T(e)(2)(ii)(B) of the 1993 regulations. Both of these exceptions are substantially identical to their counterparts in the 1993 regulations with one modification. The rule requiring that the taxpayer's actual profits attributable to the intangible must be no less than 80 percent and no greater than 120 percent of the projected profits has been liberalized. In the 1993 regulations, the profits subject to this comparison were only the projected and actual profits for all open years. Under the final regulations, this comparison applies to all past years, which in many cases will be a longer period. By enlarging the pool of data that is taken into account for purposes of this comparison, it generally will be less likely that the taxpayer's actual profits will fall outside the band of projected profits based solely on timing variances, and therefore fewer periodic adjustments will be permitted under these provisions.

Section 1.482–4(f)(2)(ii)(D) provides an additional exception from periodic adjustments for extraordinary events. It provides that no periodic adjustments will be made if the aggregate actual profits fall outside the permissible band of projected profits, but this variation from the projected results was due to extraordinary events that could not reasonably have been anticipated (such as natural or man-made disaster but does not include more routine events such as the failure of a market to develop as anticipated), and all the other requirements of either § 1.482–4(f)(2)(ii) (B) or (C) are satisfied.

Finally, § 1.482–4(f)(2)(ii)(E) provides that if the requirements of either § 1.482–4(f)(2)(ii) (B) or (C) are satisfied for the five-year period beginning with the year in which substantial periodic consideration is first paid, no periodic adjustments will be made.

Section 1.482–4(f)(3) provides rules regarding the ownership of intangible property. These rules are required to identify the controlled taxpayer that should recognize the income attributable to intangible property. The 1993 regulations provided that, for purposes of section 482, intangible property generally would be treated as owned by the controlled taxpayer that bore the greatest share of the costs of development. This rule was criticized by many commenters, principally because it disregarded legal ownership. The commenters asserted that disregarding legal ownership could be inconsistent with the arm's length standard. For instance, a controlled taxpayer that was treated as the owner of an intangible for section 482 purposes might not be the legal owner. At arm's length, the legal owner could transfer the rights to the intangible to another person irrespective of the developer's contribution to the development of the intangible. On the other hand, it would be unlikely that at arm's length an unrelated party would incur substantial costs adding value to an intangible that was owned by an unrelated party, unless there was some assurance that the party that incurred the expenses would receive the opportunity to reap the benefit attributable to the expenses.

The final regulations recognize these criticisms and adopt a modified approach to the identification of the owner of an intangible that is more consistent with legal ownership. Under § 1.482–4(f)(3)(ii)(A), the legal owner of the right to exploit an intangible will be considered the owner for purposes of section 482. Legal ownership does not refer solely to the registered holder of an intangible: ownership rights may be transferred by explicit or implicit agreement, and more than one party may be considered a legal owner of rights in the same intangible. For

example, a license agreement would grant the licensee a set of rights in the intangible for the duration of the agreement, while the licensor would retain the residual rights to the intangible after the expiration of the agreement.

Under § 1.482–4(f)(2)(ii)(B), ownership of intangible property that is not legally protected will be determined in a manner similar to that under the 1993 regulations, i.e., the owner generally will be the person that bore the greatest share of the costs of development.

Section 1.482–4(f)(2)(iii) provides that allocations may be made with respect to assistance provided to the owner by other parties that assisted in the development of the intangible. Assistance does not include expenditures of a routine nature that an unrelated party dealing at arm's length would be expected to incur under similar circumstances. For instance, even in the absence of a license agreement transferring the right to exploit a trademark to an unrelated distributor, a distributor may be expected to incur a certain amount of advertising and other marketing expenses that could increase the value of the trademark. If an uncontrolled taxpayer would incur such expenses without express or implicit reimbursement by the owner of the intangible, then no allocation with respect to similar levels of expenses would be made under section 482 in the case of a distributor that is a member of the controlled group to which the legal owner of the trademark belongs. On the other hand, an allocation could be made if the expenses were greater than those that an unrelated party would have incurred without some form of compensation.

Section 1.482–4(f)(4) provides that the arm's length consideration for the transfer of an intangible is not limited either by prevailing industry average royalty rates or the consideration paid in uncontrolled transactions that are not comparable to the controlled transaction.

Section 1.482–4(f)(5) addresses lump sum payments. This issue was reserved in the 1993 regulations. The final regulations provide that lump sum payments are potentially subject to periodic adjustments to the same extent as license agreements providing for periodic royalty payments. For purposes of determining if the lump sum payment satisfies the arm's length standard and if periodic adjustments may be made, the lump sum must be treated as an advance payment of a stream of royalties over the life of the agreement. This "equivalent royalty amount" serves as the basis for determining if the consideration is arm's length. In addition, if a periodic adjustment is made pursuant to the provisions of § 1.482– 4(f)(2), the royalty that was deemed to have been prepaid for the taxable year in question will be set off against the arm's length royalty determined for such year, and the difference will be treated as an additional payment in the year of the allocation that is of the same character as the initial lump sum payment.

Section 1.482–5

Section 1.482–5 describes the comparable profits method. It is similar to § 1.482–5T of the 1993 regulations. The CPM may be used to determine the arm's length consideration for tangible and intangible property. The CPM relies on the general principle that similarly situated taxpayers will tend to earn similar returns over a reasonable period of time. The CPM determines the arm's length consideration for a controlled transaction by referring to objective measures of operating profit (profit level indicators) derived from uncontrolled taxpayers that engage in similar activities with other uncontrolled taxpayers under similar circumstances.

Many commenters were concerned that the CPM could be applied in a manner that would be inconsistent with the arm's length standard. This concern was attributable to the fact that operating profit is normally affected by more factors than gross profit or price, which are the measures employed under the other methods provided in §§ 1.482–3 and 1.482–4. The commenters were concerned that the CPM would be applied without taking these additional differences into account, and as a result the comparability achieved under the CPM would be weaker than the comparability required under other methods. The commenters believed that in such cases an analysis under the CPM would be suspect. Further, some commenters concluded that it was permissible under the 1993 regulations to apply the CPM without making adjustments for observed material differences, which led them to believe that the IRS would routinely apply the CPM in a manner that did not provide a reasonably reliable measure of an arm's length result. This concern was heightened by language in § 1.482–5T(a) of the 1993 regulations stating that the CPM would ordinarily provide an accurate measure of an arm's length result unless the tested party owned certain types of intangible property. Some commenters misinterpreted this language as indicating that the CPM was preferred to the results obtained under other methods, irrespective of the relative levels of comparability obtained under the potentially applicable methods and without regard to the operation of the best method rule.

The final regulations make it clear that the CPM is subject to the same considerations as any other method. First, the language providing that the CPM "ordinarily will provide an accurate measure of an arm's length result" has been deleted.

Second, and more importantly, the final regulations contain a much more extensive discussion of comparability considerations under the CPM than did the 1993 regulations. While it may be permissible to apply the CPM when there is (or may be) a material difference but it is not possible to make a reliable adjustment for such difference, application of the CPM in such a case only would be permissible if the other methods were less reliable than the CPM under the facts and circumstances.

Given adequate data, methods that determine an arm's length price (e.g., the CUP method) or gross margin (e.g., the resale price method) generally achieve a higher degree of comparability than the CPM. Because the degree of comparability, including the extent and reliability of adjustments, determines the relative reliability of the result under the best method rule, the results of these methods will be selected unless the data necessary to apply them is relatively incomplete or unreliable. In this regard the CPM generally would be considered a method of last resort.

This greater emphasis on comparability under the CPM is also reflected in the treatment of "valuable non-routine intangibles." The 1993 regulations indicated that the CPM ordinarily would not provide an accurate measure of an arm's length result if the tested party owned certain highly valuable intangibles because it was unlikely that it would be possible to locate uncontrolled taxpayers that possessed similar intangibles in connection with activities similar to those performed by the controlled taxpayer. In such a case the CPM could understate the income attributable to the assets of the controlled taxpayer. As a result of this concern, the 1993 regulations generally provided that the CPM should not be applied if the tested party owned "valuable non-routine intangibles" that it developed or that it acquired from third parties.

The final regulations have taken a different approach to the problem of valuable non-routine intangibles. Due to the difficulty in adequately defining the term and the fact that it would be

inappropriate to deny use of the CPM if a comparable uncontrolled taxpayer could be located that owned intangibles similar to those owned by the controlled taxpayer, the restriction contained in the 1993 regulations has been eliminated. In its place intangible property is expressly mentioned as a factor to consider in determining if an uncontrolled taxpayer is comparable to the controlled taxpayer. In most cases in which the controlled taxpayer owns intangible property of the type described in the 1993 regulations it will not be possible to locate an uncontrolled comparable that owns similarly valuable intangible property. The final regulations recognize, however, the possibility that a comparable uncontrolled taxpayer with such intangibles might be found; therefore they do not rule out the possibility of the CPM being applied under such facts.

Section 1.482–5(b)(4) describes the profit level indicators that are used to evaluate operating profit. They include two types of measures: the rate of return on capital employed and financial ratios. In addition, § 1.482–5(b)(4)(iii) provides that other profit level indicators not specifically described in the regulations may be employed, provided that they provide the most reliable measure of an arm's length result within the meaning of the best method rule. Under this provision, any measure of profit based on objective measures of profitability derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances could be employed. Accordingly, profit level indicators based solely on a controlled taxpayer's internal data would not be included under this provision, as they are not objective measures of profitability derived from transactions between uncontrolled taxpayers.

In determining an arm's length result under the CPM, the taxpayer's average reported operating profit for the year under review and the preceding two taxable years ordinarily will be compared to the average result of the uncontrolled comparables for the same period. Comparison of multiple year averages may provide a more accurate reflection of a taxpayer's transfer pricing practices over a period than an analysis based on a single year and reduces the effect of short-term variations in operating profit that may be unrelated to transfer pricing. If the taxpayer's average reported operating profit for this period falls outside the range of arm's length results determined pursuant to § 1.482–1(e)(2) (Determination of arm's length range), the district director may make an adjustment. In most cases, the adjustment will be made to the median of the uncontrolled comparables results for the taxable year. Adjustments under section 482 for prior years are taken into account in determining the tested party's average reported operating profit for a particular year if a final determination has been made with respect to such adjustments.

In line with the greater emphasis on comparability under the final regulations, § 1.482–5(c) contains a discussion of comparability factors that is substantially more comprehensive than that contained in the 1993 regulations. Section 1.482–5(c)(2) describes a number of comparability factors that must be taken into account under the CPM. In particular, § 1.482–5(c)(2)(ii) provides that, while all the comparability factors described in § 1.482–1(d)(3) must be considered, comparability under the CPM is particularly dependent on resources employed and risks assumed. Further, since resources and risks are directly related to functions, functional comparability, while somewhat less important than under the resale price or cost plus methods, also is an important consideration under the CPM.

Section 1.482–5(c)(2)(iii) provides that product comparability is not as important a consideration under the CPM as it is under the cost plus or resale price methods. Conversely, comparability under the CPM may be adversely affected by other factors that have little effect on comparability under the CUP method, such as management efficiency. Determining whether such differences exist may be difficult in some cases. As with any potential difference, the regulations provide that objective evidence, such as long-term sales or executive compensation trends, is required in order to ascertain whether such differences exist.

Section 1.482–5(c)(2)(iv) provides that adjustments must be made for all material differences to the extent that such adjustments improve the reliability of the analysis. In a departure from the 1993 regulations, the final regulations provide that differences in non-interest bearing liabilities (such as accounts payable) that would materially affect operating profit generally should be reflected by adjustments to operating profit to reflect an imputed interest charge on each party's liability. Such differences are more appropriately reflected by adjustments to operating profits than by adjustments to operating assets.

Section 1.482–5(c)(3)(ii) requires that all items that have a material affect on the profit level indicators be accounted for consistently, and if necessary to obtain this consistency, adjustments must be made. An additional factor that may affect reliability under the CPM is the ability to allocate costs and other items between the relevant business activity and the other activities of the controlled taxpayer or the uncontrolled taxpayers.

The definitions of several items under § 1.482–5(d) are substantially similar to the definitions provided under the 1993 regulations.

Section 1.482–6

Section 1.482–6 describes profit split methods. This provision, which was in proposed form under the 1993 regulations, has been finalized. Like the CPM, profit split methods may be applied to controlled transactions involving tangible or intangible property. The basic approach of a profit split method is to estimate an arm's length return by comparing the relative economic contributions that the parties make to the success of a venture, and dividing the returns from that venture between them on the basis of the relative value of such contributions. Two profit split methods are provided: the comparable profit split and the residual profit split. In addition to these two methods, the 1993 regulations proposed two other profit split methods: the capital employed allocation rule and other profit splits. These methods have not been included in the final regulations for the reasons set forth below.

Under the 1993 regulations taxpayers were required to satisfy a number of requirements in order to employ a profit split method. Since a profit split method either wholly or in part relies on internal data rather than data derived from uncontrolled taxpayers, other methods ordinarily will provide more reliable measures of an arm's length result, and these restrictions were imposed in order to ensure that the profit split method was applied only in cases where it was likely to be the most reliable measure of an arm's length result. As noted previously, these restrictions were both procedural and substantive.

Many commenters objected to these restrictions. They observed that, contrary to the best method rule, these restrictions could prevent taxpayers from employing a profit split method in cases where the method would be likely to provide the most accurate measure of an arm's length result. In response to these comments, and in accordance with the greater flexibility associated with the increased reliance on the best method rule, the final regulations have removed these restrictions. In particular,

for reasons similar to those discussed above under the CPM, the requirements that a profit split method may be applied only if both controlled taxpayers own valuable non-routine intangible property and that the intangibles contribute significantly to the combined operating profit derived from the relevant business activity, have been deleted. Further, the requirement that the taxpayer must make a binding election to apply a profit split method also has been deleted. The concerns that these and other restrictions were intended to address (the possibility that a profit split method would be used when it did not provide the most reliable measure of an arm's length result) are addressed by the more prominent role played by the best method rule in selecting a method.

Section 1.482–6(c)(2) describes the comparable profit split method. It is substantially similar to the comparable profit split rule set forth under the 1993 regulations. As with other methods described in the final regulations, the discussion of comparability factors under this method is more comprehensive than under the 1993 regulations. In addition, § 1.482–6(c)(2)(ii)(C) identifies several reliability considerations that are particularly pronounced under this method. These are reliability of cost and income allocation to the relevant business activity and accounting consistency. Further, § 1.482–6(c)(2)(ii)(D) provides that if the data and assumptions with respect to one of the controlled taxpayers are significantly more reliable than for the other, a method relying solely on an analysis of the first controlled taxpayer may be more reliable than the profit split method.

Section 1.482–6(c)(3) describes the residual profit split. Like the version of this method described in the 1993 regulations, the residual profit split determines an arm's length consideration in a two-step process. First, using other methods such as the CPM, market returns for routine functions are estimated and allocated to the parties that performed them. The remaining, residual amount then is allocated between the parties on the assumption that this residual is attributable to intangible property contributed to the activity by the controlled taxpayers. Based on this assumption, the residual is divided based on the estimate of the relative value of the parties' contributions of such property. Since fair market value of the intangible property usually will not be readily ascertainable, the regulations permit use of other measures of the relative values of intangible property, including capitalized intangible development expenses.

The final regulations contain an extensive discussion of comparability and reliability considerations under this method. The comparability considerations relevant to the first step of the allocation are analogous to the considerations relevant under the method employed to determine this portion of the allocation (such as the CPM). Since the second step ordinarily will not be based on a market benchmark, the reliability of this method will tend to be reduced for purposes of the best method rule as the amount of the residual profit allocated pursuant to the second step increases.

Under the best method rule, methods that determine an arm's length result based on the results of transactions between uncontrolled taxpayers are generally considered to be more reliable than methods (such as the residual profit split) that only rely on such transactions in part. Therefore, the results of the methods based solely on results of transactions between uncontrolled taxpayers will be selected under the best method rule unless the data necessary to apply them is relatively incomplete or unreliable. In this regard the residual profit split generally would be considered a method of last resort.

Further, § 1.482–6(c)(3)(ii)(C) identifies several other factors that may reduce the reliability of this method. In addition to allocation of costs, income and assets, and accounting consistency, another factor to take into account under the residual profit split is the reliability of the estimate of the value of intangible property. The reliability of this method could be particularly adversely affected if capitalized costs of development are used to estimate the value of intangible property because such costs may bear no relation to market value, calculation of such costs may require allocation of indirect expenses between the relevant business activity and the controlled taxpayer's other lines of business, and capitalizing costs requires assumptions regarding the useful life of intangible property.

Finally, § 1.482–6(c)(3)(ii)(D) provides that the analysis of both parties to the controlled transaction under this method may, to some extent, mitigate the reliability concerns attributable to the use of internal data in allocating the residual profit. However, as under the comparable profit split, other methods that analyze only one of the parties to the controlled transaction may be more reliable if the data and assumptions regarding one of the parties is more reliable than the data and assumptions regarding the other party.

As indicated previously, the final regulations do not provide for the use of the capital employed allocation rule or other profit splits. The capital employed allocation rule generally could be applied only when the controlled taxpayers were subject to approximately equal levels of risk with respect to the relevant business activity. This requirement was imposed because the method allocated the same rate of return to all the assets employed in the relevant business activity. This result generally would be encountered under arm's length conditions only if the parties shared all profits in proportion to their risks. With one exception it has not been possible to describe a case in which it would be possible to conclude with certainty that two or more controlled taxpayers face equal levels of risk. The one case where it undoubtedly is true that the parties face equal levels of risk is where the parties agree ex ante to share costs and benefits proportionately. Since, absent a joint venture, such a scenario is encountered rarely, if ever, under arm's length conditions, and it describes a situation contemplated under the cost sharing regulations, the capital employed allocation rule has been deleted from the profit split provisions of the final regulations. Its possible role as a variant of the cost sharing provisions will be examined in connection with the revision of those provisions. Comments are requested as to its potential use as a variant of the cost sharing method.

Finally, the use of other profit split methods is not discussed under § 1.482–6 because it was unnecessary to provide an express rule for use of other profit splits given the liberalized rules for use of unspecified methods under §§ 1.482–3 and 1.482–4. Accordingly, a profit split method other than the comparable profit split method and the residual profit split will be considered to be an unspecified method.

Section 1.482–7, relating to cost sharing, is not being finalized with these regulations. The temporary regulations, which incorporate the text of the 1968 regulations, continue to apply. However, final regulations based on the 1992 proposed regulations are anticipated in the near future.

Finally, § 1.482–8 provides a number of examples illustrating the application of the best method rule under specific fact patterns. Like all the examples in these regulations, the examples under § 1.482–8 are provided solely for purposes of illustrating the principles contained in the text of the regulations, and are not themselves statements of

principles not contained in the text. The conclusions reached in these examples are based on the assumed simplified facts of the examples, and should not be read as general conclusions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Sim Seo, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "§ 1.482–1T", "§ 1.482–2T", "§ 1.482–3T", "§ 1.482–4T", "§ 1.482–5T" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.482–1 also issued under 26 U.S.C. 482 and 936. Section 1.482–2 also issued under 26 U.S.C. 482. Section 1.482–3 also issued under 26 U.S.C. 482. Section 1.482–4 also issued under 26 U.S.C. 482. Section 1.482–5 also issued under 26 U.S.C. 482. * * *

§§ 1.482–0T through 1.482–6T [Removed].

Par. 2. Sections 1.482–0T through 1.482–6T are removed.

Par. 3. Sections 1.482–0 through 1.482–6 and 1.482–8 are added to read as follows:

§ 1.482–0 Outline of regulations under 482.

This section contains major captions for §§ 1.482–1 through 1.482–8.

Section 1.482–1 Allocation of income and deductions among taxpayers.

(a) In general.
(1) Purpose and scope.
(2) Authority to make allocations.
(3) Taxpayer's use of section 482.
(b) Arm's length standard.
(1) In general.
(2) Arm's length methods.
(i) Methods.
(ii) Selection of category of method applicable to transaction.
(c) Best method rule.
(1) In general.
(2) Determining the best method.
(i) Comparability.
(ii) Data and assumptions.
(A) Completeness and accuracy of data.
(B) Reliability of assumptions.
(C) Sensitivity of results to deficiencies in data and assumptions.
(iii) Confirmation of results by another method.
(d) Comparability.
(1) In general.
(2) Standard of comparability.
(3) Factors for determining comparability.
(i) Functional analysis.
(ii) Contractual terms.
(A) In general.
(B) Identifying contractual terms.
(*1*) Written agreement.
(*2*) No written agreement.
(C) Examples.
(iii) Risk.
(A) In general.
(B) Identification of party that bears risk.
(C) Examples.
(iv) Economic conditions.
(v) Property or services.
(4) Special circumstances.
(i) Market share strategy.
(ii) Different geographic markets.
(A) In general.
(B) Example.
(C) Location savings.
(D) Example.
(iii) Transactions ordinarily not accepted as comparables.
(A) In general.
(B) Examples.
(e) Arm's length range.
(1) In general.
(2) Determination of arm's length range.
(i) Single method.
(ii) Selection of comparables.
(iii) Comparables included in arm's length range.
(A) In general.
(B) Adjustment of range to increase reliability.
(C) Interquartile range.
(3) Adjustment if taxpayer's results are outside arm's length range.
(4) Arm's length range not prerequisite to allocation.
(5) Examples.
(f) Scope of review.
(1) In general.
(i) Intent to evade or avoid tax not a prerequisite.
(ii) Realization of income not a prerequisite.
(A) In general.
(B) Example.
(iii) Nonrecognition provisions may not bar allocation.
(A) In general.
(B) Example.
(iv) Consolidated returns.
(2) Rules relating to determination of true taxable income.
(i) Aggregation of transactions.
(A) In general.
(B) Examples.
(ii) Allocation based on taxpayer's actual transactions.
(A) In general.
(B) Example.
(iii) Multiple year data.
(A) In general.
(B) Circumstances warranting consideration of multiple year data.
(C) Comparable effect over comparable period.
(D) Applications of methods using multiple year averages.
(E) Examples.
(iv) Product lines and statistical techniques.
(v) Allocations apply to results, not methods.
(A) In general.
(B) Example.
(g) Collateral adjustments with respect to allocations under section 482.
(1) In general.
(2) Correlative allocations.
(i) In general.
(ii) Manner of carrying out correlative allocation.
(iii) Events triggering correlative allocation.
(iv) Examples.
(3) Adjustments to conform accounts to reflect section 482 allocations.
(i) In general.
(ii) Example.
(4) Setoffs.
(i) In general.
(ii) Requirements.
(iii) Examples.
(h) Special rules.
(1) Small taxpayer safe harbor [Reserved].
(2) Effect of foreign legal restrictions.
(i) In general.
(ii) Applicable legal restrictions.
(iii) Requirement for electing the deferred income method of accounting.
(iv) Deferred income method of accounting.
(v) Examples.
(3) Coordination with section 936.
(i) Cost sharing under section 936.
(ii) Use of terms.
(i) Definitions.
(j) Effective dates.

Section 1.482–2 Determination of taxable income in specific situations.

(a) Loans or advances.
(1) Interest on bona fide indebtedness.
(i) In general.
(ii) Application of paragraph (a) of this section.
(A) Interest on bona fide indebtedness.
(B) Alleged indebtedness.
(iii) Period for which interest shall be charged.
(A) General rule.

(B) Exception for certain intercompany transactions in the ordinary course of business.
(C) Exception for trade or business of debtor member located outside the United States.
(D) Exception for regular trade practice of creditor member or others in creditor's industry.
(E) Exception for property purchased for resale in a foreign country.
(*1*) General rule.
(*2*) Interest-free period.
(*3*) Average collection period.
(*4*) Illustration.
(iv) Payment; book entries.
(2) Arm's length interest rate.
(i) In general.
(ii) Funds obtained at situs of borrower.
(iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.
(A) Applicability.
(*1*) General rule.
(*2*) Grandfather rule for existing loans.
(B) Safe haven interest rate based on applicable Federal rate.
(C) Applicable Federal rate.
(D) Lender in business of making loans.
(E) Foreign currency loans.
(3) Coordination with interest adjustments required under certain other Internal Revenue Code sections.
(4) Examples.
(b) Performance of services for another.
(1) General rule.
(2) Benefit test.
(3) Arm's length charge.
(4) Costs or deductions to be taken into account.
(5) Costs and deductions not to be taken into account.
(6) Methods.
(7) Certain services.
(8) Services rendered in connection with the transfer of property.
(c) Use of tangible property.
(1) General rule.
(2) Arm's length charge.
(i) In general.
(ii) Safe haven rental charge.
(iii) Subleases.
(d) Transfer of property.

Section 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) In general.
(b) Comparable uncontrolled price method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) In general.
(B) Adjustments for differences between controlled and uncontrolled transactions.
(iii) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(5) Indirect evidence of comparable uncontrolled transactions.
(i) In general.
(ii) Limitations.
(iii) Examples.
(c) Resale price method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Applicable resale price.
(iii) Appropriate gross profit.
(iv) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Sales agent.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(d) Cost plus method.
(1) In general.
(2) Determination of arm's length price.
(i) In general.
(ii) Appropriate gross profit.
(iii) Arm's length range.
(3) Comparability and reliability considerations.
(i) In general.
(ii) Comparability.
(A) Functional comparability.
(B) Other comparability factors.
(C) Adjustments for differences between controlled and uncontrolled transactions.
(D) Purchasing agent.
(iii) Data and assumptions.
(A) In general.
(B) Consistency in accounting.
(4) Examples.
(e) Unspecified methods.
(1) In general.
(2) Example.
(f) Coordination with intangible property rules.

Section 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

(a) In general.
(b) Definition of intangible.
(c) Comparable uncontrolled transaction method.
(1) In general.
(2) Comparability and reliability considerations.
(i) In general.
(ii) Reliability.
(iii) Comparability.
(A) In general.
(B) Factors to be considered in determining comparability.
(*1*) Comparable intangible property.
(*2*) Comparable circumstances.
(iv) Data and assumptions.
(3) Arm's length range.
(4) Examples.
(d) Unspecified methods.
(1) In general.
(2) Example.
(e) Coordination with tangible property rules.
(f) Special rules for transfers of intangible property.
(1) Form of consideration.
(2) Periodic adjustments.
(i) General rule.
(ii) Exceptions.
(A) Transactions involving the same intangible.
(B) Transactions involving comparable intangible.
(C) Methods other than comparable uncontrolled transaction.
(D) Extraordinary events.
(E) Five-year period.
(iii) Examples.
(3) Ownership of intangible property.
(i) In general.
(ii) Identification of the owner.
(A) Legally protected intangible property.
(B) Intangible property that is not legally protected.
(iii) Allocations with respect to assistance provided to the owner.
(iv) Examples.
(4) Consideration not artificially limited.
(5) Lump sum payments.
(i) In general.
(ii) Exceptions.
(iii) Example.

Section 1.482–5 Comparable profits method.

(a) In general.
(b) Determination of arm's length result.
(1) In general.
(2) Tested party.
(i) In general.
(ii) Adjustments for tested party.
(3) Arm's length range.
(4) Profit level indicators.
(i) Rate of return on capital employed.
(ii) Financial ratios.
(iii) Other profit level indicators.
(c) Comparability and reliability considerations.
(1) In general.
(2) Comparability.
(i) In general.
(ii) Functional, risk and resource comparability.
(iii) Other comparability factors.
(iv) Adjustments for differences between tested party and the uncontrolled taxpayers.
(3) Data and assumptions.
(i) In general.
(ii) Consistency in accounting.
(iii) Allocations between the relevant business activity and other activities.
(d) Definitions.
(e) Examples.

Section 1.482–6 Profit split method.

(a) In general.
(b) Appropriate share of profits and losses.
(c) Application.
(1) In general.
(2) Comparable profit split.
(i) In general.
(ii) Comparability and reliability considerations.
(A) In general.
(B) Comparability.
(*1*) In general.
(*2*) Adjustments for differences between the controlled and uncontrolled taxpayers.
(C) Data and assumptions.
(D) Other factors affecting reliability.

(3) Residual profit split.
(i) In general.
(A) Allocate income to routine contributions.
(B) Allocate residual profit.
(ii) Comparability and reliability considerations.
(A) In general.
(B) Comparability.
(C) Data and assumptions.
(D) Other factors affecting reliability.
(iii) Example.

Section 1.482–7T Sharing of costs and risks.

Section 1.482–8 Examples of the best method rule.

(a) In general.
(b) Examples.

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer. This § 1.482–1 sets forth general principles and guidelines to be followed under section 482. Section 1.482–2 provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances, services, and property. Sections 1.482–3 through 1.482–6 elaborate on the rules that apply to controlled transactions involving property. Section 1.482–7T sets forth the cost sharing provisions. Finally, § 1.482–8 provides examples illustrating the application of the best method rule.

(2) *Authority to make allocations.* The district director may make allocations between or among the members of a controlled group if a controlled taxpayer has not reported its true taxable income. In such case, the district director may allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income (referred to as allocations). The appropriate allocation may take the form of an increase or decrease in any relevant amount.

(3) *Taxpayer's use of section 482.* If necessary to reflect an arm's length result, a controlled taxpayer may report on a timely filed U.S. income tax return (including extensions) the results of its controlled transactions based upon prices different from those actually charged. Except as provided in this paragraph, section 482 grants no other right to a controlled taxpayer to apply the provisions of section 482 at will or to compel the district director to apply such provisions. Therefore, no untimely or amended returns will be permitted to decrease taxable income based on allocations or other adjustments with respect to controlled transactions. See § 1.6662–6T(a)(2) or successor regulations.

(b) *Arm's length standard*—(1) *In general.* In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances (arm's length result). However, because identical transactions can rarely be located, whether a transaction produces an arm's length result generally will be determined by reference to the results of comparable transactions under comparable circumstances. See § 1.482–1(d)(2) (Standard of comparability). Evaluation of whether a controlled transaction produces an arm's length result is made pursuant to a method selected under the best method rule described in § 1.482–1(c).

(2) *Arm's length methods*—(i) *Methods.* Sections 1.482–2 through 1.482–6 provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result.

(ii) *Selection of category of method applicable to transaction.* The methods listed in § 1.482–2 apply to different types of transactions, such as transfers of property, services, loans or advances, and rentals. Accordingly, the method or methods most appropriate to the calculation of arm's length results for controlled transactions must be selected, and different methods may be applied to interrelated transactions if such transactions are most reliably evaluated on a separate basis. For example, if services are provided in connection with the transfer of property, it may be appropriate to separately apply the methods applicable to services and property in order to determine an arm's length result. But see § 1.482–1(f)(2)(i) (Aggregation of transactions). In addition, other applicable provisions of the Code may affect the characterization of a transaction, and therefore affect the methods applicable under section 482. See for example section 467.

(c) *Best method rule*—(1) *In general.* The arm's length result of a controlled transaction must be determined under the method that, under the facts and circumstances, provides the most reliable measure of an arm's length result. Thus, there is no strict priority of methods, and no method will invariably be considered to be more reliable than others. An arm's length result may be determined under any method without establishing the inapplicability of another method, but if another method subsequently is shown to produce a more reliable measure of an arm's length result, such other method must be used. Similarly, if two or more applications of a single method provide inconsistent results, the arm's length result must be determined under the application that, under the facts and circumstances, provides the most reliable measure of an arm's length result. See § 1.482–8 for examples of the application of the best method rule.

(2) *Determining the best method.* Data based on the results of transactions between unrelated parties provides the most objective basis for determining whether the results of a controlled transaction are arm's length. Thus, in determining which of two or more available methods (or applications of a single method) provides the most reliable measure of an arm's length result, the two primary factors to take into account are the degree of comparability between the controlled transaction (or taxpayer) and any uncontrolled comparables, and the quality of the data and assumptions used in the analysis. In addition, in certain circumstances, it also may be relevant to consider whether the results of an analysis are consistent with the results of an analysis under another method. These factors are explained in paragraphs (c)(2)(i), (ii), and (iii) of this section.

(i) *Comparability.* The relative reliability of a method based on the results of transactions between unrelated parties depends on the degree of comparability between the controlled transaction or taxpayers and the uncontrolled comparables, taking into account the factors described in § 1.482–1(d)(3) (Factors for determining comparability), and after making adjustments for differences, as described in § 1.482–1(d)(2) (Standard of comparability). As the degree of comparability increases, the number and extent of potential differences that could render the analysis inaccurate is reduced. In addition, if adjustments are made to increase the degree of comparability, the number, magnitude, and reliability of those adjustments will

affect the reliability of the results of the analysis. Thus, an analysis under the comparable uncontrolled price method will generally be more reliable than analyses obtained under other methods if the analysis is based on closely comparable uncontrolled transactions, because such an analysis can be expected to achieve a higher degree of comparability and be susceptible to fewer differences than analyses under other methods. See § 1.482–3(b)(2)(ii)(A). An analysis will be relatively less reliable, however, as the uncontrolled transactions become less comparable to the controlled transaction.

(ii) *Data and assumptions.* Whether a method provides the most reliable measure of an arm's length result also depends upon the completeness and accuracy of the underlying data, the reliability of the assumptions, and the sensitivity of the results to possible deficiencies in the data and assumptions. Such factors are particularly relevant in evaluating the degree of comparability between the controlled and uncontrolled transactions. These factors are discussed in paragraphs (c)(2)(ii) (A), (B), and (C) of this section.

(A) *Completeness and accuracy of data.* The completeness and accuracy of the data affects the ability to identify and quantify those factors that would affect the result under any particular method. For example, the completeness and accuracy of data will determine the extent to which it is possible to identify differences between the controlled and uncontrolled transactions, and the reliability of adjustments that are made to account for such differences. An analysis will be relatively more reliable as the completeness and accuracy of the data increases.

(B) *Reliability of assumptions.* All methods rely on certain assumptions. The reliability of the results derived from a method depends on the soundness of such assumptions. Some assumptions are relatively reliable. For example, adjustments for differences in payment terms between controlled and uncontrolled transactions may be based on the assumption that at arm's length such differences would lead to price differences that reflect the time value of money. Although selection of the appropriate interest rate to use in making such adjustments involves some judgement, the economic analysis on which the assumption is based is relatively sound. Other assumptions may be less reliable. For example, the residual profit split method may be based on the assumption that capitalized intangible development expenses reflect the relative value of the intangible property contributed by each party. Because the costs of developing an intangible may not be related to its market value, the soundness of this assumption will affect the reliability of the results derived from this method.

(C) *Sensitivity of results to deficiencies in data and assumptions.* Deficiencies in the data used or assumptions made may have a greater effect on some methods than others. In particular, the reliability of some methods is heavily dependent on the similarity of property or services involved in the controlled and uncontrolled transaction. For certain other methods, such as the resale price method, the analysis of the extent to which controlled and uncontrolled taxpayers undertake the same or similar functions, employ similar resources, and bear similar risks is particularly important. Finally, under other methods, such as the profit split method, defining the relevant business activity and appropriate allocation of costs, income, and assets may be of particular importance. Therefore, a difference between the controlled and uncontrolled transactions for which an accurate adjustment cannot be made may have a greater effect on the reliability of the results derived under one method than the results derived under another method. For example, differences in management efficiency may have a greater effect on a comparable profits method analysis than on a comparable uncontrolled price method analysis, while differences in product characteristics will ordinarily have a greater effect on a comparable uncontrolled price method analysis than on a comparable profits method analysis.

(iii) *Confirmation of results by another method.* If two or more methods produce inconsistent results, the best method rule will be applied to select the method that provides the most reliable measure of an arm's length result. If the best method rule does not clearly indicate which method should be selected, an additional factor that may be taken into account in selecting a method is whether any of the competing methods produce results that are consistent with the results obtained from the appropriate application of another method. Further, in evaluating different applications of the same method, the fact that a second method (or another application of the first method) produces results that are consistent with one of the competing applications may be taken into account.

(d) *Comparability*—(1) *In general.* Whether a controlled transaction produces an arm's length result is generally evaluated by comparing the results of that transaction to results realized by uncontrolled taxpayers engaged in comparable transactions under comparable circumstances. For this purpose, the comparability of transactions and circumstances must be evaluated considering all factors that could affect prices or profits in arm's length dealings (comparability factors). While a specific comparability factor may be of particular importance in applying a method, each method requires analysis of all of the factors that affect comparability under that method. Such factors include the following—

(i) Functions;
(ii) Contractual terms;
(iii) Risks;
(iv) Economic conditions; and
(v) Property or services.

(2) *Standard of comparability.* In order to be considered comparable to a controlled transaction, an uncontrolled transaction need not be identical to the controlled transaction, but must be sufficiently similar that it provides a reliable measure of an arm's length result. If there are material differences between the controlled and uncontrolled transactions, adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the results. For purposes of this section, a material difference is one that would materially affect the measure of an arm's length result under the method being applied. If adjustments for material differences cannot be made, the uncontrolled transaction may be used as a measure of an arm's length result, but the reliability of the analysis will be reduced. Generally, such adjustments must be made to the results of the uncontrolled comparable and must be based on commercial practices, economic principles, or statistical analyses. The extent and reliability of any adjustments will affect the relative reliability of the analysis. See § 1.482–1(c)(1) (Best method rule). In any event, unadjusted industry average returns themselves cannot establish arm's length results.

(3) *Factors for determining comparability.* The comparability factors listed in § 1.482–1(d)(1) are discussed in this section. Each of these factors must be considered in determining the degree of comparability between transactions or taxpayers and the extent to which comparability adjustments may be necessary. In addition, in certain cases involving special circumstances, the rules under paragraph (d)(4) of this section must be considered.

(i) *Functional analysis.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the functions performed, and associated resources employed, by the taxpayers in each transaction. This comparison is based on a functional analysis that identifies and compares the economically significant activities undertaken, or to be undertaken, by the taxpayers in both controlled and uncontrolled transactions. A functional analysis should also include consideration of the resources that are employed, or to be employed, in conjunction with the activities undertaken, including consideration of the type of assets used, such as plant and equipment, or the use of valuable intangibles. A functional analysis is not a pricing method and does not itself determine the arm's length result for the controlled transaction under review. Functions that may need to be accounted for in determining the comparability of two transactions include—

(A) Research and development;

(B) Product design and engineering;

(C) Manufacturing, production and process engineering;

(D) Product fabrication, extraction, and assembly;

(E) Purchasing and materials management;

(F) Marketing and distribution functions, including inventory management, warranty administration, and advertising activities;

(G) Transportation and warehousing; and

(H) Managerial, legal, accounting and finance, credit and collection, training, and personnel management services.

(ii) *Contractual terms*—(A) *In general.* Determining the degree of comparability between the controlled and uncontrolled transactions requires a comparison of the significant contractual terms that could affect the results of the two transactions. These terms include—

(*1*) The form of consideration charged or paid;

(*2*) Sales or purchase volume;

(*3*) The scope and terms of warranties provided;

(*4*) Rights to updates, revisions or modifications;

(*5*) The duration of relevant license, contract or other agreements, and termination or renegotiation rights;

(*6*) Collateral transactions or ongoing business relationships between the buyer and the seller, including arrangements for the provision of ancillary or subsidiary services; and

(*7*) Extension of credit and payment terms. Thus, for example, if the time for payment of the amount charged in a controlled transaction differs from the time for payment of the amount charged in an uncontrolled transaction, an adjustment to reflect the difference in payment terms should be made if such difference would have a material effect on price. Such comparability adjustment is required even if no interest would be allocated or imputed under § 1.482–2(a) or other applicable provisions of the Internal Revenue Code or regulations.

(B) *Identifying contractual terms*—(*1*) *Written agreement.* The contractual terms, including the consequent allocation of risks, that are agreed to in writing before the transactions are entered into will be respected if such terms are consistent with the economic substance of the underlying transactions. In evaluating economic substance, greatest weight will be given to the actual conduct of the parties, and the respective legal rights of the parties (see, for example, § 1.482–4(f)(3) (Ownership of intangible property)). If the contractual terms are inconsistent with the economic substance of the underlying transaction, the district director may disregard such terms and impute terms that are consistent with the economic substance of the transaction.

(*2*) *No written agreement.* In the absence of a written agreement, the district director may impute a contractual agreement between the controlled taxpayers consistent with the economic substance of the transaction. In determining the economic substance of the transaction, greatest weight will be given to the actual conduct of the parties and their respective legal rights (see, for example, § 1.482–4(f)(3) (Ownership of intangible property)). For example, if, without a written agreement, a controlled taxpayer operates at full capacity and regularly sells all of its output to another member of its controlled group, the district director may impute a purchasing contract from the course of conduct of the controlled taxpayers, and determine that the producer bears little risk that the buyer will fail to purchase its full output. Further, if an established industry convention or usage of trade assigns a risk or resolves an issue, that convention or usage will be followed if the conduct of the taxpayers is consistent with it. See UCC 1–205. For example, unless otherwise agreed, payment generally is due at the time and place at which the buyer is to receive goods. See UCC 2–310.

(C) *Examples.* The following examples illustrate this paragraph (d)(3)(ii).

Example 1—Differences in volume. USP, a United States agricultural exporter, regularly buys transportation services from FSub, its foreign subsidiary, to ship its products from the United States to overseas markets. Although FSub occasionally provides transportation services to URA, an unrelated domestic corporation, URA accounts for only 10% of the gross revenues of FSub, and the remaining 90% of FSub's gross revenues are attributable to FSub's transactions with USP. In determining the degree of comparability between FSub's uncontrolled transaction with URA and its controlled transaction with USP, the difference in volumes involved in the two transactions and the regularity with which these services are provided must be taken into account if such difference would have a material effect on the price charged. Inability to make reliable adjustments for these differences would affect the reliability of the results derived from the uncontrolled transaction as a measure of the arm's length result.

Example 2—Reliability of adjustment for differences in volume. (i) FS manufactures product XX and sells that product to its parent corporation, P. FS also sells product XX to uncontrolled taxpayers at a price of $100 per unit. Except for the volume of each transaction, the sales to P and to uncontrolled taxpayers take place under substantially the same economic conditions and contractual terms. In uncontrolled transactions, FS offers a 2% discount for quantities of 20 per order, and a 5% discount for quantities of 100 per order. If P purchases product XX in quantities of 60 per order, in the absence of other reliable information, it may reasonably be concluded that the arm's length price to P would be $100, less a discount of 3.5%.

(ii) If P purchases product XX in quantities of 1,000 per order, a reliable estimate of the appropriate volume discount must be based on proper economic or statistical analysis, not necessarily a linear extrapolation from the 2% and 5% catalog discounts applicable to sales of 20 and 100 units, respectively.

Example 3—Contractual term imputed from economic substance. (i) USD, a United States corporation, is the exclusive distributor of products manufactured by FP, its foreign parent. The FP products are sold under a tradename that is not known in the United States. USD does not have an agreement with FP for the use of FP's tradename. For Years 1 through 6, USD bears marketing expenses promoting FP's tradename in the United States that are substantially above the level of such expenses incurred by comparable distributors in uncontrolled transactions. FP does not directly or indirectly reimburse USD for its marketing expenses. By Year 7, the FP tradename has become very well known in the market and commands a price premium. At this time, USD becomes a commission agent for FP.

(ii) In determining USD's arm's length result for Year 7, the district director considers the economic substance of the arrangements between USD and FP throughout the course of their relationship. It is unlikely that at arm's length, USD would incur these above-normal expenses without

some assurance it could derive a benefit from these expenses. In this case, these expenditures indicate a course of conduct that is consistent with an agreement under which USD received a long-term right to use the FP tradename in the United States. Such conduct is inconsistent with the contractual arrangements between FP and USD under which USD was merely a distributor, and later a commission agent, for FP. Therefore, the district director may impute an agreement between USD and FP under which USD will retain an appropriate portion of the price premium attributable to the FP tradename.

(iii) *Risk*—(A) *Comparability.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant risks that could affect the prices that would be charged or paid, or the profit that would be earned, in the two transactions. Relevant risks to consider include—

(*1*) Market risks, including fluctuations in cost, demand, pricing, and inventory levels;

(*2*) Risks associated with the success or failure of research and development activities;

(*3*) Financial risks, including fluctuations in foreign currency rates of exchange and interest rates;

(*4*) Credit and collection risks;

(*5*) Product liability risks; and

(*6*) General business risks related to the ownership of property, plant, and equipment.

(B) *Identification of taxpayer that bears risk.* In general, the determination of which controlled taxpayer bears a particular risk will be made in accordance with the provisions of § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms). Thus, the allocation of risks specified or implied by the taxpayer's contractual terms will generally be respected if it is consistent with the economic substance of the transaction. An allocation of risk between controlled taxpayers after the outcome of such risk is known or reasonably knowable lacks economic substance. In considering the economic substance of the transaction, the following facts are relevant—

(*1*) Whether the pattern of the controlled taxpayer's conduct over time is consistent with the purported allocation of risk between the controlled taxpayers; or where the pattern is changed, whether the relevant contractual arrangements have been modified accordingly;

(*2*) Whether a controlled taxpayer has the financial capacity to fund losses that might be expected to occur as the result of the assumption of a risk, or whether, at arm's length, another party to the controlled transaction would ultimately suffer the consequences of such losses; and

(*3*) The extent to which each controlled taxpayer exercises managerial or operational control over the business activities that directly influence the amount of income or loss realized. In arm's length dealings, parties ordinarily bear a greater share of those risks over which they have relatively more control.

(C) *Examples.* The following examples illustrate this paragraph (d)(3)(iii).

Example 1. FD, the wholly-owned foreign distributor of USM, a U.S. manufacturer, buys widgets from USM under a written contract. Widgets are a generic electronic appliance. Under the terms of the contract, FD must buy and take title to 20,000 widgets for each of the five years of the contract at a price of $10 per widget. The widgets will be sold under FD's label, and FD must finance any marketing strategies to promote sales in the foreign market. There are no rebate or buy back provisions. FD has adequate financial capacity to fund its obligations under the contract under any circumstances that could reasonably be expected to arise. In Years 1, 2 and 3, FD sold only 10,000 widgets at a price of $11 per unit. In Year 4, FD sold its entire inventory of widgets at a price of $25 per unit. Since the contractual terms allocating market risk were agreed to before the outcome of such risk was known or reasonably knowable, FD had the financial capacity to bear the market risk that it would be unable to sell all of the widgets it purchased currently, and its conduct was consistent over time, FD will be deemed to bear the risk.

Example 2. The facts are the same as in *Example 1*, except that in Year 1 FD had only $100,000 in total capital, including loans. In subsequent years USM makes no additional contributions to the capital of FD, and FD is unable to obtain any capital through loans from an unrelated party. Nonetheless, USM continues to sell 20,000 widgets annually to FD under the terms of the contract, and USM extends credit to FD to enable it to finance the purchase. FD does not have the financial capacity in Years 1, 2 and 3 to finance the purchase of the widgets given that it could not sell most of the widgets it purchased during those years. Thus, notwithstanding the terms of the contract, USM and not FD assumed the market risk that a substantial portion of the widgets could not be sold, since in that event FD would not be able to pay USM for all of the widgets it purchased.

Example 3. S, a Country X corporation, manufactures small motors that it sells to P, its U.S. parent. P incorporates the motors into various products and sells those products to uncontrolled customers in the United States. The contract price for the motors is expressed in U.S. dollars, effectively allocating the currency risk for these transactions to S for any currency fluctuations between the time the contract is signed and payment is made. As long as S has adequate financial capacity to bear this currency risk (including by hedging all or part of the risk) and the conduct of S and P is consistent with the terms of the contract (i.e., the contract price is not adjusted to reflect exchange rate movements), the agreement of the parties to allocate the exchange risk to S will be respected.

Example 4. USSub is the wholly-owned U.S. subsidiary of FP, a foreign manufacturer. USSub acts as a distributor of goods manufactured by FP. FP and USSub execute an agreement providing that FP will bear any ordinary product liability costs arising from defects in the goods manufactured by FP. In practice, however, when ordinary product liability claims are sustained against USSub and FP, USSub pays the resulting damages. Therefore, the district director disregards the contractual arrangement regarding product liability costs between FP and USSub, and treats the risk as having been assumed by USSub.

(iv) *Economic conditions.* Determining the degree of comparability between controlled and uncontrolled transactions requires a comparison of the significant economic conditions that could affect the prices that would be charged or paid, or the profit that would be earned in each of the transactions. These factors include—

(A) The similarity of geographic markets;

(B) The relative size of each market, and the extent of the overall economic development in each market;

(C) The level of the market (e.g., wholesale, retail, etc.);

(D) The relevant market shares for the products, properties, or services transferred or provided;

(E) The location-specific costs of the factors of production and distribution;

(F) The extent of competition in each market with regard to the property or services under review;

(G) The economic condition of the particular industry, including whether the market is in contraction or expansion; and

(H) The alternatives realistically available to the buyer and seller.

(v) *Property or services.* Evaluating the degree of comparability between controlled and uncontrolled transactions requires a comparison of the property or services transferred in the transactions. This comparison may include any intangibles that are embedded in tangible property or services being transferred. The comparability of the embedded intangibles will be analyzed using the factors listed in § 1.482–4(c)(2)(iii)(B)(*1*) (Comparable intangible property). The relevance of product comparability in evaluating the relative reliability of the results will depend on the method applied. For guidance concerning the specific comparability considerations applicable to transfers of tangible and

intangible property, see §§ 1.482–3 through 1.482–6; see also § 1.482–3(f), dealing with the coordination of the intangible and tangible property rules.

(4) *Special circumstances*—(i) *Market share strategy.* In certain circumstances, taxpayers may adopt strategies to enter new markets or to increase a product's share of an existing market (market share strategy). Such a strategy would be reflected by temporarily increased market development expenses or resale prices that are temporarily lower than the prices charged for comparable products in the same market. Whether or not the strategy is reflected in the transfer price depends on which party to the controlled transaction bears the costs of the pricing strategy. In any case, the effect of a market share strategy on a controlled transaction will be taken into account only if it can be shown that an uncontrolled taxpayer engaged in a comparable strategy under comparable circumstances for a comparable period of time, and the taxpayer provides documentation that substantiates the following—

(A) The costs incurred to implement the market share strategy are borne by the controlled taxpayer that would obtain the future profits that result from the strategy, and there is a reasonable likelihood that the strategy will result in future profits that reflect an appropriate return in relation to the costs incurred to implement it;

(B) The market share strategy is pursued only for a period of time that is reasonable, taking into consideration the industry and product in question; and

(C) The market share strategy, the related costs and expected returns, and any agreement between the controlled taxpayers to share the related costs, were established before the strategy was implemented.

(ii) *Different geographic markets*—(A) *In general.* Uncontrolled comparables ordinarily should be derived from the geographic market in which the controlled taxpayer operates, because there may be significant differences in economic conditions in different markets. If information from the same market is not available, an uncontrolled comparable derived from a different geographic market may be considered if adjustments are made to account for differences between the two markets. If information permitting adjustments for such differences is not available, then information derived from uncontrolled comparables in the most similar market for which reliable data is available may be used, but the extent of such differences may affect the reliability of the method for purposes of the best method rule. For this purpose, a geographic market is any geographic area in which the economic conditions for the relevant product or service are substantially the same, and may include multiple countries, depending on the economic conditions.

(B) *Example.* The following example illustrates this paragraph (d)(4)(ii).

Example. Manuco, a wholly-owned foreign subsidiary of P, a U.S. corporation, manufactures products in Country Z for sale to P. No uncontrolled transactions are located that would provide a reliable measure of the arm's length result under the comparable uncontrolled price method. The district director considers applying the cost plus method or the comparable profits method. Information on uncontrolled taxpayers performing comparable functions under comparable circumstances in the same geographic market is not available. Therefore, adjusted data from uncontrolled manufacturers in other markets may be considered in order to apply the cost plus method. In this case, comparable uncontrolled manufacturers are found in the United States. Accordingly, data from the comparable U.S. uncontrolled manufacturers, as adjusted to account for differences between the United States and Country Z's geographic market, is used to test the arm's length price paid by P to Manuco. However, the use of such data may affect the reliability of the results for purposes of the best method rule. See § 1.482–1(c).

(C) *Location savings.* If an uncontrolled taxpayer operates in a different geographic market than the controlled taxpayer, adjustments may be necessary to account for significant differences in costs attributable to the geographic markets. These adjustments must be based on the effect such differences would have on the consideration charged or paid in the controlled transaction given the relative competitive positions of buyers and sellers in each market. Thus, for example, the fact that the total costs of operating in a controlled manufacturer's geographic market are less than the total costs of operating in other markets ordinarily justifies higher profits to the manufacturer only if the cost differences would increase the profits of comparable uncontrolled manufacturers operating at arm's length, given the competitive positions of buyers and sellers in that market.

(D) *Example.* The following example illustrates the principles of this paragraph (d)(4)(ii)(C).

Example. Couture, a U.S. apparel design corporation, contracts with Sewco, its wholly owned Country Y subsidiary, to manufacture its clothes. Costs of operating in Country Y are significantly lower than the operating costs in the United States. Although clothes with the Couture label sell for a premium price, the actual production of the clothes does not require significant specialized knowledge that could not be acquired by actual or potential competitors to Sewco at reasonable cost. Thus, Sewco's functions could be performed by several actual or potential competitors to Sewco in geographic markets that are similar to Country Y. Thus, the fact that production is less costly in Country Y will not, in and of itself, justify additional profits derived from lower operating costs in Country Y inuring to Sewco, because the competitive positions of the other actual or potential producers in similar geographic markets capable of performing the same functions at the same low costs indicate that at arm's length such profits would not be retained by Sewco.

(iii) *Transactions ordinarily not accepted as comparables*—(A) *In general.* Transactions ordinarily will not constitute reliable measures of an arm's length result for purposes of this section if—

(*1*) They are not made in the ordinary course of business; or

(*2*) One of the principal purposes of the uncontrolled transaction was to establish an arm's length result with respect to the controlled transaction.

(B) *Examples.* The following examples illustrate the principle of this paragraph (d)(4)(iii).

Example 1—Not in the ordinary course of business. USP, a United States manufacturer of computer software, sells its products to FSub, its foreign distributor in country X. Compco, a United States competitor of USP, also sells its products in X through unrelated distributors. However, in the year under review, Compco is forced into bankruptcy, and Compco liquidates its inventory by selling all of its products to unrelated distributors in X for a liquidation price. Because the sale of its entire inventory was not a sale in the ordinary course of business, Compco's sale cannot be used as an uncontrolled comparable to determine USP's arm's length result from its controlled transaction.

Example 2—Principal purpose of establishing an arm's length result. USP, a United States manufacturer of farm machinery, sells its products to FSub, its wholly-owned distributor in Country Y. USP, operating at nearly full capacity, sells 95% of its inventory to FSub. To make use of its excess capacity, and also to establish a comparable uncontrolled price for its transfer price to FSub, USP increases its production to full capacity. USP sells its excess inventory to Compco, an unrelated foreign distributor in Country X. Country X has approximately the same economic conditions as that of Country Y. Because one of the principal purposes of selling to Compco was to establish an arm's length price for its controlled transactions with FSub, USP's sale to Compco cannot be used as an uncontrolled comparable to determine USP's arm's length result from its controlled transaction.

(e) *Arm's length range*—(1) *In general.* In some cases, application of a pricing method will produce a single result that

is the most reliable measure of an arm's length result. In other cases, application of a method may produce a number of results from which a range of reliable results may be derived. A taxpayer will not be subject to adjustment if its results fall within such range (arm's length range).

(2) *Determination of arm's length range*—(i) *Single method.* The arm's length range is ordinarily determined by applying a single pricing method selected under the best method rule to two or more uncontrolled transactions of similar comparability and reliability. Use of more than one method may be appropriate for the purposes described in paragraph (c)(2)(iii) of this section (Best method rule).

(ii) *Selection of comparables.* Uncontrolled comparables must be selected based upon the comparability criteria relevant to the method applied and must be sufficiently similar to the controlled transaction that they provide a reliable measure of an arm's length result. If material differences exist between the controlled and uncontrolled transactions, adjustments must be made to the results of the uncontrolled transaction if the effect of such differences on price or profits can be ascertained with sufficient accuracy to improve the reliability of the results. See § 1.482–1(d)(2) (Standard of comparability). The arm's length range will be derived only from those uncontrolled comparables that have, or through adjustments can be brought to, a similar level of comparability and reliability, and uncontrolled comparables that have a significantly lower level of comparability and reliability will not be used in establishing the arm's length range.

(iii) *Comparables included in arm's length range*—(A) *In general.* The arm's length range will consist of the results of all of the uncontrolled comparables that meet the following conditions: the information on the controlled transaction and the uncontrolled comparables is sufficiently complete that it is likely that all material differences have been identified, each such difference has a definite and reasonably ascertainable effect on price or profit, and an adjustment is made to eliminate the effect of each such difference.

(B) *Adjustment of range to increase reliability.* If there are no uncontrolled comparables described in paragraph (e)(2)(iii)(A) of this section, the arm's length range is derived from the results of all the uncontrolled comparables, selected pursuant to paragraph (e)(2)(ii) of this section, that achieve a similar level of comparability and reliability. In such cases the reliability of the analysis must be increased, where it is possible to do so, by adjusting the range through application of a valid statistical method to the results of all of the uncontrolled comparables so selected. The reliability of the analysis is increased when statistical methods are used to establish a range of results in which the limits of the range will be determined such that there is a 75 percent probability of a result falling above the lower end of the range and a 75 percent probability of a result falling below the upper end of the range. The interquartile range ordinarily provides an acceptable measure of this range; however a different statistical method may be applied if it provides a more reliable measure.

(C) *Interquartile range.* For purposes of this section, the interquartile range is the range from the 25th to the 75th percentile of the results derived from the uncontrolled comparables. For this purpose, the 25th percentile is the lowest result derived from an uncontrolled comparable such that at least 25 percent of the results are at or below the value of that result. However, if exactly 25 percent of the results are at or below a result, then the 25th percentile is equal to the average of that result and the next higher result derived from the uncontrolled comparables. The 75th percentile is determined analogously.

(3) *Adjustment if taxpayer's results are outside arm's length range.* If the results of a controlled transaction fall outside the arm's length range, the district director may make allocations that adjust the controlled taxpayer's result to any point within the arm's length range. If the interquartile range is used to determine the arm's length range, such adjustment will ordinarily be to the median of all the results. The median is the 50th percentile of the results, which is determined in a manner analogous to that described in paragraph (e)(2)(iii)(C) of this section (Interquartile range). In other cases, an adjustment normally will be made to the arithmetic mean of all the results. See § 1.482–1(f)(2)(iii)(D) for determination of an adjustment when a controlled taxpayer's result for a multiple year period falls outside an arm's length range consisting of the average results of uncontrolled comparables over the same period.

(4) *Arm's length range not prerequisite to allocation.* The rules of this paragraph (e) do not require that the district director establish an arm's length range prior to making an allocation under section 482. Thus, for example, the district director may properly propose an allocation on the basis of a single comparable uncontrolled price if the comparable uncontrolled price method, as described in § 1.482–3(b), has been properly applied. However, if the taxpayer subsequently demonstrates that the results claimed on its income tax return are within the range established by additional equally reliable comparable uncontrolled prices in a manner consistent with the requirements set forth in § 1.482–1(e)(2)(iii), then no allocation will be made.

(5) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1—Selection of comparables. (i) To evaluate the arm's length result of a controlled transaction between USSub, the United States taxpayer under review, and FP, its foreign parent, the district director considers applying the resale price method. The district director identifies ten potential uncontrolled transactions. The distributors in all ten uncontrolled transactions purchase and resell similar products and perform similar functions to those of USSub.

(ii) Data with respect to three of the uncontrolled transactions is very limited, and although some material differences can be identified and adjusted for, the level of comparability of these three uncontrolled comparables is significantly lower than that of the other seven. Further, of those seven, adjustments for the identified material differences can be reliably made for only four of the uncontrolled transactions. Therefore, pursuant to § 1.482–1(e)(2)(ii) only these four uncontrolled comparables may be used to establish an arm's length range.

Example 2—Arm's length range consists of all the results. (i) The facts are the same as in *Example 1.* Applying the resale price method to the four uncontrolled comparables, and making adjustments to the uncontrolled comparables pursuant to § 1.482- 1(d)(2), the district director derives the following results:

Comparable	Result (price)
1	$44.00
2	45.00
3	45.00
4	45.50

(ii) The district director determines that data regarding the four uncontrolled transactions is sufficiently complete and accurate so that it is likely that all material differences between the controlled and uncontrolled transactions have been identified, such differences have a definite and reasonably ascertainable effect, and appropriate adjustments were made for such differences. Accordingly, if the resale price method is determined to be the best method pursuant to § 1.482–1(c), the arm's length range for the controlled transaction will consist of the results of all of the uncontrolled comparables, pursuant to paragraph (e)(2)(iii)(A) of this section. Thus, the arm's length range in this case would be the range from $44 to $45.50.

Example 3—Arm's length range limited to interquartile range. (i) The facts are the same as in *Example 2*, except in this case there are some product and functional differences between the four uncontrolled comparables and USSub. However, the data is insufficiently complete to determine the effect of the differences. Applying the resale price method to the four uncontrolled comparables, and making adjustments to the uncontrolled comparables pursuant to § 1.482–1(d)(2), the district director derives the following results:

Uncontrolled comparable	Result (price)
1	$42.00
2	44.00
3	45.00
4	47.50

(ii) It cannot be established in this case that all material differences are likely to have been identified and reliable adjustments made for those differences. Accordingly, if the resale price method is determined to be the best method pursuant to § 1.482–1(c), the arm's length range for the controlled transaction must be established pursuant to paragraph (e)(2)(iii)(B) of this section. In this case, the district director uses the interquartile range to determine the arm's length range, which is the range from $43 to $46.25. If USSub's price falls outside this range, the district director may make an allocation. In this case that allocation would be to the median of the results, or $44.50.

Example 4—Arm's length range limited to interquartile range. (i) To evaluate the arm's length result of controlled transactions between USP, a United States manufacturing company, and FSub, its foreign subsidiary, the district director considers applying the comparable profits method. The district director identifies 50 uncontrolled taxpayers within the same industry that potentially could be used to apply the method.

(ii) Further review indicates that only 20 of the uncontrolled manufacturers engage in activities requiring similar capital investments and technical know-how. Data with respect to five of the uncontrolled manufacturers is very limited, and although some material differences can be identified and adjusted for, the level of comparability of these five uncontrolled comparables is significantly lower than that of the other 15. In addition, for those five uncontrolled comparables it is not possible to accurately allocate costs between the business activity associated with the relevant transactions and other business activities. Therefore, pursuant to § 1.482–1(e)(2)(ii) only the other fifteen uncontrolled comparables may be used to establish an arm's length range.

(iii) Although the data for the fifteen remaining uncontrolled comparables is relatively complete and accurate, there is a significant possibility that some material differences may remain. The district director has determined, for example, that it is likely that there are material differences in the level of technical expertise or in management efficiency. Accordingly, if the comparable profits method is determined to be the best method pursuant to § 1.482–1(c), the arm's length range for the controlled transaction may be established only pursuant to paragraph (e)(2)(iii)(B) of this section.

(f) *Scope of review*—(1) *In general.* The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer is other than it would have been had the taxpayer, in the conduct of its affairs, been dealing at arm's length with an uncontrolled taxpayer.

(i) *Intent to evade or avoid tax not a prerequisite.* In making allocations under section 482, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits, or allowances.

(ii) *Realization of income not a prerequisite*—(A) *In general.* The district director may make an allocation under section 482 even if the income ultimately anticipated from a series of transactions has not been or is never realized. For example, if a controlled taxpayer sells a product at less than an arm's length price to a related taxpayer in one taxable year and the second controlled taxpayer resells the product to an unrelated party in the next taxable year, the district director may make an appropriate allocation to reflect an arm's length price for the sale of the product in the first taxable year, even though the second controlled taxpayer had not realized any gross income from the resale of the product in the first year. Similarly, if a controlled taxpayer lends money to a related taxpayer in a taxable year, the district director may make an appropriate allocation to reflect an arm's length charge for interest during such taxable year even if the second controlled taxpayer does not realize income during such year. Finally, even if two controlled taxpayers realize an overall loss that is attributable to a particular controlled transaction, an allocation under section 482 is not precluded.

(B) *Example.* The following example illustrates this paragraph (f)(1)(ii).

Example. USSub is a U.S. subsidiary of FP, a foreign corporation. Parent manufactures product X and sells it to USSub. USSub functions as a distributor of product X to unrelated customers in the United States. The fact that FP may incur a loss on the manufacture and sale of product X does not by itself establish that USSub, dealing with FP at arm's length, also would incur a loss. An independent distributor acting at arm's length with its supplier would in many circumstances be expected to earn a profit without regard to the level of profit earned by the supplier.

(iii) *Nonrecognition provisions may not bar allocation*—(A) *In general.* If necessary to prevent the avoidance of taxes or to clearly reflect income, the district director may make an allocation under section 482 with respect to transactions that otherwise qualify for nonrecognition of gain or loss under applicable provisions of the Internal Revenue Code (such as section 351 or 1031).

(B) *Example.* The following example illustrates this paragraph (f)(1)(iii).

Example. (i) In Year 1 USP, a United States corporation, bought 100 shares of UR, an unrelated corporation, for $100,000. In Year 2, when the value of the UR stock had decreased to $40,000, USP contributed all 100 shares of UR stock to its wholly-owned subsidiary in exchange for subsidiary's capital stock. In Year 3, the subsidiary sold all of the UR stock for $40,000 to an unrelated buyer, and on its U.S. income tax return, claimed a loss of $60,000 attributable to the sale of the UR stock. USP and its subsidiary do not file a consolidated return.

(ii) In determining the true taxable income of the subsidiary, the district director may disallow the loss of $60,000 on the ground that the loss was incurred by USP. *National Securities Corp. v Commissioner*, 137 F.2d 600 (3rd Cir. 1943), cert. denied, 320 U.S. 794 (1943).

(iv) *Consolidated returns.* Section 482 and the regulations thereunder apply to all controlled taxpayers, whether the controlled taxpayer files a separate or consolidated U.S. income tax return. If a controlled taxpayer files a separate return, its true separate taxable income will be determined. If a controlled taxpayer is a party to a consolidated return, the true consolidated taxable income of the affiliated group and the true separate taxable income of the controlled taxpayer must be determined consistently with the principles of a consolidated return.

(2) *Rules relating to determination of true taxable income.* The following rules must be taken into account in determining the true taxable income of a controlled taxpayer.

(i) *Aggregation of transactions*—(A) *In general.* The combined effect of two or more separate transactions (whether before, during, or after the taxable year under review) may be considered, if such transactions, taken as a whole, are so interrelated that consideration of multiple transactions is the most reliable means of determining the arm's length consideration for the controlled transactions. Generally, transactions will be aggregated only when they involve related products or services, as defined in § 1.6038A–3(c)(7)(vii).

(B) *Examples.* The following examples illustrate this paragraph (f)(2)(i).

Example 1. P enters into a license agreement with S1, its subsidiary, that permits S1 to use a proprietary manufacturing process and to sell the output from this process throughout a specified region. S1 uses the manufacturing process and sells its output to S2, another subsidiary of P, which in turn resells the output to uncontrolled parties in the specified region. In evaluating the arm's length character of the royalty paid by S1 to P, it may be appropriate to consider the arm's length character of the transfer prices charged by S1 to S2 and the aggregate profits earned by S1 and S2 from the use of the manufacturing process and the sale to uncontrolled parties of the products produced by S1.

Example 2. S1, S2, and S3 are Country Z subsidiaries of U.S. manufacturer P. S1 is the exclusive Country Z distributor of computers manufactured by P. S2 provides marketing services in connection with sales of P computers in Country Z, and in this regard uses significant marketing intangibles provided by P. S3 administers the warranty program with respect to P computers in Country Z, including maintenance and repair services. In evaluating the arm's length character of the transfer price paid by S1 to P, of the fees paid by S2 to P for the use of P marketing intangibles, and of the service fees earned by S2 and S3, it may be appropriate to consider the combined effects of these separate transactions because they are so interrelated that they are most reliably analyzed on an aggregated basis.

Example 3. The facts are the same as in *Example 2.* In addition, U1, U2, and U3 are uncontrolled taxpayers that carry out functions comparable to those of S1, S2, and S3, respectively, with respect to computers produced by unrelated manufacturers. R1, R2, and R3 are a controlled group of taxpayers (unrelated to the P controlled group) that also carry out functions comparable to those of S1, S2, and S3 with respect to computers produced by their common parent. Prices charged to uncontrolled customers of the R group differ from the prices charged to customers of U1, U2, and U3. In determining whether the transactions of U1, U2, and U3, or the transactions of R1, R2, and R3 would provide a more reliable measure of the arm's length result, it is determined that the interrelated R group transactions are more reliable than the wholly independent transactions of U1, U2, and U3, given the interrelationship of the P group transactions.

Example 4. P enters into a license agreement with S1 that permits S1 to use a propriety process for manufacturing product X and to sell product X to uncontrolled parties throughout a specified region. P also sells to S1 product Y which is manufactured by P in the United States, and which is unrelated to product X. Product Y is resold by S1 to uncontrolled parties in the specified region. In evaluating the arm's length character of the royalty paid by S1 to P for the use of the manufacturing process for product X, and the transfer prices charged for unrelated product Y, it would not be appropriate to consider the combined effects of these separate and unrelated transactions.

(ii) *Allocation based on taxpayer's actual transactions*—(A) *In general.* The district director will evaluate the results of a transaction as actually structured by the taxpayer unless its structure lacks economic substance. However, the district director may consider the alternatives available to the taxpayer in determining whether the terms of the controlled transaction would be acceptable to an uncontrolled taxpayer faced with the same alternatives and operating under comparable circumstances. In such cases the district director may adjust the consideration charged in the controlled transaction based on the cost or profit of an alternative as adjusted to account for material differences between the alternative and the controlled transaction, but will not restructure the transaction as if the alternative had been adopted by the taxpayer. See § 1.482–1(d)(3) (Factors for determining comparability, Contractual terms and Risk); §§ 1.482–3(e) and 1.482–4(d) (Unspecified methods).

(B) *Example.* The following example illustrates this paragraph (f)(2)(ii).

Example. P and S are controlled taxpayers. P enters into a license agreement with S that permits S to use a proprietary process for manufacturing product X. Using its sales and marketing employees, S sells product X to related and unrelated customers outside the United States. If the license agreement between P and S has economic substance, the district director ordinarily will not restructure the taxpayer's transaction to treat P as if it had elected to exploit directly the manufacturing process. However, the fact that P could have manufactured product X may be taken into account under § 1.482–4(d) in determining the arm's length consideration for the controlled transaction. For an example of such an analysis, see *Example* in § 1.482–4(d)(2).

(iii) *Multiple year data*—(A) *In general.* The results of a controlled transaction ordinarily will be compared with the results of uncontrolled comparables occurring in the taxable year under review. It may be appropriate, however, to consider data relating to the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. If data relating to uncontrolled comparables from multiple years is used, data relating to the controlled taxpayer for the same years ordinarily must be considered. However, if such data is not available, reliable data from other years, as adjusted under paragraph (d)(2) (Standard of comparability) of this section may be used.

(B) *Circumstances warranting consideration of multiple year data.* The extent to which it is appropriate to consider multiple-year data depends on the method being applied and the issue being addressed. Circumstances that may warrant consideration of data from multiple years include the extent to which complete and accurate data is available for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible being examined. Data from one or more years before or after the taxable year under review must ordinarily be considered for purposes of applying the provisions of § 1.482–1(d)(3)(iii) (Risk), § 1.482–1(d)(4)(i) (Market share strategy), § 1.482–4(f)(2) (Periodic adjustments), and § 1.482–5 (Comparable profits method). On the other hand, multiple-year data ordinarily will not be considered for purposes of applying the comparable uncontrolled price method (except to the extent that risk or market share strategy issues are present).

(C) *Comparable effect over comparable period.* Data from multiple years may be considered to determine whether the same economic conditions that caused the controlled taxpayer's results had a comparable effect over a comparable period of time on the uncontrolled comparables that establish the arm's length range. For example, given that uncontrolled taxpayers enter into transactions with the ultimate expectation of earning a profit, persistent losses among controlled taxpayers may be an indication of non-arm's length dealings. Thus, if a controlled taxpayer that realizes a loss with respect to a controlled transaction seeks to demonstrate that the loss is within the arm's length range, the district director may take into account data from taxable years other than the taxable year of the transaction to determine whether the loss was attributable to arm's length dealings. The rule of this paragraph (f)(2)(iii)(C) is illustrated by *Example 3* of paragraph (f)(2)(iii)(E) of this section.

(D) *Applications of methods using multiple year averages.* If a comparison of a controlled taxpayer's average result over a multiple year period with the average results of uncontrolled comparables over the same period would reduce the effect of short-term variations that may be unrelated to transfer pricing, it may be appropriate to establish a range derived from the average results of uncontrolled comparables over a multiple year period to determine if an adjustment should be made. In such a case the district director

may make an adjustment if the controlled taxpayer's average result for the multiple year period is not within such range. Such a range must be determined in accordance with § 1.482–1(e) (Arm's length range). An adjustment in such a case ordinarily will be equal to the difference, if any, between the controlled taxpayer's result for the taxable year and the mid-point of the uncontrolled comparables' results for that year. If the interquartile range is used to determine the range of average results for the multiple year period, such adjustment will ordinarily be made to the median of all the results of the uncontrolled comparables for the taxable year. See *Example 2* of § 1.482–5(e). In other cases, the adjustment normally will be made to the arithmetic mean of all the results of the uncontrolled comparables for the taxable year. However, an adjustment will be made only to the extent that it would move the controlled taxpayer's multiple year average closer to the arm's length range for the multiple year period or to any point within such range. In determining a controlled taxpayer's average result for a multiple year period, adjustments made under this section for prior years will be taken into account only if such adjustments have been finally determined, as described in § 1.482–1(g)(2)(iii). See *Example 3* of § 1.482–5(e).

(E) *Examples.* The following examples, in which S and P are controlled taxpayers, illustrate this paragraph (f)(2)(iii). *Examples 1* and *4* also illustrate the principle of the arm's length range of paragraph (e) of this section.

Example 1. P sold product Z to S for $60 per unit in 1995. Applying the resale price method to data from uncontrolled comparables for the same year establishes an arm's length range of prices for the controlled transaction from $52 to $59 per unit. Since the price charged in the controlled transaction falls outside the range, the district director would ordinarily make an allocation under section 482. However, in this case there are cyclical factors that affect the results of the uncontrolled comparables (and that of the controlled transaction) that cannot be adequately accounted for by specific adjustments to the data for 1995. Therefore, the district director considers results over multiple years to account for these factors. Under these circumstances, it is appropriate to average the results of the uncontrolled comparables over the years 1993, 1994, and 1995 to determine an arm's length range. The averaged results establish an arm's length range of $56 to $58 per unit. For consistency, the results of the controlled taxpayers must also be averaged over the same years. The average price in the controlled transaction over the three years is $57. Because the controlled transfer price of product Z falls within the arm's length range, the district director makes no allocation.

Example 2. (i) FP, a Country X corporation, designs and manufactures machinery in Country X. FP's costs are incurred in Country X currency. USSub is the exclusive distributor of FP's machinery in the United States. The price of the machinery sold by FP to USSub is expressed in Country X currency. Thus, USSub bears all of the currency risk associated with fluctuations in the exchange rate between the time the contract is signed and the payment is made. The prices charged by FP to USSub for 1995 are under examination. In that year, the value of the dollar depreciated against the currency of Country X, and as a result, USSub's gross margin was only 8%.

(ii) UD is an uncontrolled distributor of similar machinery that performs distribution functions substantially the same as those performed by USSub, except that UD purchases and resells machinery in transactions where both the purchase and resale prices are denominated in U.S. dollars. Thus, UD had no currency exchange risk. UD's gross margin in 1995 was 10%. UD's average gross margin for the period 1990 to 1998 has been 12%.

(iii) In determining whether the price charged by FP to USSub in 1995 was arm's length, the district director may consider USSub's average gross margin for an appropriate period before and after 1995 to determine whether USSub's average gross margin during the period was sufficiently greater than UD's average gross margin during the same period such that USSub was sufficiently compensated for the currency risk it bore throughout the period. See § 1.482- 1(d)(3)(iii) (Risk).

Example 3. FP manufactures product X in Country M and sells it to USSub, which distributes X in the United States. USSub realizes losses with respect to the controlled transactions in each of five consecutive taxable years. In each of the five consecutive years a different uncontrolled comparable realized a loss with respect to comparable transactions equal to or greater than USSub's loss. Pursuant to paragraph (f)(3)(iii)(C) of this section, the district director examines whether the uncontrolled comparables realized similar losses over a comparable period of time, and finds that each of the five comparables realized losses in only one of the five years, and their average result over the five-year period was a profit. Based on this data, the district director may conclude that the controlled taxpayer's results are not within the arm's length range over the five year period, since the economic conditions that resulted in the controlled taxpayer's loss did not have a comparable effect over a comparable period of time on the uncontrolled comparables.

Example 4. (i) USP, a U.S. corporation, manufactures product Y in the United States and sells it to FSub, which acts as USP's exclusive distributor of product Y in Country N. The resale price method described in § 1.482–3(c) is used to evaluate whether the transfer price charged by USP to FSub for the 1994 taxable year for product Y was arm's length. For the period 1992 through 1994, FSub had a gross profit margin for each year of 13%. A, B, C and D are uncontrolled distributors of products that compete directly with product Y in country N. After making appropriate adjustments in accordance with §§ 1.482–1(d)(2) and 1.482–3(c), the gross profit margins for A, B, C, and D are as follows:

	1992	1993	1994	Average
A	13	3	8	8.00
B	11	13	2	8.67
7C	4	7	13	8.00
7D	7	9	6	7.33

(ii) Applying the provisions of § 1.482–1(e), the district director determines that the arm's length range of the average gross profit margins is between 7.33 and 8.67. The district director concludes that FSub's average gross margin of 13% is not within the arm's length range, despite the fact that C's gross profit margin for 1994 was also 13%, since the economic conditions that caused S's result did not have a comparable effect over a comparable period of time on the results of C or the other uncontrolled comparables. In this case, the district director makes an allocation equivalent to adjusting FSub's gross profit margin for 1994 from 13% to the mean of the uncontrolled comparables' results for 1994 (7.25%).

(iv) *Product lines and statistical techniques.* The methods described in §§ 1.482–2 through 1.482–6 are generally stated in terms of individual transactions. However, because a taxpayer may have controlled transactions involving many different products, or many separate transactions involving the same product, it may be impractical to analyze every individual transaction to determine its arm's length price. In such cases, it is permissible to evaluate the arm's length results by applying the appropriate methods to the overall results for product lines or other groupings. In addition, the arm's length results of all related party transactions entered into by a controlled taxpayer may be evaluated by employing sampling and other valid statistical techniques.

(v) *Allocations apply to results, not methods*—(A) *In general.* In evaluating whether the result of a controlled transaction is arm's length, it is not necessary for the district director to determine whether the method or procedure that a controlled taxpayer employs to set the terms for its controlled transactions corresponds to the method or procedure that might have been used by a taxpayer dealing at arm's length with an uncontrolled taxpayer. Rather, the district director will evaluate the result achieved rather than the method the taxpayer used to determine its prices.

(B) *Example.* The following example illustrates this paragraph (f)(2)(v).

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells household appliances. FS operates as P's exclusive distributor in Europe. P annually establishes the price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. FS's aggregate gross margin earned in its distribution business is 18%.

(ii) ED is an uncontrolled European distributor of competing household appliances. After adjusting for minor differences in the level of inventory, volume of sales, and warranty programs conducted by FS and ED, ED's aggregate gross margin is also 18%. Thus, the district director may conclude that the aggregate prices charged by P for its appliances sold to FS are arm's length, without determining whether the budgeting, production, and performance evaluation processes of P are similar to such processes used by ED.

(g) *Collateral adjustments with respect to allocations under section 482*—(1) *In general.* The district director will take into account appropriate collateral adjustments with respect to allocations under section 482. Appropriate collateral adjustments may include correlative allocations, conforming adjustments, and setoffs, as described in this paragraph (g).

(2) *Correlative allocations*—(i) *In general.* When the district director makes an allocation under section 482 (referred to in this paragraph (g)(2) as the primary allocation), appropriate correlative allocations will also be made with respect to any other member of the group affected by the allocation. Thus, if the district director makes an allocation of income, the district director will not only increase the income of one member of the group, but correspondingly decrease the income of the other member. In addition, where appropriate, the district director may make such further correlative allocations as may be required by the initial correlative allocation.

(ii) *Manner of carrying out correlative allocation.* The district director will furnish to the taxpayer with respect to which the primary allocation is made a written statement of the amount and nature of the correlative allocation. The correlative allocation must be reflected in the documentation of the other member of the group that is maintained for U.S. tax purposes, without regard to whether it affects the U.S. income tax liability of the other member for any open year. In some circumstances the allocation will have an immediate U.S. tax effect, by changing the taxable income computation of the other member (or the taxable income computation of a shareholder of the other member, for example, under the provisions of subpart F of the Internal Revenue Code). Alternatively, the correlative allocation may not be reflected on any U.S. tax return until a later year, for example when a dividend is paid.

(iii) *Events triggering correlative allocation.* For purposes of this paragraph (g)(2), a primary allocation will not be considered to have been made (and therefore, correlative allocations are not required to be made) until the date of a final determination with respect to the allocation under section 482. For this purpose, a final determination includes—

(A) Assessment of tax following execution by the taxpayer of a Form 870 (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) with respect to such allocation;

(B) Acceptance of a Form 870–AD (Offer of Waiver of Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment);

(C) Payment of the deficiency;

(D) Stipulation in the Tax Court of the United States; or

(E) Final determination of tax liability by offer-in-compromise, closing agreement, or final resolution (determined under the principles of section 7481) of a judicial proceeding.

(iv) *Examples.* The following examples illustrate this paragraph (g)(2). In each example, X and Y are members of the same group of controlled taxpayers and each regularly computes its income on a calendar year basis.

Example 1. (i) In 1996, Y, a U.S. corporation, rents a building owned by X, also a U.S. corporation. In 1998 the district director determines that Y did not pay an arm's length rental charge. The district director proposes to increase X's income to reflect an arm's length rental charge. X consents to the assessment reflecting such adjustment by executing Form 870, a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment. The assessment of the tax with respect to the adjustment is made in 1998. Thus, the primary allocation, as defined in paragraph (g)(2)(i) of this section, is considered to have been made in 1998.

(ii) The adjustment made to X's income under section 482 requires a correlative allocation with respect to Y's income. The district director notifies X in writing of the amount and nature of the adjustment made with respect to Y. Y had net operating losses in 1993, 1994, 1995, 1996, and 1997. Although a correlative adjustment will not have an effect on Y's U.S. income tax liability for 1996, an adjustment increasing Y's net operating loss for 1996 will be made for purposes of determining Y's U.S. income tax liability for 1998 or a later taxable year to which the increased net operating loss may be carried.

Example 2. (i) In 1995, X, a U.S. construction company, provided engineering services to Y, a U.S. corporation, in the construction of Y's factory. In 1997, the district director determines that the fees paid by Y to X for its services were not arm's length and proposes to make an adjustment to the income of X. X consents to an assessment reflecting such adjustment by executing Form 870. An assessment of the tax with respect to such adjustment is made in 1997. The district director notifies X in writing of the amount and nature of the adjustment to be made with respect to Y.

(ii) The fees paid by Y for X's engineering services properly constitute a capital expenditure. Y does not place the factory into service until 1998. Therefore, a correlative adjustment increasing Y's basis in the factory does not affect Y's U.S. income tax liability for 1997. However, the correlative adjustment must be made in the books and records maintained by Y for its U.S. income tax purposes and such adjustment will be taken into account in computing Y's allowable depreciation or gain or loss on a subsequent disposition of the factory.

Example 3. In 1995, X, a U.S. corporation, makes a loan to Y, its foreign subsidiary not engaged in a U.S. trade or business. In 1997, the district director, upon determining that the interest charged on the loan was not arm's length, proposes to adjust X's income to reflect an arm's length interest rate. X consents to an assessment reflecting such allocation by executing Form 870, and an assessment of the tax with respect to the section 482 allocation is made in 1997. The district director notifies X in writing of the amount and nature of the correlative allocation to be made with respect to Y. Although the correlative adjustment does not have an effect on Y's U.S. income tax liability, the adjustment must be reflected in the documentation of Y that is maintained for U.S. tax purposes. Thus, the adjustment must be reflected in the determination of the amount of Y's earnings and profits for 1995 and subsequent years, and the adjustment must be made to the extent it has an effect on any person's U.S. income tax liability for any taxable year.

(3) *Adjustments to conform accounts to reflect section 482 allocations*—(i) *In general.* Appropriate adjustments must be made to conform a taxpayer's accounts to reflect allocations made under section 482. Such adjustments may include the treatment of an allocated amount as a dividend or a capital contribution (as appropriate), or, in appropriate cases, pursuant to such applicable revenue procedures as may be provided by the Commissioner (see § 601.601(d)(2) of this chapter), repayment of the allocated amount without further income tax consequences.

(ii) *Example.* The following example illustrates the principles of this paragraph (g)(3).

Example—Conforming cash accounts. (i) USD, a United States corporation, buys

Product from its foreign parent, FP. In reviewing USD's income tax return, the district director determines that the arm's length price would have increased USD's taxable income by $5 million. The district director accordingly adjusts USD's income to reflect its true taxable income.

(ii) To conform its cash accounts to reflect the section 482 allocation made by the district director, USD applies for relief under Rev. Proc. 65–17, 1965–1 C.B. 833 (see § 601.601(d)(2)(ii)(*b*) of this chapter), to treat the $5 million adjustment as an account receivable from FP, due as of the last day of the year of the transaction, with interest accruing therefrom.

(4) *Setoffs*—(i) *In general.* If an allocation is made under section 482 with respect to a transaction between controlled taxpayers, the district director will also take into account the effect of any other non-arm's length transaction between the same controlled taxpayers in the same taxable year which will result in a setoff against the original section 482 allocation. Such setoff, however, will be taken into account only if the requirements of § 1.482–1(g)(4)(ii) are satisfied. If the effect of the setoff is to change the characterization or source of the income or deductions, or otherwise distort taxable income, in such a manner as to affect the U.S. tax liability of any member, adjustments will be made to reflect the correct amount of each category of income or deductions. For purposes of this setoff provision, the term arm's length refers to the amount defined in paragraph (b) (Arm's length standard) of this section, without regard to the rules in § 1.482–2 under which certain charges are deemed to be equal to arm's length.

(ii) *Requirements.* The district director will take a setoff into account only if the taxpayer—

(A) Establishes that the transaction that is the basis of the setoff was not at arm's length and the amount of the appropriate arm's length charge;

(B) Documents, pursuant to paragraph (g)(2) of this section, all correlative adjustments resulting from the proposed setoff; and

(C) Notifies the district director of the basis of any claimed setoff within 30 days after the earlier of the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments or the date of the issuance of the notice of deficiency.

(iii) *Examples.* The following examples illustrate this paragraph (g)(4).

Example 1. P, a U.S. corporation, renders services to S, its foreign subsidiary in Country Y, in connection with the construction of S's factory. An arm's length charge for such services determined under § 1.482–2(b) would be $100,000. During the same taxable year P makes available to S the use of a machine to be used in the construction of the factory, and the arm's length rental value of the machine is $25,000. P bills S $125,000 for the services, but does not charge S for the use of the machine. No allocation will be made with respect to the undercharge for the machine if P notifies the district director of the basis of the claimed setoff within 30 days after the date of the letter from the district director transmitting the examination report notifying P of the proposed adjustment, establishes that the excess amount charged for services was equal to an arm's length charge for the use of the machine and that the taxable income and income tax liabilities of P are not distorted, and documents the correlative allocations resulting from the proposed setoff.

Example 2. The facts are the same as in *Example 1*, except that, if P had reported $25,000 as rental income and $25,000 less as service income, it would have been subject to the tax on personal holding companies. Allocations will be made to reflect the correct amounts of rental income and service income.

(h) *Special rules*—(1) *Small taxpayer safe harbor.* [Reserved]

(2) *Effect of foreign legal restrictions*—(i) *In general.* The district director will take into account the effect of a foreign legal restriction to the extent that such restriction affects the results of transactions at arm's length. Thus, a foreign legal restriction will be taken into account only to the extent that it is shown that the restriction affected an uncontrolled taxpayer under comparable circumstances for a comparable period of time. In the absence of evidence indicating the effect of the foreign legal restriction on uncontrolled taxpayers, the restriction will be taken into account only to the extent provided in paragraphs (h)(2) (iii) and (iv) of this section (Deferred income method of accounting).

(ii) *Applicable legal restrictions.* Foreign legal restrictions (whether temporary or permanent) will be taken into account for purposes of this paragraph (h)(2) only if, and so long as, the conditions set forth in paragraphs (h)(2)(ii) (A) through (D) of this section are met.

(A) The restrictions are publicly promulgated, generally applicable to all similarly situated persons (both controlled and uncontrolled), and not imposed as part of a commercial transaction between the taxpayer and the foreign sovereign;

(B) The taxpayer (or other member of the controlled group with respect to which the restrictions apply) has exhausted all remedies prescribed by foreign law or practice for obtaining a waiver of such restrictions (other than remedies that would have a negligible prospect of success if pursued);

(C) The restrictions expressly prevented the payment or receipt, in any form, of part or all of the arm's length amount that would otherwise be required under section 482 (for example, a restriction that applies only to the deductibility of an expense for tax purposes is not a restriction on payment or receipt for this purpose); and

(D) The related parties subject to the restriction did not engage in any arrangement with controlled or uncontrolled parties that had the effect of circumventing the restriction, and have not otherwise violated the restriction in any material respect.

(iii) *Requirement for electing the deferred income method of accounting.* If a foreign legal restriction prevents the payment or receipt of part or all of the arm's length amount that is due with respect to a controlled transaction, the restricted amount may be treated as deferrable if the following requirements are met—

(A) The controlled taxpayer establishes to the satisfaction of the district director that the payment or receipt of the arm's length amount was prevented because of a foreign legal restriction and circumstances described in paragraph (h)(2)(ii) of this section; and

(B) The controlled taxpayer whose U.S. tax liability may be affected by the foreign legal restriction elects the deferred income method of accounting, as described in paragraph (h)(2)(iv) of this section, on a written statement attached to a timely U.S. income tax return (or an amended return) filed before the IRS first contacts any member of the controlled group concerning an examination of the return for the taxable year to which the foreign legal restriction applies. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (h)(2)(iii)(B) if it satisfies the requirements of a qualified amended return for purposes of § 1.6664–2(c)(3) as set forth in those regulations or as the Commissioner may prescribe by applicable revenue procedures. The election statement must identify the affected transactions, the parties to the transactions, and the applicable foreign legal restrictions.

(iv) *Deferred income method of accounting.* If the requirements of paragraph (h)(2)(ii) of this section are satisfied, any portion of the arm's length amount, the payment or receipt of which is prevented because of applicable foreign legal restrictions, will be treated as deferrable until payment or

receipt of the relevant item ceases to be prevented by the foreign legal restriction. For purposes of the deferred income method of accounting under this paragraph (h)(2)(iv), deductions (including the cost or other basis of inventory and other assets sold or exchanged) and credits properly chargeable against any amount so deferred, are subject to deferral under the provisions of § 1.461- 1(a)(4). In addition, income is deferrable under this deferred income method of accounting only to the extent that it exceeds the related deductions already claimed in open taxable years to which the foreign legal restriction applied.

(v) *Examples.* The following examples, in which Sub is a Country FC subsidiary of U.S. corporation, Parent, illustrate this paragraph (h)(2).

Example 1. Parent licenses an intangible to Sub. FC law generally prohibits payments by any person within FC to recipients outside the country. The FC law meets the requirements of paragraph (h)(2)(ii) of this section. There is no evidence of unrelated parties entering into transactions under comparable circumstances for a comparable period of time, and the foreign legal restrictions will not be taken into account in determining the arm's length amount. The arm's length royalty rate for the use of the intangible property in the absence of the foreign restriction is 10% of Sub's sales in country FC. However, because the requirements of paragraph (h)(2)(ii) of this section are satisfied, Parent can elect the deferred income method of accounting by attaching to its timely filed U.S. income tax return a written statement that satisfies the requirements of paragraph (h)(2)(iii)(B) of this section.

Example 2. (i) The facts are the same as in *Example 1*, except that Sub, although it makes no royalty payment to Parent, arranges with an unrelated intermediary to make payments equal to an arm's length amount on its behalf to Parent.

(ii) The district director makes an allocation of royalty income to Parent, based on the arm's length royalty rate of 10%. Further, the district director determines that because the arrangement with the third party had the effect of circumventing the FC law, the requirements of paragraph (h)(2)(ii)(D) of this section are not satisfied. Thus, Parent could not validly elect the deferred income method of accounting, and the allocation of royalty income cannot be treated as deferrable. In appropriate circumstances, the district director may permit the amount of the distribution to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1(g) (Collateral adjustments).

Example 3. The facts are the same as in *Example 1*, except that the laws of FC do not prevent distributions from corporations to their shareholders. Sub distributes an amount equal to 8% of its sales in country FC. Because the laws of FC did not expressly prevent all forms of payment from Sub to Parent, Parent cannot validly elect the deferred income method of accounting with respect to any of the arm's length royalty amount. In appropriate circumstances, the district director may permit the 8% that was distributed to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1(g) (Collateral adjustments).

Example 4. The facts are the same as in *Example 1*, except that Country FC law permits the payment of a royalty, but limits the amount to 5% of sales, and Sub pays the 5% royalty to Parent. Parent demonstrates the existence of a comparable uncontrolled transaction for purposes of the comparable uncontrolled transaction method in which an uncontrolled party accepted a royalty rate of 5%. Given the evidence of the comparable uncontrolled transaction, the 5% royalty rate is determined to be the arm's length royalty rate.

(3) *Coordination with section 936*—(i) *Cost sharing under section 936.* If a possessions corporation makes an election under section 936(h)(5)(C)(i)(I), the corporation must make a section 936 cost sharing payment that is at least equal to the payment that would be required under section 482 if the electing corporation were a foreign corporation. In determining the payment that would be required under section 482 for this purpose, the provisions of §§ 1.482–1 and 1.482–4 will be applied, and to the extent relevant to the valuation of intangibles, §§ 1.482–5 and 1.482–6 will be applied. The provisions of section 936(h)(5)(C)(i)(II) (Effect of Election—electing corporation treated as owner of intangible property) do not apply until the payment that would be required under section 482 has been determined.

(ii) *Use of terms.* A cost sharing payment, for the purposes of section 936(h)(5)(C)(i)(I), is calculated using the provisions of section 936 and the regulations thereunder and the provisions of this paragraph (h)(3). The provisions relating to cost sharing under section 482 do not apply to payments made pursuant to an election under section 936(h)(5)(C)(i)(I). Similarly, a profit split payment, for the purposes of section 936(h)(5)(C)(ii)(I), is calculated using the provisions of section 936 and the regulations thereunder, not section 482 and the regulations thereunder.

(i) *Definitions.* The definitions set forth in paragraphs (i) (1) through (10) of this section apply to §§ 1.482–1 through 1.482–8.

(1) *Organization* includes an organization of any kind, whether a sole proprietorship, a partnership, a trust, an estate, an association, or a corporation (as each is defined or understood in the Internal Revenue Code or the regulations thereunder), irrespective of the place of organization, operation, or conduct of the trade or business, and regardless of whether it is a domestic or foreign organization, whether it is an exempt organization, or whether it is a member of an affiliated group that files a consolidated U.S. income tax return, or a member of an affiliated group that does not file a consolidated U.S. income tax return.

(2) *Trade* or *business* includes a trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place of operation. Employment for compensation will constitute a separate trade or business from the employing trade or business.

(3) *Taxpayer* means any person, organization, trade or business, whether or not subject to any internal revenue tax.

(4) *Controlled* includes any kind of control, direct or indirect, whether legally enforceable or not, and however exercisable or exercised, including control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose. It is the reality of the control that is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(5) *Controlled taxpayer* means any one of two or more taxpayers owned or controlled directly or indirectly by the same interests, and includes the taxpayer that owns or controls the other taxpayers. *Uncontrolled taxpayer* means any one of two or more taxpayers not owned or controlled directly or indirectly by the same interests.

(6) *Group, controlled group,* and *group of controlled taxpayers* mean the taxpayers owned or controlled directly or indirectly by the same interests.

(7) *Transaction* means any sale, assignment, lease, license, loan, advance, contribution, or any other transfer of any interest in or a right to use any property (whether tangible or intangible, real or personal) or money, however such transaction is effected, and whether or not the terms of such transaction are formally documented. A transaction also includes the performance of any services for the benefit of, or on behalf of, another taxpayer.

(8) *Controlled transaction* or *controlled transfer* means any transaction or transfer between two or more members of the same group of controlled taxpayers. The term *uncontrolled transaction* means any transaction between two or more

taxpayers that are not members of the same group of controlled taxpayers.

(9) *True taxable income* means, in the case of a controlled taxpayer, the taxable income that would have resulted had it dealt with the other member or members of the group at arm's length. It does not mean the taxable income resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement the controlled taxpayer chose to make (even though such contract, transaction, or arrangement is legally binding upon the parties thereto).

(10) *Uncontrolled comparable* means the uncontrolled transaction or uncontrolled taxpayer that is compared with a controlled transaction or taxpayer under any applicable pricing methodology. Thus, for example, under the comparable profits method, an uncontrolled comparable is any uncontrolled taxpayer from which data is used to establish a comparable operating profit.

(j) *Effective dates*—(1) The regulations in this are generally effective for taxable years beginning after October 6, 1994

(2) Taxpayers may elect to apply retroactively all of the provisions of these regulations for any open taxable year. Such election will be effective for the year of the election and all subsequent taxable years.

(3) Although these regulations are generally effective for taxable years as stated, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 must be applied using any reasonable method not inconsistent with the statute. The IRS considers a method that applies these regulations or their general principles to be a reasonable method.

(4) These regulations will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986, for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date.

§ 1.482–2 Determination of taxable income in specific situations.

(a) *Loans or advances*—(1) *Interest on bona fide indebtedness*—(i) *In general.* Where one member of a group of controlled entities makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group and either charges no interest, or charges interest at a rate which is not equal to an arm's length rate of interest (as defined in paragraph (a)(2) of this section) with respect to such loan or advance, the district director may make appropriate allocations to reflect an arm's length rate of interest for the use of such loan or advance.

(ii) *Application of paragraph (a) of this section*—(A) *Interest on bona fide indebtedness.* Paragraph (e) of this section applies only to determine the appropriateness of the rate of interest charged on the principal amount of a bona fide indebtedness between members of a group of controlled entities, including—

(*1*) Loans or advances of money or other consideration (whether or not evidenced by a written instrument); and

(*2*) Indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group, or any other similar extension of credit.

(B) *Alleged indebtedness.* This paragraph (e) does not apply to so much of an alleged indebtedness which is not in fact a bona fide indebtedness, even if the stated rate of interest thereon would be within the safe haven rates prescribed in paragraph (a)(2)(iii) of this section. For example, paragraph (a) of this section does not apply to payments with respect to all or a portion of such alleged indebtedness where in fact all or a portion of an alleged indebtedness is a contribution to the capital of a corporation or a distribution by a corporation with respect to its shares. Similarly, this paragraph (a) does not apply to payments with respect to an alleged purchase-money debt instrument given in consideration for an alleged sale of property between two controlled entities where in fact the transaction constitutes a lease of the property. Payments made with respect to alleged indebtedness (including alleged stated interest thereon) shall be treated according to their substance. See § 1.482–2(a)(3)(i).

(iii) *Period for which interest shall be charged*—(A) *General rule.* This paragraph (a)(1)(iii) is effective for indebtedness arising after June 30, 1988. See § 1.482–2(a)(3) (26 CFR Part 1 edition revised as of April 1, 1988) for indebtedness arising before July 1, 1988. Except as otherwise provided in paragraphs (a)(1)(iii)(B) through (E) of this section, the period for which interest shall be charged with respect to a bona fide indebtedness between controlled entities begins on the day after the day the indebtedness arises and ends on the day the indebtedness is satisfied (whether by payment, offset, cancellation, or otherwise). Paragraphs (a)(1)(iii)(B) through (E) of this section provide certain alternative periods during which interest is not required to be charged on certain indebtedness. These exceptions apply only to indebtedness described in paragraph (a)(1)(ii)(A)(2) of this section (relating to indebtedness incurred in the ordinary course of business from sales, services, etc., between members of the group) and not evidenced by a written instrument requiring the payment of interest. Such amounts are hereinafter referred to as intercompany trade receivables. The period for which interest is not required to be charged on intercompany trade receivables under this paragraph (a)(1)(iii) is called the interest-free period. In general, an intercompany trade receivable arises at the time economic performance occurs (within the meaning of section 461(h) and the regulations thereunder) with respect to the underlying transaction between controlled entities. For purposes of this paragraph (a)(1)(iii), the term United States includes any possession of the United States, and the term foreign country excludes any possession of the United States.

(B) *Exception for certain intercompany transactions in the ordinary course of business.* Interest is not required to be charged on an intercompany trade receivable until the first day of the third calendar month following the month in which the intercompany trade receivable arises.

(C) *Exception for trade or business of debtor member located outside the United States.* In the case of an intercompany trade receivable arising from a transaction in the ordinary course of a trade or business which is actively conducted outside the United States by the debtor member, interest is not required to be charged until the first day of the fourth calendar month following the month in which such intercompany trade receivable arises.

(D) *Exception for regular trade practice of creditor member or others in creditor's industry.* If the creditor member or unrelated persons in the creditor member's industry, as a regular trade practice, allow unrelated parties a longer period without charging interest than that described in paragraph (a)(1)(iii)(B) or (C) of this section

(whichever is applicable) with respect to transactions which are similar to transactions that give rise to intercompany trade receivables, such longer interest-free period shall be allowed with respect to a comparable amount of intercompany trade receivables.

(E) *Exception for property purchased for resale in a foreign country—(1) General rule.* If in the ordinary course of business one member of the group (related purchaser) purchases property from another member of the group (related seller) for resale to unrelated persons located in a particular foreign country, the related purchaser and the related seller may use as the interest-free period for the intercompany trade receivables arising during the related seller's taxable year from the purchase of such property within the same product group an interest-free period equal the sum of—

(*i*) The number of days in the related purchaser's average collection period (as determined under paragraph (a)(1)(iii)(E)(*2*) of this section) for sales of property within the same product group sold in the ordinary course of business to unrelated persons located in the same foreign country; plus

(*ii*) Ten (10) calendar days.

(*2*) *Interest-free period.* The interest-free period under this paragraph (a)(1)(iii)(E), however, shall in no event exceed 183 days. The related purchaser does not have to conduct business outside the United States in order to be eligible to use the interest-free period of this paragraph (a)(1)(iii)(E). The interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to intercompany trade receivables attributable to property which is manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by the related purchaser. For purposes of this paragraph (a)(1)(iii)(E) a product group includes all products within the same three-digit Standard Industrial Classification (SIC) Code (as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.)

(*3*) *Average collection period.* An average collection period for purposes of this paragraph (a)(1)(iii)(E) is determined as follows—

(*i*) *Step 1.* Determine total sales (less returns and allowances) by the related purchaser in the product group to unrelated persons located in the same foreign country during the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*ii*) *Step 2.* Determine the related purchaser's average month-end accounts receivable balance with respect to sales described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section for the related purchaser's last taxable year ending on or before the first day of the related seller's taxable year in which the intercompany trade receivable arises.

(*iii*) *Step 3.* Compute a receivables turnover rate by dividing the total sales amount described in paragraph (a)(1)(iii)(E)(*2*)(*i*) of this section by the average receivables balance described in paragraph (a)(1)(iii)(E)(*2*)(*ii*) of this section.

(*iv*) *Step 4.* Divide the receivables turnover rate determined under paragraph (a)(1)(iii)(E)(*2*)(*iii*) of this section into 365, and round the result to the nearest whole number to determine the number of days in the average collection period.

(*v*) *Other considerations.* If the related purchaser makes sales in more than one foreign country, or sells property in more than one product group in any foreign country, separate computations of an average collection period, by product group within each country, are required. If the related purchaser resells fungible property in more than one foreign country and the intercompany trade receivables arising from the related party purchase of such fungible property cannot reasonably be identified with resales in particular foreign countries, then solely for the purpose of assigning an interest-free period to such intercompany trade receivables under this paragraph (a)(1)(iii)(E), an amount of each such intercompany trade receivable shall be treated as allocable to a particular foreign country in the same proportion that the related purchaser's sales of such fungible property in such foreign country during the period described in paragraph (a)(1)(iii)(E)(2)(i) of this section bears to the related purchaser's sales of all such fungible property in all such foreign countries during such period. An interest-free period under this paragraph (a)(1)(iii)(E) shall not apply to any intercompany trade receivables arising in a taxable year of the related seller if the related purchaser made no sales described in paragraph (a)(1)(iii)(E)(2)(i) of this section from which the appropriate interest-free period may be determined.

(*4*) *Illustration.* The interest-free period provided under paragraph (a)(1)(iii)(E) of this section may be illustrated by the following example:

Example—(i) *Facts.* X and Y use the calendar year as the taxable year and are members of the same group of controlled entities within the meaning of section 482. For Y's 1988 calendar taxable year X and Y intend to use the interest-free period determined under this paragraph (a)(1)(iii)(E) for intercompany trade receivables attributable to X's purchases of certain products from Y for resale by X in the ordinary course of business to unrelated persons in country Z. For its 1987 calendar taxable year all of X's sales in country Z were of products within a single product group based upon a three-digit SIC code, were not manufactured, produced, or constructed (within the meaning of § 1.954–3(a)(4)) by X, and were sold in the ordinary course of X's trade or business to unrelated persons located only in country Z. These sales and the month-end accounts receivable balances (for such sales and for such sales uncollected from prior months) are as follows:

Month	Sales	Accounts receivable
Jan. 1987	$500,000	$2,835,850
Feb.	600,000	2,840,300
Mar.	450,000	2,850,670
Apr.	550,000	2,825,700
May.	650,000	2,809,360
June	525,000	2,803,200
July	400,000	2,825,850
Aug.	425,000	2,796,240
Sept.	475,000	2,839,390
Oct.	525,000	2,650,550
Nov.	450,000	2,775,450
Dec. 1987	650,000	2,812,600
Totals	6,200,000	33,665,160

(ii) *Average collection period.* X's total sales within the same product group to unrelated persons within country Z for the period are $6,200,000. The average receivables balance for the period is $2,805,430 ($33,665,160/12). The average collection period in whole days is determined as follows:

$$\text{Receivables Turnover Rate} = \frac{\$6,200,000}{\$2,805,430} = 2.21$$

$$\text{Average Collection Period} = \frac{365}{2.21} = \begin{matrix}165.16 \text{ days, rounded to the} \\ \text{nearest whole day} = 165 \text{ days.}\end{matrix}$$

(iii) *Interest-free period.* Accordingly, for intercompany trade receivables incurred by X during Y's 1988 calendar taxable year attributable to the purchase of property from Y for resale to unrelated persons located in country Z and included in the product group, X may use an interest-free period of 175 days (165 days in the average collection period plus 10 days, but not in excess of a maximum of 183 days). All other intercompany trade receivables incurred by X are subject to the interest-free periods described in paragraphs (a)(1)(iii) (B), (C), or (D), whichever are applicable. If X makes sales in other foreign countries in addition to country Z or makes sales of property in more than one product group in any foreign country, separate computations of X's average collection period, by product group within each country, are required in order for X and Y to determine an interest-free period for such product groups in such foreign countries under this paragraph (a)(1)(iii)(E).

(iv) *Payment; book entries*—(A) Except as otherwise provided in this paragraph (a)(1)(iv), in determining the period of time for which an amount owed by one member of the group to another member is outstanding, payments or other credits to an account are considered to be applied against the earliest amount outstanding, that is, payments or credits are applied against amounts in a first-in, first-out (FIFO) order. Thus, tracing payments to individual intercompany trade receivables is generally not required in order to determine whether a particular intercompany trade receivable has been paid within the applicable interest-free period determined under paragraph (a)(1)(iii) of this section. The application of this paragraph (a)(1)(iv)(A) may be illustrated by the following example:

Example—(i) *Facts.* X and Y are members of a group of controlled entities within the meaning of section 482. Assume that the balance of intercompany trade receivables owed by X to Y on June 1 is $100, and that all of the $100 balance represents amounts incurred by X to Y during the month of May. During the month of June X incurs an additional $200 of intercompany trade receivables to Y. Assume that on July 15, $60 is properly credited against X's intercompany account to Y, and that $240 is properly credited against the intercompany account on August 31. Assume that under paragraph (a)(1)(iii)(B) of this section interest must be charged on X's intercompany trade receivables to Y beginning with the first day of the third calendar month following the month the intercompany trade receivables arise, and that no alternative interest-free period applies. Thus, the interest-free period for intercompany trade receivables incurred during the month of May ends on July 31, and the interest-free period for intercompany trade receivables incurred during the month of June ends on August 31.

(ii) *Application of payments.* Using a FIFO payment order, the aggregate payments of $300 are applied first to the opening June balance, and then to the additional amounts incurred during the month of June. With respect to X's June opening balance of $100, no interest is required to be accrued on $60 of such balance paid by X on July 15, because such portion was paid within its interest-free period. Interest for 31 days, from August 1 to August 31 inclusive, is required to be accrued on the $40 portion of the opening balance not paid until August 31. No interest is required to be accrued on the $200 of intercompany trade receivables X incurred to Y during June because the $240 credited on August 31, after eliminating the $40 of indebtedness remaining from periods before June, also eliminated the $200 incurred by X during June prior to the end of the interest-free period for that amount. The amount of interest incurred by X to Y on the $40 amount during August creates bona fide indebtedness between controlled entities and is subject to the provisions of paragraph (a)(1)(iii)(A) of this section without regard to any of the exceptions contained in paragraphs (a)(1)(iii)(B) through (E).

(B) Notwithstanding the first-in, first-out payment application rule described in paragraph (a)(1)(iv)(A) of this section, the taxpayer may apply payments or credits against amounts owed in some other order on its books in accordance with an agreement or understanding of the related parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate*—(i) *In general.* For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower.* Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986*—(A) *Applicability*—(*1*) *General rule.* Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(*i*) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*) of this section) the loan or advance is entered into after May 8, 1986; and

(*ii*) After May 8, 1986 under a demand loan or advance between such controlled entities.

(*2*) *Grandfather rule for existing loans.* The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in § 1.482–2(a)(2)(iii) (26 CFR part 1 edition revised as of April 1, 1985), shall apply to—

(*i*) Term loans or advances made before May 9, 1986; and

(*ii*) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of chapter 1 of the Internal Revenue Code—

(*1*) The rate of interest actually charged if that rate is—

(*i*) Not less than 100 percent of the applicable Federal rate (lower limit); and

(*ii*) Not greater than 130 percent of the applicable Federal rate (upper limit); or

(*2*) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually; or

(*3*) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually, unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate

determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i). In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term applicable Federal rate means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate;

(*2*) Over 3 years but not over 9 years, the Federal mid-term rate; or

(*3*) Over 9 years, the Federal long-term rate, as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (lowest 3-month rate, as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the applicable Federal rate means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business of making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i) of this section, including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of the Internal Revenue Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Internal Revenue Code section. After the enactment of the Tax Reform Act of 1964, Pub. L. 98–369, and the enactment of Pub. L. 99–121, such other Internal Revenue Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows—

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Internal Revenue Code section.

(ii) Second, the other Internal Revenue Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Internal Revenue Code section.

(iii) Third, whether or not the other Internal Revenue Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (e) of this section, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3)(i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price.

If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of paragraph (e) of this section, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples.* The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example 1. An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482–2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example 2. B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a term loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and the loan is treated as having original issue discount equal to such amount. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100–130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example 3. The facts are the same as in Example 2 except that the amount lent by Z to B is $9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 de minimis exception of section 7872(c)(3), no adjustment for interest will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

Example 4. X and Y are commonly controlled taxpayers. At a time when the applicable Federal rate is 12 percent, compounded semiannually, X sells property to Y in exchange for a note with a stated rate of interest of 18 percent, compounded semiannually. Assume that the other applicable Code section to the transaction is section 483. Section 483 does not apply to this transaction because, under section 483(d), there is no total unstated interest under the contract using the test rate of interest equal to 100 percent of the applicable Federal rate. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may be applied by the district director to determine whether the rate of interest under the note is excessive, that is, to determine whether the 18 percent stated interest rate under the note exceeds an arm's length rate of interest.

Example 5. Assume that A and B are commonly controlled taxpayers and that the applicable Federal rate is 10 percent, compounded semiannually. On June 30, 1986, A sells property to B and receives in exchange B's purchase-money note in the amount of $2,000,000. The stated interest rate on the note is 9%, compounded semiannually, and the stated redemption price at maturity on the note is $2,000,000. Assume that the other applicable Code section to this transaction is section 1274. As provided in section 1274A(a) and (b), the discount rate for purposes of section 1274 will be nine percent, compounded semiannually, because the stated principal amount of B's note does not exceed $2,800,000. Section 1274 does not apply to this transaction because there is adequate stated interest on the debt instrument using a discount rate equal to 9%, compounded semiannually, and the stated redemption price at maturity does not exceed the stated principal amount. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $2,000,000 note to determine whether the 9% rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(b) *Performance of services for another*—(1) *General rule.* Where one member of a group of controlled entities performs marketing, managerial, administrative, technical, or other services for the benefit of, or on behalf of another member of the group without charge, or at a charge which is not equal to an arm's length charge as defined in paragraph (b)(3) of this section, the district director may make appropriate allocations to reflect an arm's length charge for such services.

(2) *Benefit test*—(i) Allocations may be made to reflect arm's length charges with respect to services undertaken for the joint benefit of the members of a group of controlled entities, as well as with respect to services performed by one member of the group exclusively for the benefit of another member of the group. Any allocations made shall be consistent with the relative benefits intended from the services, based upon the facts known at the time the services were rendered, and shall be made even if the potential benefits anticipated are not realized. No allocations shall be made if the probable benefits to the other members were so indirect or remote that unrelated parties would not have charged for such services. In general, allocations may be made if the service, at the time it was performed, related to the carrying on of an activity by another member or was intended to benefit another member, either in the member's overall operations or in its day-to-day activities. The principles of this paragraph (b)(2)(i) may be illustrated by the following examples in each of which it is assumed that X and Y are corporate members of the same group of controlled entities:

Example 1. X's International Division engages in a wide range of sales promotion activities. Although most of these activities are undertaken exclusively for the benefit of X's international operations, some are intended to jointly benefit both X and Y and others are undertaken exclusively for the benefit of Y. The district director may make an allocation to reflect an arm's length charge with respect to the activities undertaken for the joint benefit of X and Y consistent with the relative benefits intended as well as with respect to the services performed exclusively for the benefit of Y.

Example 2. X operates an international airline, and Y owns and operates hotels in several cities which are serviced by X. X, in conjunction with its advertising of the airline, often pictures Y's hotels and mentions Y's name. Although such advertising was primarily intended to benefit X's airline operations, it was reasonable to anticipate that there would be substantial benefits to Y resulting from patronage by travelers who responded to X's advertising. Since an unrelated hotel operator would have been charged for such advertising, the district director may make an appropriate allocation to reflect an arm's length charge consistent with the relative benefits intended.

Example 3. Assume the same facts as in Example 2 except that X's advertising neither mentions nor pictures Y's hotels. Although it is reasonable to anticipate that increased air travel attributable to X's advertising will result in some benefit to Y due to increased patronage by air travelers, the district director will not make an allocation with respect to such advertising since the probable benefit to Y was so indirect and remote that an unrelated hotel operator would not have been charged for such advertising.

(ii) Allocations will generally not be made if the service is merely a duplication of a service which the related party has independently performed or is performing for itself. In this connection, the ability to independently perform the service (in terms of qualification and availability of personnel) shall be taken into account. The principles of this paragraph (b)(2)(ii) may be illustrated by the following examples, in each of which it is assumed that X and Y are corporate members of the same group of controlled entities:

Example 1. At the request of Y, the financial staff of X makes an analysis to determine the amount and source of the borrowing needs of Y. Y does not have personnel qualified to make the analysis, and it does not undertake the same analysis. The district director may make an appropriate allocation to reflect an arm's length charge for such analysis.

Example 2. Y, which has a qualified financial staff, makes an analysis to determine the amount and source of its borrowing needs. Its report, recommending a loan from a bank, is submitted to X. X's financial staff reviews the analysis to determine whether X should advise Y to reconsider its plan. No allocation should be made with respect to X's review.

(3) *Arm's length charge.* For the purpose of this paragraph an arm's length charge for services rendered shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances considering all relevant facts. However, except in the case of services which are an integral part of the business activity of either the member rendering the services or the member receiving the benefit of the services (as described in paragraph (b)(7) of this section) the arm's length charge shall be deemed equal to the costs or deductions incurred with respect to such services by the member or members rendering such services unless the taxpayer establishes a more appropriate charge under the standards set forth in the first sentence of this subparagraph. Where costs or deductions are a factor in applying the provisions of this paragraph adequate books and records must be maintained by taxpayers to permit verification of such costs or deductions by the Internal Revenue Service.

(4) *Costs or deductions to be taken into account*—(i) Where the amount of an arm's length charge for services is determined with reference to the costs or deductions incurred with respect to such services, it is necessary to take into account on some reasonable basis all the costs or deductions which are directly or indirectly related to the service performed.

(ii) Direct costs or deductions are those identified specifically with a particular service. These include, but are not limited to, costs or deductions

for compensation, bonuses, and travel expenses attributable to employees directly engaged in performing such services, for material and supplies directly consumed in rendering such services, and for other costs such as the cost of overseas cables in connection with such services.

(iii) Indirect costs or deductions are those which are not specifically identified with a particular activity or service but which relate to the direct costs referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions generally include costs or deductions with respect to utilities, occupancy, supervisory and clerical compensation, and other overhead burden of the department incurring the direct costs or deductions referred to in paragraph (b)(4)(ii) of this section. Indirect costs or deductions also generally include an appropriate share of the costs or deductions relating to supporting departments and other applicable general and administrative expenses to the extent reasonably allocable to a particular service or activity. Thus, for example, if a domestic corporation's advertising department performs services for the direct benefit of a foreign subsidiary, in addition to direct costs of such department, such as salaries of employees and fees paid to advertising agencies or consultants, which are attributable to such foreign advertising, indirect costs must be taken into account on some reasonable basis in determining the amount of costs or deductions with respect to which the arm's length charge to the foreign subsidiary is to be determined. These generally include depreciation, rent, property taxes, other costs of occupancy, and other overhead costs of the advertising department itself, and allocations of costs from other departments which service the advertising department, such as the personnel, accounting, payroll, and maintenance departments, and other applicable general and administrative expenses including compensation of top management.

(5) *Costs and deductions not to be taken into account.* Costs or deductions of the member rendering the services which are not to be taken into account in determining the amount of an arm's length charge for services include—

(i) Interest expense on indebtedness not incurred specifically for the benefit of another member of the group;

(ii) Expenses associated with the issuance of stock and maintenance of shareholder relations; and

(iii) Expenses of compliance with regulations or policies imposed upon the member rendering the services by its government which are not directly related to the service in question.

(6) *Methods*—(i) Where an arm's length charge for services rendered is determined with reference to costs or deductions, and a member has allocated and apportioned costs or deductions to reflect arm's length charges by employing in a consistent manner a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, such method will not be disturbed. If the member has not employed a method of allocation and apportionment which is reasonable and in keeping with sound accounting practice, the method of allocating and apportioning costs or deductions for the purpose of determining the amount of arm's length charges shall be based on the particular circumstances involved.

(ii) The methods of allocation and apportionment referred to in this paragraph (b)(6) are applicable both in allocating and apportioning indirect costs to a particular activity or service (see paragraph (b)(4)(iii) of this section) and in allocating and apportioning the total costs (direct and indirect) of a particular activity or service where such activity or service is undertaken for the joint benefit of two or more members of a group (see paragraph (b)(2)(i) of this section). While the use of one or more bases may be appropriate under the circumstances, in establishing the method of allocation and apportionment, appropriate consideration should be given to all bases and factors, including, for example, total expenses, asset size, sales, manufacturing expenses, payroll, space utilized, and time spent. The costs incurred by supporting departments may be apportioned to other departments on the basis of reasonable overall estimates, or such costs may be reflected in the other departments' costs by means of application of reasonable departmental overhead rates Allocations and apportionments of costs or deductions must be made on the basis of the full cost as opposed to the incremental cost. Thus, if an electronic data processing machine, which is rented by the taxpayer, is used for the joint benefit of itself and other members of a controlled group, the determination of the arm's length charge to each member must be made with reference to the full rent and cost of operating the machine by each member, even if the additional use of the machine for the benefit of the other members did not increase the cost to the taxpayer.

(iii) Practices actually employed to apportion costs or expenses in connection with the preparation of statements and analyses for the use of management, creditors, minority shareholders, joint venturers, clients, customers, potential investors, or other parties or agencies in interest shall be considered by the district director. Similarly, in determining the extent to which allocations are to be made to or from foreign members of a controlled group, practices employed by the domestic members of a controlled group in apportioning costs between themselves shall also be considered if the relationships with the foreign members of the group are comparable to the relationships between the domestic members of the group. For example, if, for purposes of reporting to public stockholders or to a governmental agency, a corporation apportions the costs attributable to its executive officers among the domestic members of a controlled group on a reasonable and consistent basis, and such officers exercise comparable control over foreign members of such group, such domestic apportionment practice will be taken into consideration in determining the amount of allocations to be made to the foreign members.

(7) *Certain services.* An arm's length charge shall not be deemed equal to costs or deductions with respect to services which are an integral part of the business activity of either the member rendering the services (referred to in this paragraph (b) as the renderer) or the member receiving the benefit of the services (referred to in this paragraph (b) as the recipient). Paragraphs (b)(7)(i) through (b)(7)(iv) of this section describe those situations in which services shall be considered an integral part of the business activity of a member of a group of controlled entities.

(i) Services are an integral part of the business activity of a member of a controlled group where either the renderer or the recipient is engaged in the trade or business of rendering similar services to one or more unrelated parties.

(ii) (A) Services are an integral part of the business activity of a member of a controlled group where the renderer renders services to one or more related parties as one of its principal activities. Except in the case of services which constitute a manufacturing, production, extraction, or construction activity, it will be presumed that the renderer does not render services to related parties as one of its principal activities if the cost of services of the renderer attributable to the rendition of services for the taxable year to related parties does not exceed 25 percent of the total costs or deductions of the renderer for the taxable year. Where the cost of services rendered to related parties is in excess

of 25 percent of the total costs or deductions of the renderer for the taxable year or where the 25-percent test does not apply, the determination of whether the rendition of such services is one of the principal activities of the renderer will be based on the facts and circumstances of each particular case. Such facts and circumstances may include the time devoted to the rendition of the services, the relative cost of the services, the regularity with which the services are rendered, the amount of capital investment, the risk of loss involved, and whether the services are in the nature of supporting services or independent of the other activities of the renderer.

(B) For purposes of the 25-percent test provided in this paragraph (b)(7)(ii), the cost of services rendered to related parties shall include all costs or deductions directly or indirectly related to the rendition of such services including the cost of services which constitute a manufacturing, production, extraction, or construction activity; and the total costs or deductions of the renderer for the taxable year shall exclude amounts properly reflected in the cost of goods sold of the renderer. Where any of the costs or deductions of the renderer do not reflect arm's length consideration and no adjustment is made under any provision of the Internal Revenue Code to reflect arm's length consideration, the 25-percent test will not apply if, had an arm's length charge been made, the costs or deductions attributable to the renderer's rendition of services to related entities would exceed 25 percent of the total costs or deductions of the renderer for the taxable year.

(C) For purposes of the 25-percent test in this paragraph (b)(7)(ii), a consolidated group (as defined in this paragraph (b)(7)(ii)(C)) may, at the option of the taxpayer, be considered as the renderer where one or more members of the consolidated group render services for the benefit of or on behalf of a related party which is not a member of the consolidated group. In such case, the cost of services rendered by members of the consolidated group to any related parties not members of the consolidated group, as well as the total costs or deductions of the members of the consolidated group, shall be considered in the aggregate to determine if such services constitute a principal activity of the renderer. Where a consolidated group is considered the renderer in accordance with this paragraph (b)(7)(ii)(C), the costs or deductions referred to in this paragraph (b)(7)(ii) shall not include costs or deductions paid or accrued to any member of the consolidated group. In addition to the preceding provisions of this paragraph (b)(7)(ii)(C), if part or all of the services rendered by a member of a consolidated group to any related party not a member of the consolidated group are similar to services rendered by any other member of the consolidated group to unrelated parties as part of a trade or business, the 25-percent test in this paragraph (b)(7)(ii) shall be applied with respect to such similar services without regard to this subdivision (c). For purposes of this paragraph (b)(7)(ii)(C), the term consolidated group means all members of a group of controlled entities created or organized within a single country and subjected to an income tax by such country on the basis of their combined income.

(iii) Services are an integral part of the business activity of a member of a controlled group where the renderer is peculiarly capable of rendering the services and such services are a principal element in the operations of the recipient. The renderer is peculiarly capable of rendering the services where the renderer, in connection with the rendition of such services, makes use of a particularly advantageous situation or circumstance such as by utilization of special skills and reputation, utilization of an influential relationship with customers, or utilization of its intangible property (as defined in § 1.482–4(b)). However, the renderer will not be considered peculiarly capable of rendering services unless the value of the services is substantially in excess of the costs or deductions of the renderer attributable to such services.

(iv) Services are an integral part of the business activity of a member of a controlled group where the recipient has received the benefit of a substantial amount of services from one or more related parties during its taxable year. For purposes of this subdivision, services rendered by one or more related parties shall be considered substantial in amount if the total costs or deductions of the related party or parties rendering services to the recipient during its taxable year which are directly or indirectly related to such services exceed an amount equal to 25 percent of the total costs or deductions of the recipient during its taxable year. For purposes of the preceding sentence, the total costs or deductions of the recipient shall include the renderers' costs or deductions directly or indirectly related to the rendition of such services and shall exclude any amounts paid or accrued to the renderers by the recipient for such services and shall also exclude any amounts paid or accrued for materials the cost of which is properly reflected in the cost of goods sold of the recipient. At the option of the taxpayer, where the taxpayer establishes that the amount of the total costs or deductions of a recipient for the recipient's taxable year are abnormally low due to the commencement or cessation of an operation by the recipient, or other unusual circumstances of a nonrecurring nature, the costs or deductions referred to in the preceding two sentences shall be the total of such amount for the 3-year period immediately preceding the close of the taxable year of the recipient (or for the first 3 years of operation of the recipient if the recipient had been in operation for less than 3 years as of the close of the taxable year in which the services in issue were rendered).

(v) The principles of paragraphs (b)(7)(i) through (iv) of this section may be illustrated by the following examples:

Example 1. Y is engaged in the business of selling merchandise and X, an entity related to Y, is a printing company regularly engaged in printing and mailing advertising literature for unrelated parties. X also prints circulars advertising Y's products, mails the circulars to potential customers of Y, and in addition, performs the art work involved in the preparation of the circulars. Since the printing, mailing, and art work services rendered by X to Y are similar to the printing and mailing services rendered by X as X's trade or business, the services rendered to Y are an integral part of the business activity of X as described in subdivision (i) of this subparagraph.

Example 2. V, W, X, and Y are members of the same group of controlled entities. Each member of the group files a separate income tax return. X renders wrecking services to V, W, and Y, and, in addition, sells building materials to unrelated parties. The total costs or deductions incurred by X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X) are $4 million. The total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $650,000. Since $650,000 is less than 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($4,000,000 * 25% = $1,000,000), the services rendered by X to V, W, and Y will not be considered one of X's principal activities within the meaning of subdivision (ii) of this subparagraph.

Example 3. Assume the same facts as in *Example 2*, except that the total costs or deductions of X for the taxable year which are directly or indirectly related to the services rendered to V, W, and Y are $1,800,000. Assume in addition, that there is a high risk of loss involved in the rendition of the wrecking services by X, that X has a large investment in the wrecking equipment, and that a substantial amount of X's time is devoted to the rendition of wrecking services

to V, W, and Y. Since $1,800,000 is greater than 25 percent of the total costs or deductions of X for the taxable year (exclusive of amounts properly reflected in the cost of goods sold of X), i.e., $1 million, the services rendered by X to V, W, and Y will not be automatically excluded from classification as one of the principal activities of X as in *Example 2*, and consideration must be given to the facts and circumstances of the particular case. Based on the facts and circumstances in this case, X would be considered to render wrecking services to related parties as one of its principal activities. Thus, the wrecking services are an integral part of the business activity of X as described in paragraph (b)(7)(ii) of this section.

Example 4. Z is a domestic corporation and has several foreign subsidiaries. Z and X, a domestic subsidiary of Z, have exercised the privilege granted under section 1501 to file a consolidated return and, therefore, constitute a *consolidated group* within the meaning of paragraph (b)(7)(ii)(C) of this section. Pursuant to paragraph (b)(7)(ii)(C) of this section, the taxpayer treats X and Z as the renderer. The sole function of X is to provide accounting, billing, communication, and travel services to the foreign subsidiaries of Z. Z also provides some other services for the benefit of its foreign subsidiaries. The total costs or deductions of X and Z related to the services rendered for the benefit of the foreign subsidiaries is $750,000. Of that amount, $710,000 represents the costs of X, which are X's total operating costs. The total costs or deductions of X and Z for the taxable year with respect to their operations (exclusive of amounts properly reflected in the cost of goods sold of X and Z) is $6,500,000. Since the total costs or deductions related to the services rendered to the foreign subsidiaries ($750,000) is less than 25 percent of the total costs or deductions of X and Z (exclusive of amounts properly reflected in the costs of goods sold of X or Z) in the aggregate ($6,500,000 * 25% = $1,625,000), the services rendered by X and Z to the foreign subsidiaries will not be considered one of the principal activities of X and Z within the meaning of paragraph (b)(7)(ii) of this section.

Example 5. Assume the same facts as in *Example 4*, except that all the communication services rendered for the benefit of the foreign subsidiaries are rendered by X and that Z renders communication services to unrelated parties as part of its trade or business. X is regularly engaged in rendering communication services to foreign subsidiaries and devotes a substantial amount of its time to this activity. The costs or deductions of X related to the rendition of the communication services to the foreign subsidiaries are $355,000. By application of the paragraph (b)(7)(ii)(C) of this section, the services provided by X and Z to related entities other than the communication services will not be considered one of the principal activities of X and Z. However, since Z renders communication services to unrelated parties as a part of its trade or business, the communication services rendered by X to the foreign subsidiaries will be subject to the provisions of paragraph (b)(7)(ii) of this section without regard to paragraph (b)(7)(ii)(C) of this section. Since the costs or deductions of X related to the rendition of the communication services ($355,000) are in excess of 25 percent of the total costs or deductions of X (exclusive of amounts properly reflected in the cost of goods sold of X) for the taxable year ($710,000 * 25% = $177,500), the determination of whether X renders the communication services as one of its principal activities will depend on the particular facts and circumstances. The given facts and circumstances indicate that X renders the communication services as one of its principal activities.

Example 6. X and Y are members of the same group of controlled entities. Y produces and sells product D. As a part of the production process, Y sends materials to X who converts the materials into component parts. This conversion activity constitutes only a portion of X's operations. X then ships the component parts back to Y who assembles them (along with other components) into the finished product for sale to unrelated parties. Since the services rendered by X to Y constitute a manufacturing activity, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply.

Example 7. X and Y are members of the same group of controlled entities. X manufactures product D for distribution and sale in the United States, Canada, and Mexico. Y manufactures product D for distribution and sale in South and Central America. Due to a breakdown of machinery, Y is forced to cease its manufacturing operations for a 1-month period. In order to meet demand for product D during the shutdown period, Y sends partially finished goods to X. X, for that period, completes the manufacture of product D for Y and ships the finished product back to Y. The costs or deductions of X related to the manufacturing services rendered to Y are $750,000. The total costs or deductions of X are $24,000,000. Since the services in issue constitute a manufacturing activity, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply. However, under these facts and circumstances, i.e., the insubstantiality of the services rendered to Y in relation to X's total operations, the lack of regularity with which the services are rendered, and the short duration for which the services are rendered, X's rendition of manufacturing services to Y is not considered one of X's principal activities within the meaning of paragraph (b)(7)(ii) of this section.

Example 8. Assume the same facts as in *Example 7*, except that, instead of temporarily ceasing operations, Y requests assistance from X in correcting the defects in the manufacturing equipment. In response, X sends a team of engineers to discover and correct the defects without the necessity of a shutdown. Although the services performed by the engineers were related to a manufacturing activity, the services are essentially supporting in nature and, therefore, do not constitute a manufacturing, production, extraction, or construction activity. Thus, the 25-percent test in paragraph (b)(7)(ii) of this section applies.

Example 9. X is a domestic manufacturing corporation. Y, a foreign subsidiary of X, has decided to construct a plant in Country A. In connection with the construction of Y's plant, X draws up the architectural plans for the plant, arranges the financing of the construction, negotiates with various Government authorities in Country A, invites bids from unrelated parties for several phases of construction, and negotiates, on Y's behalf, the contracts with unrelated parties who are retained to carry out certain phases of the construction. Although the unrelated parties retained by X for Y perform the physical construction, the aggregate services performed by X for Y are such that they, in themselves, constitute a construction activity. Thus, the 25-percent test in paragraph (b)(7)(ii) of this section does not apply with respect to such services.

Example 10. X and Y are members of the same group of controlled entities. X is a finance company engaged in financing automobile loans. In connection with such loans it requires the borrower to have life insurance in the amount of the loan. Although X's borrowers are not required to take out life insurance from any particular insurance company, at the same time that the loan agreement is being finalized, X's employees suggest that the borrower take out life insurance from Y, which is an agency for life insurance companies. Since there would be a delay in the processing of the loan if some other company were selected by the borrower, almost all of X's borrowers take out life insurance through Y. Because of this utilization of its influential relationship with its borrowers, X is peculiarly capable of rendering selling services to Y and, since a substantial amount of Y's business is derived from X's borrowers, such selling services are a principal element in the operation of Y's insurance business. In addition, the value of the services is substantially in excess of the costs incurred by X. Thus, the selling services rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iii) of this section.

Example 11. X and Y are members of the same group of controlled entities. Y is a manufacturer of product E. In past years product E has not always operated properly because of imperfections present in the finished product. X owns an exclusive patented process by which such imperfections can be detected and removed prior to sale of the product, thereby greatly increasing the marketability of the product. In connection with its manufacturing operations Y sends its products to X for inspection which involves utilization of the patented process. The inspection of Y's products by X is not one of the principal activities of X. However, X is peculiarly capable of rendering the inspection services to Y because of its utilization of the patented process. Since this inspection greatly increases the marketability of product E it is extremely valuable. Such value is substantially in excess of the cost incurred by X in rendition of such services. Because of the impact of the inspection on sales, such services are a principal element in the operations of Y. Thus, the inspection services

rendered by X to Y are an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iii) of this section.

Example 12. Assume the same facts as in *Example 11* except that Y owns the patented process for detecting the imperfections. Y, however, does not have the facilities to implement the inspection process. Therefore, Y sends its products to X for inspection which involves utilization of the patented process owned by Y. Since Y owns the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 13. Assume the same facts as in *Example 12* except that X and Y both own interests in the patented process as a result of having developed the process pursuant to a bona fide cost sharing plan (within the meaning of paragraph (d)(4) of this section). Since Y owns the requisite interest in the patent, X is not peculiarly capable of rendering the inspection services to Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 14. X and Y are members of the same group of controlled entities. X is a large manufacturing concern. X's accounting department has, for many years, maintained the financial records of Y, a distributor of X's products. Although X is able to render these accounting services more efficiently than others due to its thorough familiarity with the operations of Y, X is not peculiarly capable of rendering the accounting services to Y because such familiarity does not, in and of itself, constitute a particularly advantageous situation or circumstance within the meaning of paragraph (b)(7)(iii) of this section. Furthermore, under these circumstances, the accounting services are supporting in nature and, therefore, do not constitute a principal element in the operations of Y. Thus, the accounting services rendered by X to Y are not an integral part of the business activity of either X or Y within the meaning of paragraph (b)(7)(iii) of this section.

Example 15. (i) Corporations X, Y, and Z are members of the same group of controlled entities. X is a manufacturer, and Y and Z are distributors of X's products. X provides a variety of services to Y including billing, shipping, accounting, and other general and administrative services. During Y's taxable year, on several occasions, Z renders selling and other promotional services to Y. None of the services rendered to Y constitute one of the principal activities of any of the renderers within the meaning of paragraph (b)(7)(ii) of this section. Y's total costs and deductions for Y's taxable year (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) are $1,600,000. The total direct and indirect costs of X and Z for services rendered to Y during Y's taxable year are as follows:

Services provided by X:	
Billing	$50,000
Shipping	250,000
Accounting	150,000
Other	200,000
Services provided by Z:	
Selling	500,000
Total Costs	1,150,000

(ii) Since the total costs or deductions of X and Z related to the rendition of services to Y exceed the amount equal to 25 percent of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($1,150,000 ÷ [$1,600,000 + $1,150,000] = 41.8%), the services rendered by X and Z to Y are substantial within the meaning of paragraph (b)(7)(iv) of this section. Thus, the services rendered by X and Z to Y are an integral part of the business activity of Y as described in paragraph (b)(7)(iv) of this section.

Example 16. Assume the same facts as in *Example 15*, except that the taxpayer establishes that, due to a major change in the operations of Y, Y's total costs or deductions for Y's taxable year were abnormally low. Y has always used the calendar year as its taxable year. Y's total costs and deductions for the 2 years immediately preceding the taxable year in issue (exclusive of amounts paid to X and Z for services rendered and amounts paid for goods purchased for resale) were $6 million and $6,200,000 respectively. The total direct and indirect costs of X and Z for services rendered to Y were $1,150,000 for each of the 3 years. Applying the same formula to the costs or deductions for the 3 years immediately preceding the close of the taxable year in issue, the costs or deductions of X and Z related to the rendition of services to Y (3 * $1,150,000=$3,450,000) amount to 20 percent of the sum of the total costs or deductions of Y (exclusive of amounts paid to X and Z for the services rendered and amounts paid for goods purchased for resale) plus the total costs or deductions of X and Z related to the rendition of services to Y ($3,450,000 $1,600,000 + $6,000,000 + $6,200,000 + $3,450,000=20%). If the taxpayer chooses to use the 3-year period, the services rendered by X and Z to Y are not substantial within the meaning of paragraph (b)(7)(iv) of this section. Thus, the services will not be an integral part of the business activity of a member of the controlled group as described in paragraph (b)(7)(iv) of this section.

(8) *Services rendered in connection with the transfer of property.* Where tangible or intangible property is transferred, sold, assigned, loaned, leased, or otherwise made available in any manner by one member of a group to another member of the group and services are rendered by the transferor to the transferee in connection with the transfer, the amount of any allocation that may be appropriate with respect to such transfer shall be determined in accordance with the rules of paragraph (c) of this section, or §§ 1.482–3 or 1.482–4, whichever is appropriate and a separate allocation with respect to such services under this paragraph shall not be made. Services are rendered in connection with the transfer of property where such services are merely ancillary and subsidiary to the transfer of the property or to the commencement of effective use of the property by the transferee. Whether or not services are merely ancillary and subsidiary to a property transfer is a question of fact. Ancillary and subsidiary services could be performed, for example, in promoting the transaction by demonstrating and explaining the use of the property, or by assisting in the effective starting-up of the property transferred, or by performing under a guarantee relating to such effective starting-up. Thus, where an employee of one member of a group, acting under the instructions of his employer, reveals a valuable secret process owned by his employer to a related entity, and at the same time supervises the integration of such process into the manufacturing operation of the related entity, such services could be considered to be rendered in connection with the transfer, and, if so considered, shall not be the basis for a separate allocation. However, if the employee continues to render services to the related entity by supervising the manufacturing operation after the secret process has been effectively integrated into such operation, a separate allocation with respect to such additional services may be made in accordance with the rules of this paragraph.

(c) *Use of tangible property*—(1) *General rule.* Where possession, use, or occupancy of tangible property owned or leased by one member of a group of controlled entities (referred to in this paragraph as the owner) is transferred by lease or other arrangement to another member of such group (referred to in this paragraph as the user) without charge or at a charge which is not equal to an arm's length rental charge (as defined in paragraph (c)(2)(i) of this section) the district director may make appropriate allocations to properly reflect such arm's length charge. Where possession, use, or occupancy of only a portion of such property is transferred, the determination of the arm's length charge and the allocation shall be made with reference to the portion transferred.

(2) *Arm's length charge*—(i) *In general.* For purposes of paragraph (c) of this section, an arm's length rental charge shall be the amount of rent which was charged, or would have been charged for the use of the same or similar property, during the time it was in use, in independent transactions with or between unrelated parties under similar circumstances considering the period and location of the use, the owner's investment in the property or rent paid for the property, expenses of

maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge.* See § 1.482–2(c)(2)(ii) (26 CFR Part 1 revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1986, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases*—(A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section; or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

(d) *Transfer of property.* For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving the transfer of property, see §§ 1.482–3 through 1.482–6.

§ 1.482–3 Methods to determine taxable income in connection with a transfer of tangible property.

(a) *In general.* The arm's length amount charged in a controlled transfer of tangible property must be determined under one of the six methods listed in this paragraph (a). Each of the methods must be applied in accordance with all of the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e). The methods are—

(1) The comparable uncontrolled price method, described in paragraph (b) of this section;

(2) The resale price method, described in paragraph (c) of this section;

(3) The cost plus method, described in paragraph (d) of this section;

(4) The comparable profits method, described in § 1.482–5;

(5) The profit split method, described in § 1.482–6; and

(6) Unspecified methods, described in paragraph (e) of this section.

(b) *Comparable uncontrolled price method*—(1) *In general.* The comparable uncontrolled price method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the amount charged in a comparable uncontrolled transaction.

(2) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from applications of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the comparable uncontrolled price method is discussed in paragraph (b)(2)(ii) and (iii) of this section.

(ii) *Comparability*—(A) *In general.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the provisions of § 1.482–1(d). Although all of the factors described in § 1.482–1(d)(3) must be considered, similarity of products generally will have the greatest effect on comparability under this method. In addition, because even minor differences in contractual terms or economic conditions could materially affect the amount charged in an uncontrolled transaction, comparability under this method depends on close similarity with respect to these factors, or adjustments to account for any differences. The results derived from applying the comparable uncontrolled price method generally will be the most direct and reliable measure of an arm's length price for the controlled transaction if an uncontrolled transaction has no differences with the controlled transaction that would affect the price, or if there are only minor differences that have a definite and reasonably ascertainable effect on price and for which appropriate adjustments are made. If such adjustments cannot be made, or if there are more than minor differences between the controlled and uncontrolled transactions, the comparable uncontrolled price method may be used, but the reliability of the results as a measure of the arm's length price will be reduced. Further, if there are material product differences for which reliable adjustments cannot be made, this method ordinarily will not provide a reliable measure of an arm's length result.

(B) *Adjustments for differences between controlled and uncontrolled transactions.* If there are differences between the controlled and uncontrolled transactions that would affect price, adjustments should be made to the price of the uncontrolled transaction according to the comparability provisions of § 1.482–1(d)(2). Specific examples of the factors that may be particularly relevant to this method include—

(*1*) Quality of the product;

(*2*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms);

(*3*) Level of the market (i.e., wholesale, retail, etc.);

(*4*) Geographic market in which the transaction takes place;

(*5*) Date of the transaction;

(*6*) Intangible property associated with the sale;

(*7*) Foreign currency risks; and

(*8*) Alternatives realistically available to the buyer and seller.

(iii) *Data and assumptions.* The reliability of the results derived from the comparable uncontrolled price method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply the method. See § 1.482–1(c) (Best method rule).

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of an arm's length range.

(4) *Examples.* The principles of this paragraph (b) are illustrated by the following examples.

Example 1—Comparable Sales of Same Product. USM, a U.S. manufacturer, sells the same product to both controlled and uncontrolled distributors. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales price is a delivered price and the uncontrolled sales are made f.o.b. USM's factory. Differences in the contractual terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price, and adjustments are made to the results of the uncontrolled transaction to account for such differences. No other material difference has been identified between the controlled and uncontrolled transactions. Because USM sells in both the controlled and uncontrolled transactions, it is likely that all material differences between the two transactions have been identified. In addition, because the

comparable uncontrolled price method is applied to an uncontrolled comparable with no product differences, and there are only minor contractual differences that have a definite and reasonably ascertainable effect on price, the results of this application of the comparable uncontrolled price method will provide the most direct and reliable measure of an arm's length result. See § 1.482–3(b)(2)(ii)(A).

Example 2—Effect of Trademark. The facts are the same as in *Example 1*, except that USM affixes its valuable trademark to the property sold in the controlled transactions, but does not affix its trademark to the property sold in the uncontrolled transactions. Under the facts of this case, the effect on price of the trademark is material and cannot be reliably estimated. Because there are material product differences for which reliable adjustments cannot be made, the comparable uncontrolled price method is unlikely to provide a reliable measure of the arm's length result. See § 1.482–3(b)(2)(ii)(A).

Example 3—Minor Product Differences. The facts are the same as in *Example 1*, except that USM, which manufactures business machines, makes minor modifications to the physical properties of the machines to satisfy specific requirements of a customer in controlled sales, but does not make these modifications in uncontrolled sales. If the minor physical differences in the product have a material effect on prices, adjustments to account for these differences must be made to the results of the uncontrolled transactions according to the provisions of § 1.482- 1(d)(2), and such adjusted results may be used as a measure of the arm's length result.

Example 4—Effect of Geographic Differences. FM, a foreign specialty radio manufacturer, sells its radios to a controlled U.S. distributor, AM, that serves the West Coast of the United States. FM sells its radios to uncontrolled distributors to serve other regions in the United States. The product in the controlled and uncontrolled transactions is the same, and all other circumstances surrounding the controlled and uncontrolled transactions are substantially the same, other than the geographic differences. If the geographic differences are unlikely to have a material effect on price, or they have definite and reasonably ascertainable effects for which adjustments are made, then the adjusted results of the uncontrolled sales may be used under the comparable uncontrolled price method to establish an arm's length range pursuant to § 1.482–1(e)(iii)(A). If the effects of the geographic differences would be material but cannot be reliably ascertained, then the reliability of the results will be diminished. However, the comparable uncontrolled price method may still provide the most reliable measure of an arm's length result, pursuant to the best method rule of § 1.482–1(c), and, if so, an arm's length range may be established pursuant to § 1.482–1(e)(iii)(B).

(5) *Indirect evidence of comparable uncontrolled transactions*—(i) *In general.* A comparable uncontrolled price may be derived from data from public exchanges or quotation media, but only if the following requirements are met—

(A) The data is widely and routinely used in the ordinary course of business in the industry to negotiate prices for uncontrolled sales;

(B) The data derived from public exchanges or quotation media is used to set prices in the controlled transaction in the same way it is used by uncontrolled taxpayers in the industry; and

(C) The amount charged in the controlled transaction is adjusted to reflect differences in product quality and quantity, contractual terms, transportation costs, market conditions, risks borne, and other factors that affect the price that would be agreed to by uncontrolled taxpayers.

(ii) *Limitation.* Use of data from public exchanges or quotation media may not be appropriate under extraordinary market conditions.

(iii) *Examples.* The following examples illustrate this paragraph (b)(5).

Example 1—Use of Quotation Medium. (i) On June 1, USOil, a United States corporation, enters into a contract to purchase crude oil from its foreign subsidiary, FS, in Country Z. USOil and FS agree to base their sales price on the average of the prices published for that crude in a quotation medium in the five days before August 1, the date set for delivery. USOil and FS agree to adjust the price for the particular circumstances of their transactions, including the quantity of the crude sold, contractual terms, transportation costs, risks borne, and other factors that affect the price.

(ii) The quotation medium used by USOil and FS is widely and routinely used in the ordinary course of business in the industry to establish prices for uncontrolled sales. Because USOil and FS use the data to set their sales price in the same way that unrelated parties use the data from the quotation medium to set their sales prices, and appropriate adjustments were made to account for differences, the price derived from the quotation medium used by USOil and FS to set their transfer prices will be considered evidence of a comparable uncontrolled price.

Example 2—Extraordinary Market Conditions. The facts are the same as in *Example 1*, except that before USOil and FS enter into their contract, war breaks out in Countries X and Y, major oil producing countries, causing significant instability in world petroleum markets. As a result, given the significant instability in the price of oil, the prices listed on the quotation medium may not reflect a reliable measure of an arm's length result. See § 1.482–3(b)(5)(ii).

(c) *Resale price method*—(1) *In general.* The resale price method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the gross profit margin realized in comparable uncontrolled transactions. The resale price method measures the value of functions performed, and is ordinarily used in cases involving the purchase and resale of tangible property in which the reseller has not added substantial value to the tangible goods by physically altering the goods before resale. For this purpose, packaging, repackaging, labelling, or minor assembly do not ordinarily constitute physical alteration. Further the resale price method is not ordinarily used in cases where the controlled taxpayer uses its intangible property to add substantial value to the tangible goods.

(2) *Determination of arm's length price*—(i) *In general.* The resale price method measures an arm's length price by subtracting the appropriate gross profit from the applicable resale price for the property involved in the controlled transaction under review.

(ii) *Applicable resale price.* The applicable resale price is equal to either the resale price of the particular item of property involved or the price at which contemporaneous resales of the same property are made. If the property purchased in the controlled sale is resold to one or more related parties in a series of controlled sales before being resold in an uncontrolled sale, the applicable resale price is the price at which the property is resold to an uncontrolled party, or the price at which contemporaneous resales of the same property are made. In such case, the determination of the appropriate gross profit will take into account the functions of all members of the group participating in the series of controlled sales and final uncontrolled resales, as well as any other relevant factors described in § 1.482–1(d)(3).

(iii) *Appropriate gross profit.* The appropriate gross profit is computed by multiplying the applicable resale price by the gross profit margin (expressed as a percentage of total revenue derived from sales) earned in comparable uncontrolled transactions.

(iv) *Arm's length range.* See § 1.482–1(e)(2) for determination of the arm's length range.

(3) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from applications of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the resale price method is discussed in paragraphs (c)(3) (ii) and (iii) of this section.

(ii) *Comparability*—(A) *Functional comparability.* The degree of comparability between an uncontrolled transaction and a controlled transaction

is determined by applying the comparability provisions of § 1.482–1(d). A reseller's gross profit provides compensation for the performance of resale functions related to the product or products under review, including an operating profit in return for the reseller's investment of capital and the assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms, or adjustments to account for the effects of any such differences. If possible, appropriate gross profit margins should be derived from comparable uncontrolled purchases and resales of the reseller involved in the controlled sale, because similar characteristics are more likely to be found among different resales of property made by the same reseller than among sales made by other resellers. In the absence of comparable uncontrolled transactions involving the same reseller, an appropriate gross profit margin may be derived from comparable uncontrolled transactions of other resellers.

(B) *Other comparability factors.* Comparability under this method is less dependent on close physical similarity between the products transferred than under the comparable uncontrolled price method. For example, distributors of a wide variety of consumer durables might perform comparable distribution functions without regard to the specific durable goods distributed. Substantial differences in the products may, however, indicate significant functional differences between the controlled and uncontrolled taxpayers. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions would involve the distribution of products of the same general type (e.g., consumer electronics). Furthermore, significant differences in the value of the distributed goods due, for example, to the value of a trademark, may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross profit may be adversely affected by factors that have less effect on prices. For example, gross profit may be affected by a variety of other factors, including cost structures (as reflected, for example, in the age of plant and equipment), business experience (such as whether the business is in a start-up phase or is mature), or management efficiency (as indicated, for example, by expanding or contracting sales or executive compensation over time). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(C) *Adjustments for differences between controlled and uncontrolled transactions.* If there are material differences between the controlled and uncontrolled transactions that would affect the gross profit margin, adjustments should be made to the gross profit margin earned with respect to the uncontrolled transaction according to the comparability provisions of § 1.482–1(d)(2). For this purpose, consideration of operating expenses associated with functions performed and risks assumed may be necessary, because differences in functions performed are often reflected in operating expenses. If there are differences in functions performed, however, the effect on gross profit of such differences is not necessarily equal to the differences in the amount of related operating expenses. Specific examples of the factors that may be particularly relevant to this method include—

(*1*) Inventory levels and turnover rates, and corresponding risks, including any price protection programs offered by the manufacturer;

(*2*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms);

(*3*) Sales, marketing, advertising programs and services, (including promotional programs, rebates, and co-op advertising);

(*4*) The level of the market (e.g., wholesale, retail, etc.); and

(*5*) Foreign currency risks.

(D) *Sales agent.* If the controlled taxpayer is comparable to a sales agent that does not take title to goods or otherwise assume risks with respect to ownership of such goods, the commission earned by such sales agent, expressed as a percentage of the uncontrolled sales price of the goods involved, may be used as the comparable gross profit margin.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the resale price method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect the gross profit margin affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect the gross profit margin, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, the controlled transaction and the uncontrolled comparable should be consistent in the reporting of items (such as discounts, returns and allowances, rebates, transportation costs, insurance, and packaging) between cost of goods sold and operating expenses.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. A controlled taxpayer sells property to another member of its controlled group that resells the property in uncontrolled sales. There are no changes in the beginning and ending inventory for the year under review. Information regarding an uncontrolled comparable is sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified and adjusted for. If the applicable resale price of the property involved in the controlled sale is $100 and the appropriate gross profit margin is 20%, then an arm's length result of the controlled sale is a price of $80 ($100 minus (20%×$100)).

Example 2. (i) S, a U.S. corporation, is the exclusive distributor for FP, its foreign parent. There are no changes in the beginning and ending inventory for the year under review. S's total reported cost of goods sold is $800, consisting of $600 for property purchased from FP and $200 of other costs of goods sold incurred to unrelated parties. S's applicable resale price and reported gross profit are as follows:

Applicable resale price	$1000
Cost of goods sold:	
Cost of purchases from FP	600
Costs incurred to unrelated parties	200
Reported gross profit	200

(ii) The district director determines that the appropriate gross profit margin is 25%. Therefore, S's appropriate gross profit is $250 (i.e., 25% of the applicable resale price of $1000). Because S is incurring costs of sales to unrelated parties, an arm's length price for property purchased from FP must be determined under a two-step process. First, the appropriate gross profit ($250) is subtracted from the applicable resale price ($1000). The resulting amount ($750) is then reduced by the costs of sales incurred to unrelated parties ($200). Therefore, an arm's length price for S's cost of sales of FP's product in this case equals $550 (i.e., $750 minus $200).

Example 3. FP, a foreign manufacturer, sells Product to USSub, its U.S. subsidiary, which in turn sells Product to its domestic affiliate Sister. Sister sells Product to unrelated buyers. In this case, the applicable resale price is the price at which Sister sells Product in uncontrolled transactions. The determination of the appropriate gross profit margin for the sale from FP to USSub will

take into account the functions performed by USSub and Sister, as well as other relevant factors described in § 1.482–1(d)(3).

Example 4. (i) USSub, a U.S. corporation, is the exclusive distributor of widgets for its foreign parent. To determine whether the gross profit margin of 25% earned by USSub is an arm's length result, the district director considers applying the resale price method. There are several uncontrolled distributors that perform similar functions under similar circumstances in uncontrolled transactions. However, the uncontrolled distributors treat certain costs such as discounts and insurance as cost of goods sold, while USSub treats such costs as operating expenses. In such cases, accounting reclassifications, pursuant to § 1.482–3(c)(iii)(B), must be made to ensure consistent treatment of such material items. Inability to make such accounting reclassifications will decrease the reliability of the results of the uncontrolled transactions.

Example 5. (i) USP, a U.S. corporation, manufactures Product X, an unbranded widget, and sells it to FSub, its wholly owned foreign subsidiary. FSub acts as a distributor of Product X in country M, and sells it to uncontrolled parties in that country. Uncontrolled distributors A, B, C, D, and E distribute competing products of approximately similar value in country M. All such products are unbranded.

(ii) Relatively complete data is available regarding the functions performed and risks borne by the uncontrolled distributors and the contractual terms under which they operate in the uncontrolled transactions. In addition, data is available to ensure accounting consistency between all of the uncontrolled distributors and FSub. Because the available data is sufficiently complete and accurate to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified, such differences have a definite and reasonably ascertainable effect, and reliable adjustments are made to account for such differences, the results of each of the uncontrolled distributors may be used to establish an arm's length range pursuant to § 1.482–1(e)(2)(iii)(A).

Example 6. The facts are the same as *Example 5*, except that sufficient data is not available to determine whether any of the uncontrolled distributors provide warranties or to determine the payment terms of the contracts. Because differences in these contractual terms could materially affect price or profits, the inability to determine whether these differences exist between the controlled and uncontrolled transactions diminishes the reliability of the results of the uncontrolled comparables. However, the reliability of the results may be enhanced by the application of a statistical method when establishing an arm's length range pursuant to § 1.482–1(e)(2)(iii)(B).

Example 7. The facts are the same as in *Example 5*, except that Product X is branded with a valuable trademark that is owned by P. A, B, and C distribute unbranded competing products, while D and E distribute products branded with other trademarks. D and E do not own any rights in the trademarks under which their products are sold. The value of the products that A, B, and C sold are not similar to the value of the products sold by S. The value of products sold by D and E, however, is similar to that of Product X. Although close product similarity is not as important for a reliable application of the resale price method as for the comparable uncontrolled price method, significant differences in the value of the products involved in the controlled and uncontrolled transactions may affect the reliability of the results. In addition, because in this case it is difficult to determine the effect the trademark will have on price or profits, reliable adjustments for the differences cannot be made. Because D and E have a higher level of comparability than A, B, and C with respect to S, pursuant to § 1.482–1(e)(2)(ii), only D and E may be included in an arm's length range.

(d) *Cost plus method*—(1) *In general.* The cost plus method evaluates whether the amount charged in a controlled transaction is arm's length by reference to the gross profit markup realized in comparable uncontrolled transactions. The cost plus method is ordinarily used in cases involving the manufacture, assembly, or other production of goods that are sold to related parties.

(2) *Determination of arm's length price*—(i) *In general.* The cost plus method measures an arm's length price by adding the appropriate gross profit to the controlled taxpayer's costs of producing the property involved in the controlled transaction.

(ii) *Appropriate gross profit.* The appropriate gross profit is computed by multiplying the controlled taxpayer's cost of producing the transferred property by the gross profit markup, expressed as a percentage of cost, earned in comparable uncontrolled transactions.

(iii) *Arm's length range.* See § 1.482–1(e)(2) for determination of an arm's length range.

(3) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from the application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c).

(ii) *Comparability*—(A) *Functional comparability.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the comparability provisions of § 1.482–1(d). A producer's gross profit provides compensation for the performance of the production functions related to the product or products under review, including an operating profit for the producer's investment of capital and assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on similarity of functions performed, risks borne, and contractual terms, or adjustments to account for the effects of any such differences. If possible, the appropriate gross profit markup should be derived from comparable uncontrolled transactions of the taxpayer involved in the controlled sale, because similar characteristics are more likely to be found among sales of property by the same producer than among sales by other producers. In the absence of such sales, an appropriate gross profit markup may be derived from comparable uncontrolled sales of other producers whether or not such producers are members of the same controlled group.

(B) *Other comparability factors.*. Comparability under this method is less dependent on close physical similarity between the products transferred than under the comparable uncontrolled price method. Substantial differences in the products may, however, indicate significant functional differences between the controlled and uncontrolled taxpayers. Thus, it ordinarily would be expected that the controlled and uncontrolled transactions involve the production of goods within the same product categories. Furthermore, significant differences in the value of the products due, for example, to the value of a trademark, may also affect the reliability of the comparison. Finally, the reliability of profit measures based on gross profit may be adversely affected by factors that have less effect on prices. For example, gross profit may be affected by a variety of other factors, including cost structures (as reflected, for example, in the age of plant and equipment), business experience (such as whether the business is in a start-up phase or is mature), or management efficiency (as indicated, for example, by expanding or contracting sales or executive compensation over time). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(C) *Adjustments for differences between controlled and uncontrolled transactions.* If there are material differences between the controlled and uncontrolled transactions that would affect the gross profit markup, adjustments should be made to the gross profit markup earned in the comparable uncontrolled transaction according to the provisions of § 1.482–1(d)(2). For this purpose, consideration of the operating expenses associated with the functions performed and risks assumed

may be necessary, because differences in functions performed are often reflected in operating expenses. If there are differences in functions performed, however, the effect on gross profit of such differences is not necessarily equal to the differences in the amount of related operating expenses. Specific examples of the factors that may be particularly relevant to this method include—

(*1*) The complexity of manufacturing or assembly;

(*2*) Manufacturing, production, and process engineering;

(*3*) Procurement, purchasing, and inventory control activities;

(*4*) Testing functions;

(*5*) Selling, general, and administrative expenses;

(*6*) Foreign currency risks; and

(*7*) Contractual terms (e.g., scope and terms of warranties provided, sales or purchase volume, credit terms, transport terms).

(D) *Purchasing agent.* If a controlled taxpayer is comparable to a purchasing agent that does not take title to property or otherwise assume risks with respect to ownership of such goods, the commission earned by such purchasing agent, expressed as a percentage of the purchase price of the goods, may be used as the appropriate gross profit markup.

(iii) *Data and assumptions*—(A) *In general.* The reliability of the results derived from the cost plus method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(B) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect the gross profit margin affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect the gross profit markup, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, the controlled transaction and the comparable uncontrolled transaction should be consistent in the reporting of costs between cost of goods sold and operating expenses. The term *cost of producing* includes the cost of acquiring property that is held for resale.

(4) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. (i) USP, a domestic manufacturer of computer components, sells its products to FS, its foreign distributor. UT1, UT2, and UT3 are domestic computer component manufacturers that sell to uncontrolled foreign purchasers.

(ii) Relatively complete data is available regarding the functions performed and risks borne by UT1, UT2, and UT3, and the contractual terms in the uncontrolled transactions. In addition, data is available to ensure accounting consistency between all of the uncontrolled manufacturers and USP. Because the available data is sufficiently complete to conclude that it is likely that all material differences between the controlled and uncontrolled transactions have been identified, the effect of the differences are definite and reasonably ascertainable, and reliable adjustments are made to account for the differences, an arm's length range can be established pursuant to § 1.482–1(e)(2)(iii)(A).

Example 2. The facts are the same as in *Example 1*, except that USP accounts for supervisory, general, and administrative costs as operating expenses, which are not allocated to its sales to FS. The gross profit markups of UT1, UT2, and UT3, however, reflect supervisory, general, and administrative expenses because they are accounted for as costs of goods sold. Accordingly, the gross profit markups of UT1, UT2, and UT3 must be adjusted as provided in paragraph (d)(3)(iii)(B) of this section to provide accounting consistency. If data is not sufficient to determine whether such accounting differences exist between the controlled and uncontrolled transactions, the reliability of the results will be decreased.

Example 3. The facts are the same as in *Example 1*, except that under its contract with FS, USP uses materials consigned by FS. UT1, UT2, and UT3, on the other hand, purchase their own materials, and their gross profit markups are determined by including the costs of materials. The fact that USP does not carry an inventory risk by purchasing its own materials while the uncontrolled producers carry inventory is a significant difference that may require an adjustment if the difference has a material effect on the gross profit markups of the uncontrolled producers. Inability to reasonably ascertain the effect of the difference on the gross profit markups will affect the reliability of the results of UT1, UT2, and UT3.

Example 4. (i) FS, a foreign corporation, produces apparel for USP, its U.S. parent corporation. FS purchases its materials from unrelated suppliers and produces the apparel according to designs provided by USP. The district director identifies 10 uncontrolled foreign apparel producers that operate in the same geographic market and are similar in many respect to FS.

(ii) Relatively complete data is available regarding the functions performed and risks borne by the uncontrolled producers. In addition, data is sufficiently detailed to permit adjustments for differences in accounting practices. However, sufficient data is not available to determine whether it is likely that all material differences in contractual terms have been identified. For example, it is not possible to determine which parties in the uncontrolled transactions bear currency risks. Because differences in these contractual terms could materially affect price or profits, the inability to determine whether differences exist between the controlled and uncontrolled transactions will diminish the reliability of these results. Therefore, the reliability of the results of the uncontrolled transactions must be enhanced by the application of a statistical method in establishing an arm's length range pursuant to § 1.482–1(e)(2)(iii)(B).

(e) *Unspecified methods*—(1) *In general.* Methods not specified in paragraphs (a)(1), (2), (3), (4), and (5) of this section may be used to evaluate whether the amount charged in a controlled transaction is arm's length. Any method used under this paragraph (e) must be applied in accordance with the provisions of § 1.482–1. Consistent with the specified methods, an unspecified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. For example, the comparable uncontrolled price method compares a controlled transaction to similar uncontrolled transactions to provide a direct estimate of the price to which the parties would have agreed had they resorted directly to a market alternative to the controlled transaction. Therefore, in establishing whether a controlled transaction achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c). Therefore, in accordance with § 1.482–1(d) (Comparability), to the extent that a method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(2) *Example.* The following example illustrates an application of the principle of this paragraph (e).

Example. Amcan, a U.S. company, produces unique vessels for storing and transporting toxic waste, toxicans, at its U.S. production facility. Amcan agrees by contract to supply its Canadian subsidiary, Cancan, with 4000 toxicans per year to serve the Canadian market for toxicans. Prior to entering into the contract with Cancan, Amcan had received a bona fide offer from an independent Canadian waste disposal

company, Cando, to serve as the Canadian distributor for toxicans and to purchase a similar number of toxicans at a price of $5,000 each. If the circumstances and terms of the Cancan supply contract are sufficiently similar to those of the Cando offer, or sufficiently reliable adjustments can be made for differences between them, then the Cando offer price of $5,000 may provide reliable information indicating that an arm's length consideration under the Cancan contract will not be less than $5,000 per toxican.

(f) *Coordination with intangible property rules.* The value of an item of tangible property may be affected by the value of intangible property, such as a trademark affixed to the tangible property (embedded intangible). Ordinarily, the transfer of tangible property with an embedded intangible will not be considered a transfer of such intangible if the controlled purchaser does not acquire any rights to exploit the intangible property other than rights relating to the resale of the tangible property under normal commercial practices. Pursuant to § 1.482–1(d)(3)(v), however, the embedded intangible must be accounted for in evaluating the comparability of the controlled transaction and uncontrolled comparables. For example, because product comparability has the greatest effect on an application of the comparable uncontrolled price method, trademarked tangible property may be insufficiently comparable to unbranded tangible property to permit a reliable application of the comparable uncontrolled price method. The effect of embedded intangibles on comparability will be determined under the principles of § 1.482–4. If the transfer of tangible property conveys to the recipient a right to exploit an embedded intangible (other than in connection with the resale of that item of tangible property), it may be necessary to determine the arm's length consideration for such intangible separately from the tangible property, applying methods appropriate to determining the arm's length result for a transfer of intangible property under § 1.482–4. For example, if the transfer of a machine conveys the right to exploit a manufacturing process incorporated in the machine, then the arm's length consideration for the transfer of that right must be determined separately under § 1.482–4.

§ 1.482–4 Methods to determine taxable income in connection with a transfer of intangible property.

(a) *In general.* The arm's length amount charged in a controlled transfer of intangible property must be determined under one of the four methods listed in this paragraph (a). Each of the methods must be applied in accordance with all of the provisions of § 1.482–1, including the best method rule of § 1.482–1(c), the comparability analysis of § 1.482–1(d), and the arm's length range of § 1.482–1(e). The arm's length consideration for the transfer of an intangible determined under this section must be commensurate with the income attributable to the intangible. See § 1.482–4(f)(2) (Periodic adjustments). The available methods are—

(1) The comparable uncontrolled transaction method, described in paragraph (c) of this section;

(2) The comparable profits method, described in § 1.482–5;

(3) The profit split method, described in § 1.482–6; and

(4) Unspecified methods described in paragraph (d) of this section.

(b) *Definition of intangible.* For purposes of section 482, an intangible is an asset that comprises any of the following items and has substantial value independent of the services of any individual—

(1) Patents, inventions, formulae, processes, designs, patterns, or know-how;

(2) Copyrights and literary, musical, or artistic compositions;

(3) Trademarks, trade names, or brand names;

(4) Franchises, licenses, or contracts;

(5) Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and

(6) Other similar items. For purposes of section 482, an item is considered similar to those listed in paragraph (b)(1) through (5) of this section if it derives its value not from its physical attributes but from its intellectual content or other intangible properties.

(c) *Comparable uncontrolled transaction method*—(1) *In general.* The comparable uncontrolled transaction method evaluates whether the amount charged for a controlled transfer of intangible property was arm's length by reference to the amount charged in a comparable uncontrolled transaction. The amount determined under this method may be adjusted as required by paragraph (f)(2) of this section (Periodic adjustments).

(2) *Comparability and reliability considerations*—(i) *In general.* Whether results derived from applications of this method are the most reliable measure of an arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). The application of these factors under the comparable uncontrolled transaction method is discussed in paragraphs (c)(2)(ii), (iii), and (iv) of this section.

(ii) *Reliability.* If an uncontrolled transaction involves the transfer of the same intangible under the same, or substantially the same, circumstances as the controlled transaction, the results derived from applying the comparable uncontrolled transaction method will generally be the most direct and reliable measure of the arm's length result for the controlled transfer of an intangible. Circumstances between the controlled and uncontrolled transactions will be considered substantially the same if there are at most only minor differences that have a definite and reasonably ascertainable effect on the amount charged and for which appropriate adjustments are made. If such uncontrolled transactions cannot be identified, uncontrolled transactions that involve the transfer of comparable intangibles under comparable circumstances may be used to apply this method, but the reliability of the analysis will be reduced.

(iii) *Comparability*—(A) *In general.* The degree of comparability between controlled and uncontrolled transactions is determined by applying the comparability provisions of § 1.482–1(d). Although all of the factors described in § 1.482–1(d)(3) must be considered, specific factors may be particularly relevant to this method. In particular, the application of this method requires that the controlled and uncontrolled transactions involve either the same intangible property or comparable intangible property, as defined in paragraph (c)(2)(iii)(B)(*1*) of this section. In addition, because differences in contractual terms, or the economic conditions in which transactions take place, could materially affect the amount charged, comparability under this method also depends on similarity with respect to these factors, or adjustments to account for material differences in such circumstances.

(B) *Factors to be considered in determining comparability*—(*1*) *Comparable intangible property.* In order for the intangible property involved in an uncontrolled transaction to be considered comparable to the intangible property involved in the controlled transaction, both intangibles must—

(*i*) Be used in connection with similar products or processes within the same general industry or market; and

(*ii*) Have similar profit potential. The profit potential of an intangible is most reliably measured by directly calculating the net present value of the benefits to be realized (based on prospective profits to be realized or costs to be saved) through the use or

subsequent transfer of the intangible, considering the capital investment and start-up expenses required, the risks to be assumed, and other relevant considerations. The need to reliably measure profit potential increases in relation to both the total amount of potential profits and the potential rate of return on investment necessary to exploit the intangible. If the information necessary to directly calculate net present value of the benefits to be realized is unavailable, and the need to reliably measure profit potential is reduced because the potential profits are relatively small in terms of total amount and rate of return, comparison of profit potential may be based upon the factors referred to in paragraph (c)(2)(iii)(B)(*2*) of this section. See *Example 3* of § 1.482–4(c)(4). Finally, the reliability of a measure of profit potential is affected by the extent to which the profit attributable to the intangible can be isolated from the profit attributable to other factors, such as functions performed and other resources employed.

(2) *Comparable circumstances.* In evaluating the comparability of the circumstances of the controlled and uncontrolled transactions, although all of the factors described in § 1.482–1(d)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(*i*) The terms of the transfer, including the exploitation rights granted in the intangible, the exclusive or nonexclusive character of any rights granted, any restrictions on use, or any limitations on the geographic area in which the rights may be exploited;

(*ii*) The stage of development of the intangible (including, where appropriate, necessary governmental approvals, authorizations, or licenses) in the market in which the intangible is to be used;

(*iii*) Rights to receive updates, revisions, or modifications of the intangible;

(*iv*) The uniqueness of the property and the period for which it remains unique, including the degree and duration of protection afforded to the property under the laws of the relevant countries;

(*v*) The duration of the license, contract, or other agreement, and any termination or renegotiation rights;

(*vi*) Any economic and product liability risks to be assumed by the transferee;

(*vii*) The existence and extent of any collateral transactions or ongoing business relationships between the transferee and transferor; and

(*viii*) The functions to be performed by the transferor and transferee, including any ancillary or subsidiary services.

(*iv*) *Data and assumptions.* The reliability of the results derived from the comparable uncontrolled transaction method is affected by the completeness and accuracy of the data used and the reliability of the assumptions made to apply this method. See § 1.482–1(c) (Best method rule).

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of an arm's length range.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. (i) USpharm, a U.S. pharmaceutical company, develops a new drug Z that is a safe and effective treatment for the disease zeezee. USpharm has obtained patents covering drug Z in the United States and in various foreign countries. USpharm has also obtained the regulatory authorizations necessary to market drug Z in the United States and in foreign countries.

(ii) USpharm licenses its subsidiary in country X, Xpharm, to produce and sell drug Z in country X. At the same time, it licenses an unrelated company, Ydrug, to produce and sell drug Z in country Y, a neighboring country. Prior to licensing the drug, USpharm had obtained patent protection and regulatory approvals in both countries and both countries provide similar protection for intellectual property rights. Country X and country Y are similar countries in terms of population, per capita income and the incidence of disease zeezee. Consequently, drug Z is expected to sell in similar quantities and at similar prices in both countries. In addition, costs of producing and marketing drug Z in each country are expected to be approximately the same.

(iii) USpharm and Xpharm establish terms for the license of drug Z that are identical in every material respect, including royalty rate, to the terms established between USpharm and Ydrug. In this case the district director determines that the royalty rate established in the Ydrug license agreement is a reliable measure of the arm's length royalty rate for the Xpharm license agreement.

Example 2. The facts are the same as in *Example 1*, except that the incidence of the disease zeezee in Country Y is much higher than in Country X. In this case, the profit potential from exploitation of the right to make and sell drug Z is likely to be much higher in country Y than it is in Country X. Consequently, the Ydrug license agreement is unlikely to provide a reliable measure of the arm's length royalty rate for the Xpharm license.

Example 3 (i) FP, is a foreign company that designs, manufactures and sells industrial equipment. FP has developed proprietary components that are incorporated in its products. These components are important in the operation of FP's equipment and some of them have distinctive features, but other companies produce similar components and none of these components by itself accounts for a substantial part of the value of FP's products.

(ii) FP licenses its U.S. subsidiary, USSub, exclusive North American rights to use the patented technology for producing component X, a heat exchanger used for cooling operating mechanisms in industrial equipment. Component X incorporates proven technology that makes it somewhat more efficient than the heat exchangers commonly used in industrial equipment. FP also agrees to provide technical support to help adapt component X to USSub's products and to assist with initial production. Under the terms of the license agreement USSub pays FP a royalty equal to 3 percent of sales of USSub equipment incorporating component X.

(iii) FP does not license unrelated parties to use component X, but many similar components are transferred between uncontrolled taxpayers. Consequently, the district director decides to apply the comparable uncontrolled transaction method to evaluate whether the 3 percent royalty for component X is an arm's length royalty.

(iv) The district director uses a database of company documents filed with the Securities and Exchange Commission (SEC) to identify potentially comparable license agreements between uncontrolled taxpayers that are on file with the SEC. The district director identifies 40 license agreements that were entered into in the same year as the controlled transfer or in the prior or following year, and that relate to transfers of technology associated with industrial equipment that has similar applications to USSub's products. Further review of these uncontrolled agreements indicates that 25 of them involved components that have a similar level of technical sophistication as component X and could be expected to play a similar role in contributing to the total value of the final product.

(v) The district director makes a detailed review of the terms of each of the 25 uncontrolled agreements and finds that 15 of them are similar to the controlled agreement in that they all involve—

(A) The transfer of exclusive rights for the North American market;

(B) Products for which the market could be expected to be of a similar size to the market for the products into which USSub incorporates component X;

(C) The transfer of patented technology;

(D) Continuing technical support;

(E) Access to technical improvements;

(F) Technology of a similar age; and

(G) A similar duration of the agreement.

(vi) Based on these factors and the fact that none of the components to which these license agreements relate accounts for a substantial part of the value of the final products, the district director concludes that these fifteen intangibles have similar profit potential to the component X technology.

(vii) The 15 uncontrolled comparables produce the following royalty rates:

License	Royalty rate (percent)
1	1.0

License	Royalty rate (percent)
2	1.0
3	1.25
4	1.25
5	1.5
6	1.5
7	1.75
8	2.0
9	2.0
10	2.0
11	2.25
12	2.5
13	2.5
14	2.75
15	3.0

(viii) Although the uncontrolled comparables are clearly similar to the controlled transaction, it is likely that unidentified material differences exist between the uncontrolled comparables and the controlled transaction. Therefore, an appropriate statistical technique must be used to establish the arm's length range. In this case the district director uses the interquartile range to determine the arm's length range. Therefore, the arm's length range covers royalty rates from 1.25 to 2.5 percent, and an adjustment is warranted to the 3 percent royalty charged in the controlled transfer. The district director determines that the appropriate adjustment corresponds to a reduction in the royalty rate to 2.0 percent, which is the median of the uncontrolled comparables.

Example 4. (i) USdrug, a U.S. pharmaceutical company, has developed a new drug, Nosplit, that is useful in treating migraine headaches and produces no significant side effects. Nosplit replaces another drug, Lessplit, that USdrug had previously produced and marketed as a treatment for migraine headaches. A number of other drugs for treating migraine headaches are already on the market, but Nosplit can be expected rapidly to dominate the worldwide market for such treatments and to command a premium price since all other treatments produce side effects. Thus, USdrug projects that extraordinary profits will be derived from Nosplit in the U.S. market and other markets.

(ii) USdrug licenses its newly established European subsidiary, Eurodrug, the rights to produce and market Nosplit in the European market. In setting the royalty rate for this license, USdrug considers the royalty that it established previously when it licensed the right to produce and market Lessplit in the European market to an unrelated European pharmaceutical company. In many respects the two license agreements are closely comparable. The drugs were licensed at the same stage in their development and the agreements conveyed identical rights to the licensees. Moreover, there appear to have been no significant changes in the European market for migraine headache treatments since Lessplit was licensed. However, at the time that Lessplit was licensed there were several other similar drugs already on the market to which Lessplit was not in all cases superior. Consequently, the projected and actual Lessplit profits were substantially less than the projected Nosplit profits. Thus, USdrug concludes that the profit potential of Lessplit is not similar to the profit potential of Nosplit, and the Lessplit license agreement consequently is not a comparable uncontrolled transaction for purposes of this paragraph (c) in spite of the other indicia of comparability between the two intangibles.

(d) *Unspecified methods*—(1) *In general.* Methods not specified in paragraphs (a)(1), (2), and (3) of this section may be used to evaluate whether the amount charged in a controlled transaction is arm's length. Any method used under this paragraph (d) must be applied in accordance with the provisions of § 1.482–1. Consistent with the specified methods, an unspecified method should take into account the general principle that uncontrolled taxpayers evaluate the terms of a transaction by considering the realistic alternatives to that transaction, and only enter into a particular transaction if none of the alternatives is preferable to it. For example, the comparable uncontrolled transaction method compares a controlled transaction to similar uncontrolled transactions to provide a direct estimate of the price the parties would have agreed to had they resorted directly to a market alternative to the controlled transaction. Therefore, in establishing whether a controlled transaction achieved an arm's length result, an unspecified method should provide information on the prices or profits that the controlled taxpayer could have realized by choosing a realistic alternative to the controlled transaction. As with any method, an unspecified method will not be applied unless it provides the most reliable measure of an arm's length result under the principles of the best method rule. See § 1.482–1(c). Therefore, in accordance with § 1.482–1(d) (Comparability), to the extent that a method relies on internal data rather than uncontrolled comparables, its reliability will be reduced. Similarly, the reliability of a method will be affected by the reliability of the data and assumptions used to apply the method, including any projections used.

(2) *Example.* The following example illustrates an application of the principle of this paragraph (d).

Example. (i) USbond is a U.S. company that licenses to its foreign subsidiary, Eurobond, a proprietary process that permits the manufacture of Longbond, a long-lasting industrial adhesive, at a substantially lower cost than otherwise would be possible. Using the proprietary process, Eurobond manufactures Longbond and sells it to related and unrelated parties for the market price of $550 per ton. Under the terms of the license agreement, Eurobond pays USbond a royalty of $100 per ton of Longbond sold. USbond also manufactures and markets Longbond in the United States.

(ii) In evaluating whether the consideration paid for the transfer of the proprietary process to Eurobond was arm's length, the district director may consider, subject to the best method rule of § 1.482–1(c), USbond's alternative of producing and selling Longbond itself. Reasonably reliable estimates indicate that if USbond directly supplied Longbond to the European market, a selling price of $300 per ton would cover its costs and provide a reasonable profit for its functions, risks and investment of capital associated with the production of Longbond for the European market. Given that the market price of Longbond was $550 per ton, by licensing the proprietary process to Eurobond, USbond forgoes $250 per ton of profit over the profit that would be necessary to compensate it for the functions, risks and investment involved in supplying Longbond to the European market itself. Based on these facts, the district director concludes that a royalty of $100 for the proprietary process is not arm's length.

(e) *Coordination with tangible property rules.* See § 1.482–3(f) for the provisions regarding the coordination between the tangible property and intangible property rules.

(f) *Special rules for transfers of intangible property*—(1) *Form of consideration.* If a transferee of an intangible pays nominal or no consideration and the transferor has retained a substantial interest in the property, the arm's length consideration shall be in the form of a royalty, unless a different form is demonstrably more appropriate.

(2) *Periodic adjustments*—(i) General rule. If an intangible is transferred under an arrangement that covers more than one year, the consideration charged in each taxable year may be adjusted to ensure that it is commensurate with the income attributable to the intangible. Adjustments made pursuant to this paragraph (f)(2) shall be consistent with the arm's length standard and the provisions of § 1.482–1. In determining whether to make such adjustments in the taxable year under examination, the district director may consider all relevant facts and circumstances throughout the period the intangible is used. The determination in an earlier year that the amount charged for an intangible was an arm's length amount will not preclude the district director in a subsequent taxable year from making an adjustment to the amount charged for the intangible in the subsequent year. A periodic adjustment under the commensurate with income requirement of section 482 may be made in a subsequent taxable year without regard to whether the taxable year of the original transfer remains open for

statute of limitation purposes. For exceptions to this rule see paragraph (f)(2)(ii) of this section.

(ii) *Exceptions*—(A) *Transactions involving the same intangible.* If the same intangible was transferred to an uncontrolled taxpayer under substantially the same circumstances as those of the controlled transaction; this transaction serves as the basis for the application of the comparable uncontrolled transaction method in the first taxable year in which substantial periodic consideration was required to be paid; and the amount paid in that year was an arm's length amount, then no allocation in a subsequent year will be made under paragraph (f)(2)(i) of this paragraph for a controlled transfer of intangible property.

(B) *Transactions involving comparable intangible.* If the arm's length result is derived from the application of the comparable uncontrolled transaction method based on the transfer of a comparable intangible under comparable circumstances to those of the controlled transaction, no allocation will be made under paragraph (f)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, such consideration was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid under the agreement, and such agreement remained in effect for the taxable year under review;

(*2*) There is a written agreement setting forth the terms of the comparable uncontrolled transaction relied upon to establish the arm's length consideration (uncontrolled agreement), which contains no provisions that would permit any change to the amount of consideration, a renegotiation, or a termination of the agreement, in circumstances comparable to those of the controlled transaction in the taxable year under review (or that contains provisions permitting only specified, non-contingent, periodic changes to the amount of consideration);

(*3*) The controlled agreement is substantially similar to the uncontrolled agreement, with respect to the time period for which it is effective and the provisions described in paragraph (f)(2)(ii)(B)(*2*) of this section;

(*4*) The controlled agreement limits use of the intangible to a specified field or purpose in a manner that is consistent with industry practice and any such limitation in the uncontrolled agreement;

(*5*) There were no substantial changes in the functions performed by the controlled transferee after the controlled agreement was executed, except changes required by events that were not foreseeable; and

(*6*) The aggregate profits actually earned or the aggregate cost savings actually realized by the controlled taxpayer from the exploitation of the intangible in the year under examination, and all past years, are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the comparability of the uncontrolled agreement was established under paragraph (c)(2) of this section.

(C) *Methods other than comparable uncontrolled transaction.* If the arm's length amount was determined under any method other than the comparable uncontrolled transaction method, no allocation will be made under paragraph (f)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, and such agreement remained in effect for the taxable year under review;

(*2*) The consideration called for in the controlled agreement was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid, and relevant supporting documentation was prepared contemporaneously with the execution of the controlled agreement;

(*3*) There have been no substantial changes in the functions performed by the transferee since the controlled agreement was executed, except changes required by events that were not foreseeable; and

(*4*) The total profits actually earned or the total cost savings realized by the controlled transferee from the exploitation of the intangible in the year under examination, and all past years, are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the controlled agreement was entered into.

(D) *Extraordinary events.* No allocation will be made under paragraph (f)(2)(i) of this section if the following requirements are met—

(*1*) Due to extraordinary events that were beyond the control of the controlled taxpayers and that could not reasonably have been anticipated at the time the controlled agreement was entered into, the aggregate actual profits or aggregate cost savings realized by the taxpayer are less than 80% or more than 120% of the prospective profits or cost savings; and

(*2*) All of the requirements of paragraph (f)(2)(ii) (B) or (C) of this section are otherwise satisfied.

(E) *Five-year period.* If the requirements of § 1.482–4 (f)(2)(ii)(B) or (f)(2)(ii)(C) are met for each year of the five-year period beginning with the first year in which substantial periodic consideration was required to be paid, then no periodic adjustment will be made under paragraph (f)(2)(i) of this section in any subsequent year.

(iii) *Examples.* The following examples illustrate this paragraph (f)(2).

Example 1. (i) USdrug, a U.S. pharmaceutical company, has developed a new drug, Nosplit, that is useful in treating migraine headaches and produces no significant side effects. A number of other drugs for treating migraine headaches are already on the market, but Nosplit can be expected rapidly to dominate the worldwide market for such treatments and to command a premium price since all other treatments produce side effects. Thus, USdrug projects that extraordinary profits will be derived from Nosplit in the U.S. and European markets.

(ii) USdrug licenses its newly established European subsidiary, Eurodrug, the rights to produce and market Nosplit for the European market for 5 years. In setting the royalty rate for this license, USdrug makes projections of the annual sales revenue and the annual profits to be derived from the exploitation of Nosplit by Eurodrug. Based on the projections, a royalty rate of 3.9% is established for the term of the license.

(iii) In Year 1, USdrug evaluates the royalty rate it received from Eurodrug. Given the high profit potential of Nosplit, USdrug is unable to locate any uncontrolled transactions dealing with licenses of comparable intangible property. USdrug therefore determines that the comparable uncontrolled transaction method will not provide a reliable measure of an arm's length royalty. However, applying the comparable profits method to Eurodrug, USdrug determines that a royalty rate of 3.9% will result in Eurodrug earning an arm's length return for its manufacturing and marketing functions.

(iv) In Year 5, the U.S. income tax return for USdrug is examined, and the district director must determine whether the royalty rate between USdrug and Eurodrug is commensurate with the income attributable to Nosplit. In making this determination, the district director considers whether any of the exceptions in § 1.482–4(f)(2)(ii) are applicable. In particular, the district director compares the profit projections attributable to Nosplit made by USdrug against the actual profits realized by Eurodrug. The projected and actual profits are as follows:

	Profit projections	Actual profits
Year 1	200	250
Year 2	250	300
Year 3	500	600
Year 4	350	200
Year 5	100	100
Total ...	1400	1450

(v) The total profits earned through Year 5 were not less than 80% nor more than 120% of the profits that were projected when the license was entered into. If the district director determines that the other requirements of § 1.482–4(f)(2)(ii)(C) were met, no adjustment will be made to the royalty rate between USdrug and Eurodrug for the license of Nosplit.

Example 2. (i) The facts are the same as in *Example 1*, except that Eurodrug's actual profits earned were much higher than the projected profits, as follows:

	Profit projections	Actual profits
Year 1	200	250
Year 2	250	500
Year 3	500	800
Year 4	350	700
Year 5	100	600
Total ...	1400	2850

(ii) In examining USdrug's tax return for Year 5, the district director considers the actual profits realized by Eurodrug in Year 5, and all past years. Accordingly, although Years 1 through 4 may be closed under the statute of limitations, for purposes of determining whether an adjustment should be made with respect to the royalty rate in Year 5 with respect to Nosplit, the district director aggregates the actual profits from those years with the profits of Year 5. However, the district director will make an adjustment, if any, only with respect to Year 5.

Example 3. (i) FP, a foreign corporation, licenses to USS, its U.S. subsidiary, a new air-filtering process that permits manufacturing plants to meet new environmental standards. The license runs for a 10-year period, and the profit derived from the new process is projected to be $15 million per year, for an aggregate profit of $150 million.

(ii) The royalty rate for the license is based on a comparable uncontrolled transaction involving a comparable intangible under comparable circumstances. The requirements of paragraphs (f)(2)(ii)(B)(*1*) through (*5*) of this section have been met. Specifically, FP and USS have entered into a written agreement that provides for a royalty in each year of the license, the royalty rate is considered arm's length for the first taxable year in which a substantial royalty was required to be paid, the license limited the use of the process to a specified field, consistent with industry practice, and there are no substantial changes in the functions performed by USS after the license was entered into.

(iii) In examining Year 4 of the license, the district director determines that the aggregate actual profits earned by USS through Year 4 are $30 million, less than 80% of the projected profits of $60 million. However, USS establishes to the satisfaction of the district director that the aggregate actual profits from the process are less than 80% of the projected profits in Year 3 because an earthquake severely damaged USS's manufacturing plant. Because the difference between the projected profits and actual profits was due to an extraordinary event that was beyond the control of USS, and could not reasonably have been anticipated at the time the license was entered into, the requirement under § 1.482–4(f)(2)(ii)(D) has been met, and no adjustment under this section is made.

(3) *Ownership of intangible property*—(i) *In general.* If the owner of the rights to exploit an intangible transfers such rights to a controlled taxpayer, the owner must receive an amount of consideration with respect to such transfer that is determined in accordance with the provisions of this section. If another controlled taxpayer provides assistance to the owner in connection with the development or enhancement of an intangible, such person may be entitled to receive consideration with respect to such assistance. See § 1.482–4(f)(3)(iii) (Allocations with respect to assistance provided to the owner). Because the right to exploit an intangible can be subdivided in various ways, a single intangible may have multiple owners for purposes of this paragraph (3)(i). Thus, for example, the owner of a trademark may license to another person the exclusive right to use that trademark in a specified geographic area for a specified period of time (while otherwise retaining the right to use the intangible). In such a case, both the licensee and the licensor will be considered owners for purposes of this paragraph (f)(3)(i), with respect to their respective exploitation rights.

(ii) *Identification of owner*—(A) *Legally protected intangible property.* The legal owner of a right to exploit an intangible ordinarily will be considered the owner for purposes of this section. Legal ownership may be acquired by operation of law or by contract under which the legal owner transfers all or part of its rights to another. Further, the district director may impute an agreement to convey legal ownership if the conduct of the controlled taxpayers indicates the existence in substance of such an agreement. See § 1.482–1(d)(3)(ii)(B) (Identifying contractual terms).

(B) *Intangible property that is not legally protected.* In the case of intangible property that is not legally protected, the developer of the intangible will be considered the owner. Except as provided in § 1.482–7T, if two or more controlled taxpayers jointly develop an intangible, for purposes of section 482, only one of the controlled taxpayers will be regarded as the developer and owner of the intangible, and the other participating members will be regarded as assisters. Ordinarily, the developer is the controlled taxpayer that bore the largest portion of the direct and indirect costs of developing the intangible, including the provision, without adequate compensation, of property or services likely to contribute substantially to developing the intangible. A controlled taxpayer will be presumed not to have borne the costs of development if, pursuant to an agreement entered into before the success of the project is known, another person is obligated to reimburse the controlled taxpayer for its costs. If it cannot be determined which controlled taxpayer bore the largest portion of the costs of development, all other facts and circumstances will be taken into consideration, including the location of the development activities, the capability of each controlled taxpayer to carry on the project independently, the extent to which each controlled taxpayer controls the project, and the conduct of the controlled taxpayers.

(iii) *Allocations with respect to assistance provided to the owner.* Allocations may be made to reflect an arm's length consideration for assistance provided to the owner of an intangible in connection with the development or enhancement of the intangible. Such assistance may include loans, services, or the use of tangible or intangible property. Assistance does not, however, include expenditures of a routine nature that an unrelated party dealing at arm's length would be expected to incur under circumstances similar to those of the controlled taxpayer. The amount of any allocation required with respect to that assistance must be determined in accordance with the applicable rules under section 482.

(iv) *Examples.* The principles of this paragraph are illustrated by the following examples.

Example 1. A, a member of a controlled group, allows B, another member of the controlled group and the owner of an intangible, to use tangible property, such as laboratory equipment, in connection with the development of the intangible. Any allocations with respect to the owner's use of the property will be determined under § 1.482–2(c).

Example 2. FP, a foreign producer of cheese, markets the cheese in countries other than the United States under the tradename

Fromage Frere. FP owns all the worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, FP decides to enter the United States market and incorporates U.S. subsidiary, USSub, to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name Fromage Frere in the United States. USSub incurs expenses that are not reimbursed by FP for developing the U.S. market for Fromage Frere. These expenses are comparable to the levels of expense incurred by independent distributors in the U.S. cheese industry when introducing a product in the U.S. market under a brand name owned by a foreign manufacturer. Since USSub would have been expected to incur these expenses if it were unrelated to FP, no allocation to USSub is made with respect to the market development activities performed by USSub.

Example 3. The facts are the same as in *Example 2*, except that the expenses incurred by USSub are significantly larger than the expenses incurred by independent distributors under similar circumstances. FP does not reimburse USSub for its expenses. The district director concludes based on this evidence that an unrelated party dealing at arm's length under similar circumstances would not have engaged in the same level of activity relating to the development of FP's marketing intangibles. The expenditures in excess of the level incurred by the independent distributors therefore are considered to be a service provided to FP that adds to the value of FP's trademark for Fromage Frere. Accordingly, the district director makes an allocation under section 482 for the fair market value of the services that USSub is considered to have performed for FP.

Example 4. The facts are the same as in *Example 3*, except that FP and USSub conclude a long term agreement under which USSub receives the exclusive right to distribute cheese in the United States under FP's trademark. USSub purchases cheese from FP at an arm's length price. Since USSub is the owner of the trademark under paragraph (f)(3)(ii)(A) of this section, and its conduct is consistent with that status, its activities related to the development of the trademark are not considered to be a service performed for the benefit of FP, and no allocation is made with respect to such activities.

(4) *Consideration not artificially limited.* The arm's length consideration for the controlled transfer of an intangible is not limited by the consideration paid in any uncontrolled transactions that do not meet the requirements of the comparable uncontrolled transaction method described in paragraph (c) of this section. Similarly, the arm's length consideration for an intangible is not limited by the prevailing rates of consideration paid for the use or transfer of intangibles within the same or similar industry.

(5) *Lump sum payments*—(i) *In general.* If an intangible is transferred in a controlled transaction for a lump sum, that amount must be commensurate with the income attributable to the intangible. A lump sum is commensurate with income in a taxable year if the equivalent royalty amount for that taxable year is equal to an arm's length royalty. The equivalent royalty amount for a taxable year is the amount determined by treating the lump sum as an advance payment of a stream of royalties over the useful life of the intangible (or the period covered by an agreement, if shorter), taking into account the projected sales of the licensee as of the date of the transfer. Thus, determining the equivalent royalty amount requires a present value calculation based on the lump sum, an appropriate discount rate, and the projected sales over the relevant period. The equivalent royalty amount is subject to periodic adjustments under § 1.482–4(f)(2)(i) to the same extent as an actual royalty payment pursuant to a license agreement.

(ii) *Exceptions.* No periodic adjustment will be made under paragraph (f)(2)(i) of this section if any of the exceptions to periodic adjustments provided in paragraph (f)(2)(ii) of this section apply.

(iii) *Example.* The following example illustrates the principle of this paragraph (f)(5).

Example. Calculation of the equivalent royalty amount. (i) FSub is the foreign subsidiary of USP, a U.S. company. USP licenses FSub the right to produce and sell the whopperchopper, a patented new kitchen appliance, for the foreign market. The license is for a period of five years, and payment takes the form of a single lump-sum charge of $500,000 that is paid at the beginning of the period.

(ii) The equivalent royalty amount for this license is determined by deriving an equivalent royalty rate equal to the lump-sum payment divided by the present discounted value of FSub's projected sales of whopperchoppers over the life of the license. Based on the riskiness of the whopperchopper business, an appropriate discount rate is determined to be 10 percent. Projected sales of whopperchoppers for each year of the license are as follows:

Year	Projected sales
1	$2,500,000
2	2,600,000
3	2,700,000
4	2,700,000
5	2,750,000

(iii) Based on this information, the present discounted value of the projected whopperchopper sales is approximately $10 million, yielding an equivalent royalty rate of approximately 5%. Thus, the equivalent royalty amounts for each year are as follows:

Year	Projected sales	Equivalent royalty amount
1	$2,500,000	$125,000
2	2,600,000	130,000
3	2,700,000	135,000
4	2,700,000	135,000
5	2,750,000	137,500

(iv) If in any of the five taxable years the equivalent royalty amount is determined not to be an arm's length amount, a periodic adjustment may be made pursuant to § 1.482–4(f)(2)(i). The adjustment in such case would be equal to the difference between the equivalent royalty amount and the arm's length royalty in that taxable year.

§ 1.482–5 Comparable profits method.

(a) *In general.* The comparable profits method evaluates whether the amount charged in a controlled transaction is arm's length based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities under similar circumstances.

(b) *Determination of arm's length result*—(1) *In general.* Under the comparable profits method, the determination of an arm's length result is based on the amount of operating profit that the tested party would have earned on related party transactions if its profit level indicator were equal to that of an uncontrolled comparable (comparable operating profit). Comparable operating profit is calculated by determining a profit level indicator for an uncontrolled comparable, and applying the profit level indicator to the financial data related to the tested party's most narrowly identifiable business activity for which data incorporating the controlled transaction is available (relevant business activity). To the extent possible, profit level indicators should be applied solely to the tested party's financial data that is related to controlled transactions. The tested party's reported operating profit is compared to the comparable operating profits derived from the profit level indicators of uncontrolled comparables to determine whether the reported operating profit represents an arm's length result.

(2) *Tested party*—(i) *In general.* For purposes of this section, the tested party will be the participant in the controlled transaction whose operating profit attributable to the controlled transactions can be verified using the most reliable data and requiring the fewest and most reliable adjustments, and for which reliable data regarding

uncontrolled comparables can be located. Consequently, in most cases the tested party will be the least complex of the controlled taxpayers and will not own valuable intangible property or unique assets that distinguish it from potential uncontrolled comparables.

(ii) *Adjustments for tested party.* The tested party's operating profit must first be adjusted to reflect all other allocations under section 482, other than adjustments pursuant to this section.

(3) *Arm's length range.* See § 1.482–1(e)(2) for the determination of the arm's length range. For purposes of the comparable profits method, the arm's length range will be established using comparable operating profits derived from a single profit level indicator.

(4) *Profit level indicators.* Profit level indicators are ratios that measure relationships between profits and costs incurred or resources employed. A variety of profit level indicators can be calculated in any given case. Whether use of a particular profit level indicator is appropriate depends upon a number of factors, including the nature of the activities of the tested party, the reliability of the available data with respect to uncontrolled comparables, and the extent to which the profit level indicator is likely to produce a reliable measure of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length, taking into account all of the facts and circumstances. The profit level indicators should be derived from a sufficient number of years of data to reasonably measure returns that accrue to uncontrolled comparables. Generally, such a period should encompass at least the taxable year under review and the preceding two taxable years. This analysis must be applied in accordance with § 1.482–1(f)(2)(iii)(D). Profit level indicators that may provide a reliable basis for comparing operating profits of the tested party and uncontrolled comparables include the following—

(i) *Rate of return on capital employed.* The rate of return on capital employed is the ratio of operating profit to operating assets. The reliability of this profit level indicator increases as operating assets play a greater role in generating operating profits for both the tested party and the uncontrolled comparable. In addition, reliability under this profit level indicator depends on the extent to which the composition of the tested party's assets is similar to that of the uncontrolled comparable. Finally, difficulties in properly valuing operating assets will diminish the reliability of this profit level indicator.

(ii) *Financial ratios.* Financial ratios measure relationships between profit and costs or sales revenue. Since functional differences generally have a greater effect on the relationship between profit and costs or sales revenue than the relationship between profit and operating assets, financial ratios are more sensitive to functional differences than the rate of return on capital employed. Therefore, closer functional comparability normally is required under a financial ratio than under the rate of return on capital employed to achieve a similarly reliable measure of an arm's length result. Financial ratios that may be appropriate include the following—

(A) Ratio of operating profit to sales; and

(B) Ratio of gross profit to operating expenses. Reliability under this profit level indicator also depends on the extent to which the composition of the tested party's operating expenses is similar to that of the uncontrolled comparables.

(iii) *Other profit level indicators.* Other profit level indicators not described in this paragraph (b)(4) may be used if they provide reliable measures of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length. However, profit level indicators based solely on internal data may not be used under this paragraph (b)(4) because they are not objective measures of profitability derived from operations of uncontrolled taxpayers engaged in similar business activities under similar circumstances.

(c) *Comparability and reliability considerations*—(1) *In general.* Whether results derived from application of this method are the most reliable measure of the arm's length result must be determined using the factors described under the best method rule in § 1.482–1(c).

(2) *Comparability*—(i) *In general.* The degree of comparability between an uncontrolled taxpayer and the tested party is determined by applying the provisions of § 1.482–1(d)(2). The comparable profits method compares the profitability of the tested party, measured by a profit level indicator (generally based on operating profit), to the profitability of uncontrolled taxpayers in similar circumstances. As with all methods that rely on external market benchmarks, the greater the degree of comparability between the tested party and the uncontrolled taxpayer, the more reliable will be the results derived from the application of this method. The determination of the degree of comparability between the tested party and the uncontrolled taxpayer depends upon all the relevant facts and circumstances, including the relevant lines of business, the product or service markets involved, the asset composition employed (including the nature and quantity of tangible assets, intangible assets and working capital), the size and scope of operations, and the stage in a business or product cycle.

(ii) *Functional, risk and resource comparability.* An operating profit represents a return for the investment of resources and assumption of risks. Therefore, although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on resources employed and risks assumed. Moreover, because resources and risks usually are directly related to functions performed, it is also important to consider functions performed in determining the degree of comparability between the tested party and an uncontrolled taxpayer. The degree of functional comparability required to obtain a reliable result under the comparable profits method, however, is generally less than that required under the resale price or cost plus methods. For example, because differences in functions performed often are reflected in operating expenses, taxpayers performing different functions may have very different gross profit margins but earn similar levels of operating profit.

(iii) *Other comparability factors.* Other factors listed in § 1.482–1(d)(3) also may be particularly relevant under the comparable profits method. Because operating profit usually is less sensitive than gross profit to product differences, reliability under the comparable profits method is not as dependent on product similarity as the resale price or cost plus method. However, the reliability of profitability measures based on operating profit may be adversely affected by factors that have less effect on results under the comparable uncontrolled price, resale price, and cost plus methods. For example, operating profit may be affected by varying cost structures (as reflected, for example, in the age of plant and equipment), differences in business experience (such as whether the business is in a start-up phase or is mature), or differences in management efficiency (as indicated, for example, by objective evidence such as expanding or contracting sales or executive compensation over time). Accordingly, if material differences in these factors are identified based on objective evidence, the reliability of the analysis may be affected.

(iv) *Adjustments for the differences between the tested party and the uncontrolled taxpayers.* If there are differences between the tested party and an uncontrolled comparable that would materially affect the profits determined under the relevant profit level indicator, adjustments should be made according to the comparability provisions of § 1.482–1(d)(2). In some cases, the assets of an uncontrolled comparable may need to be adjusted to achieve greater comparability between the tested party and the uncontrolled comparable. In such cases, the uncontrolled comparable's operating income attributable to those assets must also be adjusted before computing a profit level indicator in order to reflect the income and expense attributable to the adjusted assets. In certain cases it may also be appropriate to adjust the operating profit of the tested party and comparable parties. For example, where there are material differences in accounts payable among the comparable parties and the tested party, it will generally be appropriate to adjust the operating profit of each party by increasing it to reflect an imputed interest charge on each party's accounts payable.

(3) *Data and assumptions*—(i) *In general.* The reliability of the results derived from the comparable profits method is affected by the quality of the data and assumptions used to apply this method.

(ii) *Consistency in accounting.* The degree of consistency in accounting practices between the controlled transaction and the uncontrolled comparables that materially affect operating profit affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect operating profit, the ability to make reliable adjustments for such differences would affect the reliability of the results.

(iii) *Allocations between the relevant business activity and other activities.* The reliability of the allocation of costs, income, and assets between the relevant business activity and other activities of the tested party or an uncontrolled comparable will affect the reliability of the determination of operating profit and profit level indicators. If it is not possible to allocate costs, income, and assets directly based on factual relationships, a reasonable allocation formula may be used. To the extent direct allocations are not made, the reliability of the results derived from the application of this method is reduced relative to the results of a method that requires fewer allocations of costs, income, and assets. Similarly, the reliability of the results derived from the application of this method is affected by the extent to which it is possible to apply the profit level indicator to the tested party's financial data that is related solely to the controlled transactions. For example, if the relevant business activity is the assembly of components purchased from both controlled and uncontrolled suppliers, it may not be possible to apply the profit level indicator solely to financial data related to the controlled transactions. In such a case, the reliability of the results derived from the application of this method will be reduced.

(d) *Definitions.* The definitions set forth in paragraphs (d)(1) through (6) of this section apply for purposes of this section.

(1) *Sales revenue* means the amount of the total receipts from sale of goods and provision of services, less returns and allowances. Accounting principles and conventions that are generally accepted in the trade or industry of the controlled taxpayer under review must be used.

(2) *Gross profit* means sales revenue less cost of goods sold.

(3) *Operating expenses* includes all expenses not included in cost of goods sold except for interest expense, foreign income taxes (as defined in § 1.901–2(a)), domestic income taxes, and any other expenses not related to the operation of the relevant business activity. Operating expenses ordinarily include expenses associated with advertising, promotion, sales, marketing, warehousing and distribution, administration, and a reasonable allowance for depreciation and amortization.

(4) *Operating profit* means gross profit less operating expenses. Operating profit includes all income derived from the business activity being evaluated by the comparable profits method, but does not include interest and dividends, income derived from activities not being tested by this method, or extraordinary gains and losses that do not relate to the continuing operations of the tested party.

(5) *Reported operating profit* means the operating profit of the tested party reflected on a timely filed U.S. income tax return. If the tested party files a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return if the calculation of taxable income on its return for the taxable year takes into account the income attributable to the controlled transaction under review. If the tested party does not file a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return in any taxable year for which income attributable to the controlled transaction under review affects the calculation of the U.S. taxable income of any other member of the same controlled group. If the comparable operating profit of the tested party is determined from profit level indicators derived from financial statements or other accounting records and reports of comparable parties, adjustments may be made to the reported operating profit of the tested party in order to account for material differences between the tested party's operating profit reported for U.S income tax purposes and the tested party's operating profit for financial statement purposes. In addition, in accordance with § 1.482–1(f)(2)(iii)(D), adjustments under section 482 that are finally determined may be taken into account in determining reported operating profit.

(6) *Operating assets.* The term operating assets means the value of all assets used in the relevant business activity of the tested party, including fixed assets and current assets (such as cash, cash equivalents, accounts receivable, and inventories).

The term does not include investments in subsidiaries, excess cash, and portfolio investments. Operating assets may be measured by their net book value or by their fair market value, provided that the same method is consistently applied to the tested party and the comparable parties, and consistently applied from year to year. In addition, it may be necessary to take into account recent acquisitions, leased assets, intangibles, currency fluctuations, and other items that may not be explicitly recorded in the financial statements of the tested party or uncontrolled comparable. Finally, operating assets must be measured by the average of the values for the beginning of the year and the end of the year, unless substantial fluctuations in the value of operating assets during the year make this an inaccurate measure of the average value over the year. In such a case, a more accurate measure of the average value of operating assets must be applied.

(e) *Examples.* The following examples illustrate the application of this section.

Example 1—Transfer of tangible property resulting in no adjustment. (i) FP is a publicly traded foreign corporation with a U.S. subsidiary, USSub, that is under audit for its 1996 taxable year. FP manufactures a consumer product for worldwide distribution. USSub imports the assembled product and distributes it within the United

States at the wholesale level under the FP name.

(ii) FP does not allow uncontrolled taxpayers to distribute the product. Similar products are produced by other companies but none of them is sold to uncontrolled taxpayers or to uncontrolled distributors.

(iii) Based on all the facts and circumstances, the district director determines that the comparable profits method will provide the most reliable measure of an arm's length result. USSub is selected as the tested party because it engages in activities that are less complex than those undertaken by FP.

There is data from a number of independent operators of wholesale distribution businesses. These potential comparables are further narrowed to select companies in the same industry segment that perform similar functions and bear similar risks to USSub. An analysis of the information available on these taxpayers shows that the ratio of operating profit to sales is the most appropriate profit level indicator, and this ratio is relatively stable where at least three years are included in the average. For the taxable years 1994 through 1996, USSub shows the following results:

	1994	1995	1996	Average
Sales	$00,000	$60,000	$00,000	$20,000
Cost of Goods Sold	393,000	412,400	400,000	401,800
Operating Expenses	80,000	110,000	104,600	98,200
Operating Profit	27,000	37,600	(4,600)	20,000

(iv) After adjustments have been made to account for identified material differences between USSub and the uncontrolled distributors, the average ratio of operating profit to sales is calculated for each of the uncontrolled distributors. Applying each ratio to USSub would lead to the following comparable operating profit (COP) for USSub:

Uncontrolled distributor	OP/S (percent)	USSub COP
A	1.7	$8,840
B	3.1	16,120
C	3.8	19,760
D	4.5	23,400
E	4.7	24,440
F	4.8	24,960
G	4.9	25,480
H	6.7	34,840
I	9.9	51,480
J	10.5	54,600

(v) The data is not sufficiently complete to conclude that it is likely that all material differences between USSub and the uncontrolled distributors have been identified. Therefore, an arm's length range can be established only pursuant to § 1.482-1(e)(2)(iii)(B). The district director measures the arm's length range by the interquartile range of results, which consists of the results ranging from $19,760 to $34,840. Although USSub's operating income for 1996 shows a loss of $4,600, the district director determines that no allocation should be made, because USSub's average reported operating profit of $20,000 is within this range.

Example 2—Transfer of tangible property resulting in adjustment. (i) The facts are the same as in *Example 1* except that USSub reported the following income and expenses:

	1994	1995	1996	Average
Sales	$500,000	$560,000	$500,000	$520,000
Cost of Good Sold	370,000	460,000	400,000	410,000
Operating Expenses	110,000	110,000	110,000	110,000
Operating Profit	20,000	(10,000)	(10,000)	0

(ii) The interquartile range of comparable operating profits remains the same as derived in *Example 1*: $19,760 to $34,840. USSub's average operating profit for the years 1994 through 1996 ($0) falls outside this range. Therefore, the district director determines that an allocation may be appropriate.

(iii) To determine the amount, if any, of the allocation, the district director compares USSub's reported operating profit for 1996 to comparable operating profits derived from the uncontrolled distributors' results for 1996. The ratio of operating profit to sales in 1996 is calculated for each of the uncontrolled comparables and applied to USSub's 1996 sales to derive the following results:

Uncontrolled distributor	OP/S (percent)	USSub COP
C	0.5	$2,500
D	1.5	7,500
E	2.0	10,000
A	1.6	13,000
F	2.8	14,000
B	2.9	14,500
J	3.0	15,000
I	4.4	22,000
H	6.9	34,500
G	7.4	37,000

(iv) Based on these results, the median of the comparable operating profits for 1996 is $14,250. Therefore, USSub's income for 1996 is increased by $24,250, the difference between USSub's reported operating profit for 1996 and the median of the comparable operating profits for 1996.

Example 3—Multiple year analysis. (i) The facts are the same as in *Example 2*. In addition, the district director examines the taxpayer's results for the 1997 taxable year. As in *Example 2*, the district director increases USSub's income for the 1996 taxable year by $24,250. The results for the 1997 taxable year, together with the 1995 and 1996 taxable years, are as follows:

	1995	1996	1997	Average
Sales	$560,000	$500,000	$530,000	$530,000
Cost of Good Sold	460,000	400,000	430,000	430,000
Operating Expenses	110,000	110,000	110,000	110,000
Operating Profit	(10,000)	(10,000)	(10,000)	(10,000)

(ii) The interquartile range of comparable operating profits, based on average results from the uncontrolled comparables and average sales for USSub for the years 1995 through 1997, ranges from $15,500 to $30,000. In determining whether an allocation for the 1997 taxable year may be made, the district director compares USSub's average reported operating profit for the years 1995 through 1997 to the interquartile range of average comparable operating profits over this period. USSub's average reported

operating profit is determined without regard to the adjustment made with respect to the 1996 taxable year. See § 1.482–1(f)(2)(iii)(D). Therefore, USSub's average reported operating profit for the years 1995 through 1997 is ($10,000). Because this amount of income falls outside the interquartile range, the district director determines that an allocation may be appropriate.

(iii) To determine the amount, if any, of the allocation for the 1997 taxable year, the district director compares USSub's reported operating profit for 1997 to the median of the comparable operating profits derived from the uncontrolled distributors' results for 1997. The median of the comparable operating profits derived from the uncontrolled comparables results for the 1997 taxable year is $12,000. Based on this comparison, the district director increases USSub's 1997 taxable income by $22,000, the difference between the median of the comparable operating profits for the 1997 taxable year and USSub's reported operating profit of ($10,000) for the 1997 taxable year.

Example 4—Transfer of intangible to offshore manufacturer. (i) DevCo is a U.S. developer, producer and marketer of widgets. DevCo develops a new "high tech widget" (htw) that is manufactured by its foreign subsidiary ManuCo located in Country H. ManuCo sells the htw to MarkCo (a U.S. subsidiary of DevCo) for distribution and marketing in the United States. The taxable year 1996 is under audit, and the district director examines whether the royalty rate of 5 percent paid by ManuCo to DevCo is an arm's length consideration for the htw technology.

(ii) Based on all the facts and circumstances, the district director determines that the comparable profits method will provide the most reliable measure of an arm's length result. ManuCo is selected as the tested party because it engages in relatively routine manufacturing activities, while DevCo engages in a variety of complex activities using unique and valuable intangibles. Finally, because ManuCo engages in manufacturing activities, it is determined that the ratio of operating profit to operating assets is an appropriate profit level indicator.

(iii) Uncontrolled taxpayers performing similar functions cannot be found in country H. It is determined that data available in countries M and N provides the best match of companies in a similar market performing similar functions and bearing similar risks. Such data is sufficiently complete to identify many of the material differences between ManuCo and the uncontrolled comparables, and to make adjustments to account for such differences. However, data is not sufficiently complete so that it is likely that no material differences remain. In particular, the differences in geographic markets might have materially affected the results of the various companies.

(iv) In a separate analysis, it is determined that the price that ManuCo charged to MarkCo for the htw's is an arm's length price under § 1.482–3(b). Therefore, ManuCo's financial data derived from its sales to MarkCo are reliable. ManuCo's financial data from 1994–1996 is as follows:

	1994	1995	1996	Average
Assets	$24,000	$25,000	$26,000	$25,000
Sales to MarkCo	25,000	30,000	35,000	30,000
Cost of Goods Sold	6,250	7,500	8,750	7,500
Royalty to DevCo (5%)	1,250	1,500	1,750	1,500
Other	5,000	6,000	7,000	6,000
Operating Expenses	1,000	1,000	1,000	1,000
Operating Profit	17,750	21,500	25,250	21,500

(v) Applying the ratios of average operating profit to operating assets for the 1994 through 1996 taxable years derived from a group of similar uncontrolled comparables located in country M and N to ManuCo's average operating assets for the same period provides a set of comparable operating profits. The interquartile range for these average comparable operating profits is $3,000 to $4,500. ManuCo's average reported operating profit for the years 1994 through 1996 ($21,500) falls outside this range. Therefore, the district director determines that an allocation may be appropriate for the 1996 taxable year.

(vi) To determine the amount, if any, of the allocation for the 1996 taxable year, the district director compares ManuCo's reported operating profit for 1996 to the median of the comparable operating profits derived from the uncontrolled distributors' results for 1996. The median result for the uncontrolled comparables for 1996 is $3,750. Based on this comparison, the district director increases royalties that ManuCo paid by $21,500 (the difference between $25,250 and the median of the comparable operating profits, $3,750).

Example 5—Adjusting operating assets and operating profit for differences in accounts receivable. (i) USM is a U.S. company that manufactures parts for industrial equipment and sells them to its foreign parent corporation. For purposes of applying the comparable profits method, 15 uncontrolled manufacturers that are similar to USM have been identified.

(ii) USM has a significantly lower level of accounts receivable than the uncontrolled manufacturers. Since the rate of return on capital employed is to be used as the profit level indicator, both operating assets and operating profits must be adjusted to account for this difference. Each uncontrolled comparable's operating assets is reduced by the amount (relative to sales) by which they exceed USM's accounts receivable. Each uncontrolled comparable's operating profit is adjusted by deducting imputed interest income on the excess accounts receivable. This imputed interest income is calculated by multiplying the uncontrolled comparable's excess accounts receivable by an interest rate appropriate for short-term debt.

Example 6—Adjusting operating profit for differences in accounts payable. (i) USD is the U.S. subsidiary of a foreign corporation. USD purchases goods from its foreign parent and sells them in the U.S. market. For purposes of applying the comparable profits method, 10 uncontrolled distributors that are similar to USD have been identified.

(ii) There are significant differences in the level of accounts payable among the uncontrolled distributors and USD. To adjust for these differences, the district director increases the operating profit of the uncontrolled distributors and USD to reflect interest expense imputed to the accounts payable. The imputed interest expense for each company is calculated by multiplying the company's accounts payable by an interest rate appropriate for its short-term debt.

§ 1.482–6 Profit split method.

(a) *In general.* The profit split method evaluates whether the allocation of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. The combined operating profit or loss must be derived from the most narrowly identifiable business activity of the controlled taxpayers for which data is available that includes the controlled transactions (relevant business activity).

(b) *Appropriate share of profits and losses.* The relative value of each controlled taxpayer's contribution to the success of the relevant business activity must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the comparability provisions of § 1.482–1(d)(3). Such an allocation is intended to correspond to the division of profit or loss that would result from an arrangement between uncontrolled taxpayers, each performing functions similar to those of the various controlled taxpayers engaged in the relevant business activity. The profit allocated to any particular member of a controlled

group is not necessarily limited to the total operating profit of the group from the relevant business activity. For example, in a given year, one member of the group may earn a profit while another member incurs a loss. In addition, it may not be assumed that the combined operating profit or loss from the relevant business activity should be shared equally, or in any other arbitrary proportion. The specific method of allocation must be determined under paragraph (c) of this section.

(c) *Application*—(1) *In general.* The allocation of profit or loss under the profit split method must be made in accordance with one of the following allocation methods—(i) The comparable profit split, described in paragraph (c)(2) of this section; or

(ii) The residual profit split, described in paragraph (c)(3) of this section.

(2) *Comparable profit split*—(i) *In general.* A comparable profit split is derived from the combined operating profit of uncontrolled taxpayers whose transactions and activities are similar to those of the controlled taxpayers in the relevant business activity. Under this method, each uncontrolled taxpayer's percentage of the combined operating profit or loss is used to allocate the combined operating profit or loss of the relevant business activity.

(ii) *Comparability and reliability considerations—(A) In general.* Whether results derived from application of this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c).

(B) *Comparability—(1) In general.* The degree of comparability between the controlled and uncontrolled taxpayers is determined by applying the comparability provisions of § 1.482–1(d). The comparable profit split compares the division of operating profits among the controlled taxpayers to the division of operating profits among uncontrolled taxpayers engaged in similar activities under similar circumstances. Although all of the factors described in § 1.482–1(d)(3) must be considered, comparability under this method is particularly dependent on the considerations described under the comparable profits method in § 1.482–5(c)(2), because this method is based on a comparison of the operating profit of the controlled and uncontrolled taxpayers. In addition, because the contractual terms of the relationship among the participants in the relevant business activity will be a principal determinant of the allocation of functions and risks among them, comparability under this method also depends particularly on the degree of similarity of the contractual terms of the controlled and uncontrolled taxpayers. Finally, the comparable profit split may not be used if the combined operating profit (as a percentage of the combined assets) of the uncontrolled comparables varies significantly from that earned by the controlled taxpayers.

(*2*) *Adjustments for differences between the controlled and uncontrolled taxpayers.* If there are differences between the controlled and uncontrolled taxpayers that would materially affect the division of operating profit, adjustments must be made according to the provisions of § 1.482–1(d)(2).

(C) *Data and assumptions.* The reliability of the results derived from the comparable profit split is affected by the quality of the data and assumptions used to apply this method. In particular, the following factors must be considered—

(*1*) The reliability of the allocation of costs, income, and assets between the relevant business activity and the participants' other activities will affect the accuracy of the determination of combined operating profit and its allocation among the participants. If it is not possible to allocate costs, income, and assets directly based on factual relationships, a reasonable allocation formula may be used. To the extent direct allocations are not made, the reliability of the results derived from the application of this method is reduced relative to the results of a method that requires fewer allocations of costs, income, and assets. Similarly, the reliability of the results derived from the application of this method is affected by the extent to which it is possible to apply the method to the parties' financial data that is related solely to the controlled transactions. For example, if the relevant business activity is the assembly of components purchased from both controlled and uncontrolled suppliers, it may not be possible to apply the method solely to financial data related to the controlled transactions. In such a case, the reliability of the results derived from the application of this method will be reduced.

(*2*) The degree of consistency between the controlled and uncontrolled taxpayers in accounting practices that materially affect the items that determine the amount and allocation of operating profit affects the reliability of the result. Thus, for example, if differences in inventory and other cost accounting practices would materially affect operating profit, the ability to make reliable adjustments for such differences would affect the reliability of the results. Further, accounting consistency among the participants in the controlled transaction is required to ensure that the items determining the amount and allocation of operating profit are measured on a consistent basis.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, and 1.482–5, the comparable profit split relies exclusively on external market benchmarks. As indicated in § 1.482–1(c)(2)(i), as the degree of comparability between the controlled and uncontrolled transactions increases, the relative weight accorded the analysis under this method will increase. In addition, the reliability of the analysis under this method may be enhanced by the fact that all parties to the controlled transaction are evaluated under the comparable profit split. However, the reliability of the results of an analysis based on information from all parties to a transaction is affected by the reliability of the data and the assumptions pertaining to each party to the controlled transaction. Thus, if the data and assumptions are significantly more reliable with respect to one of the parties than with respect to the others, a different method, focusing solely on the results of that party, may yield more reliable results.

(3) *Residual profit split*—(i) *In general.* Under this method, the combined operating profit or loss from the relevant business activity is allocated between the controlled taxpayers following the two-step process set forth in paragraphs (c)(3)(i)(A) and (B) of this section.

(A) *Allocate income to routine contributions.* The first step allocates operating income to each party to the controlled transactions to provide a market return for its routine contributions to the relevant business activity. Routine contributions are contributions of the same or a similar kind to those made by uncontrolled taxpayers involved in similar business activities for which it is possible to identify market returns. Routine contributions ordinarily include contributions of tangible property, services and intangibles that are generally owned by uncontrolled taxpayers engaged in similar activities. A functional analysis is required to identify these contributions according to the functions performed, risks assumed, and resources employed by each of the controlled taxpayers. Market returns for the routine contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent

with the methods described in §§ 1.482–3, 1.482–4 and 1.482–5.

(B) *Allocate residual profit.* The allocation of income to the controlled taxpayers' routine contributions will not reflect profits attributable to the controlled group's valuable intangible property where similar property is not owned by the uncontrolled taxpayers from which the market returns are derived. Thus, in cases where such intangibles are present there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(3)(i)(A) of this section. Under this second step, the residual profit generally should be divided among the controlled taxpayers based upon the relative value of their contributions of intangible property to the relevant business activity that was not accounted for as a routine contribution. The relative value of the intangible property contributed by each taxpayer may be measured by external market benchmarks that reflect the fair market value of such intangible property. Alternatively, the relative value of intangible contributions may be estimated by the capitalized cost of developing the intangibles and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. Finally, if the intangible development expenditures of the parties are relatively constant over time and the useful life of the intangible property of all parties is approximately the same, the amount of actual expenditures in recent years may be used to estimate the relative value of intangible contributions. If the intangible property contributed by one of the controlled taxpayers is also used in other business activities (such as transactions with other controlled taxpayers), an appropriate allocation of the value of the intangibles must be made among all the business activities in which it is used.

(ii) *Comparability and reliability considerations*—(A) *In general.* Whether results derived from this method are the most reliable measure of the arm's length result is determined using the factors described under the best method rule in § 1.482–1(c). Thus, comparability and the quality of data and assumptions must be considered in determining whether this method provides the most reliable measure of an arm's length result. The application of these factors to the residual profit split is discussed in paragraph (c)(3)(ii)(B), (C), and (D) of this section.

(B) *Comparability.* The first step of the residual profit split relies on market benchmarks of profitability. Thus, the comparability considerations that are relevant for the first step of the residual profit split are those that are relevant for the methods that are used to determine market returns for the routine contributions. The second step of the residual profit split, however, may not rely so directly on market benchmarks. Thus, the reliability of the results under this method is reduced to the extent that the allocation of profits in the second step does not rely on market benchmarks.

(C) *Data and assumptions.* The reliability of the results derived from the residual profit split is affected by the quality of the data and assumptions used to apply this method. In particular, the following factors must be considered—

(*1*) The reliability of the allocation of costs, income, and assets as described in paragraph (c)(2)(ii)(C)(*1*);

(*2*) Accounting consistency as described in paragraph (c)(2)(ii)(C)(*2*) of this section;

(*3*) The reliability of the data used and the assumptions made in valuing the intangible property contributed by the participants. In particular, if capitalized costs of development are used to estimate the value of intangible property, the reliability of the results is reduced relative to the reliability of other methods that do not require such an estimate, for the following reasons. First, in any given case, the costs of developing the intangible may not be related to its market value. Second, the calculation of the capitalized costs of development may require the allocation of indirect costs between the relevant business activity and the controlled taxpayer's other activities, which may affect the reliability of the analysis. Finally, the calculation of costs may require assumptions regarding the useful life of the intangible property.

(D) *Other factors affecting reliability.* Like the methods described in §§ 1.482–3, 1.482–4, and 1.482–5, the first step of the residual profit split relies exclusively on external market benchmarks. As indicated in § 1.482–1(c)(2)(i), as the degree of comparability between the controlled and uncontrolled transactions increases, the relative weight accorded the analysis under this method will increase. In addition, to the extent the allocation of profits in the second step is not based on external market benchmarks, the reliability of the analysis will be decreased in relation to an analysis under a method that relies on market benchmarks. Finally, the reliability of the analysis under this method may be enhanced by the fact that all parties to the controlled transaction are evaluated under the residual profit split. However, the reliability of the results of an analysis based on information from all parties to a transaction is affected by the reliability of the data and the assumptions pertaining to each party to the controlled transaction. Thus, if the data and assumptions are significantly more reliable with respect to one of the parties than with respect to the others, a different method, focusing solely on the results of that party, may yield more reliable results.

(iii) *Example.* The provisions of this paragraph (c)(3) are illustrated by the following example.

Example—Application of Residual Profit Split. (i) XYZ is a U.S. corporation that develops, manufactures and markets a line of products for police use in the United States. XYZ's research unit developed a bulletproof material for use in protective clothing and headgear (Nulon). XYZ obtains patent protection for the chemical formula for Nulon. Since its introduction in the U.S., Nulon has captured a substantial share of the U.S. market for bulletproof material.

(ii) XYZ licensed its European subsidiary, XYZ-Europe, to manufacture and market Nulon in Europe. XYZ-Europe is a well-established company that manufactures and markets XYZ products in Europe. XYZ-Europe has a research unit that adapts XYZ products for the defense market, as well as a well-developed marketing network that employs brand names that it developed.

(iii) XYZ-Europe's research unit alters Nulon to adapt it to military specifications and develops a high-intensity marketing campaign directed at the defense industry in several European countries. Beginning with the 1995 taxable year, XYZ-Europe manufactures and sells Nulon in Europe through its marketing network under one of its brand names.

(iv) For the 1995 taxable year, XYZ has no direct expenses associated with the license of Nulon to XYZ-Europe and incurs no expenses related to the marketing of Nulon in Europe. For the 1995 taxable year, XYZ-Europe's Nulon sales and pre-royalty expenses are $500 million and $300 million, respectively, resulting in net pre-royalty profit of $200 million related to the Nulon business. The operating assets employed in XYZ-Europe's Nulon business are $200 million. Given the facts and circumstances, the district director determines under the best method rule that a residual profit split will provide the most reliable measure of an arm's length result. Based on an examination of a sample of European companies performing functions similar to those of XYZ-Europe, the district director determines that an average market return on XYZ-Europe's operating assets in the Nulon business is 10 percent, resulting in a market return of $20 million (10% X $200 million) for XYZ-Europe's Nulon business, and a residual profit of $180 million.

(v) Since the first stage of the residual profit split allocated profits to XYZ-Europe's contributions other than those attributable to highly valuable intangible property, it is

assumed that the residual profit of $180 million is attributable to the valuable intangibles related to Nulon, i.e., the European brand name for Nulon and the Nulon formula (including XYZ-Europe's modifications). To estimate the relative values of these intangibles, the district director compares the ratios of the capitalized value of expenditures as of 1995 on Nulon-related research and development and marketing over the 1995 sales related to such expenditures.

(vi) Because XYZ's protective product research and development expenses support the worldwide protective product sales of the XYZ group, it is necessary to allocate such expenses among the worldwide business activities to which they relate. The district director determines that it is reasonable to allocate the value of these expenses based on worldwide protective product sales. Using information on the average useful life of its investments in protective product research and development, the district director capitalizes and amortizes XYZ's protective product research and development expenses. This analysis indicates that the capitalized research and development expenditures have a value of $0.20 per dollar of global protective product sales in 1995.

(vii) XYZ-Europe's expenditures on Nulon research and development and marketing support only its sales in Europe. Using information on the average useful life of XYZ-Europe's investments in marketing and research and development, the district director capitalizes and amortizes XYZ-Europe's expenditures and determines that they have a value in 1995 of $0.40 per dollar of XYZ-Europe's Nulon sales.

(viii) Thus, XYZ and XYZ-Europe together contributed $0.60 in capitalized intangible development expenses for each dollar of XYZ-Europe's protective product sales for 1995, of which XYZ contributed one-third (or $0.20 per dollar of sales). Accordingly, the district director determines that an arm's length royalty for the Nulon license for the 1995 taxable year is $60 million, i.e., one-third of XYZ-Europe's $180 million in residual Nulon profit.

§ 1.482–8 Examples of the best method rule.

In accordance with the best method rule of § 1.482–1(c), a method may be applied in a particular case only if the comparability, quality of data, and reliability of assumptions under that method make it more reliable than any other available measure of the arm's length result. The following examples illustrate the comparative analysis required to apply this rule. As with all of the examples in these regulations, these examples are based on simplified facts, are provided solely for purposes of illustrating the type of analysis required under the relevant rule, and do not provide rules of general application. Thus, conclusions reached in these examples as to the relative reliability of methods are based on the assumed facts of the examples, and are not general conclusions concerning the relative reliability of any method.

Example 1—Preference for comparable uncontrolled price method. Company A is the U.S. distribution subsidiary of Company B, a foreign manufacturer of consumer electrical appliances. Company A purchases toaster ovens from Company B for resale in the U.S. market. To exploit other outlets for its toaster ovens, Company B also sells its toaster ovens to Company C, an unrelated U.S. distributor of toaster ovens. The products sold to Company A and Company C are identical in every respect and there are no material differences between the transactions. In this case application of the CUP method, using the sales of toaster ovens to Company C, generally will provide a more reliable measure of an arm's length result for the controlled sale of toaster ovens to Company A than the application of any other method. See §§ 1.482–1(c)(2)(i) and –3(b)(2)(ii)(A).

Example 2—Resale price method preferred to comparable uncontrolled price method. The facts are the same as in Example 1, except that the toaster ovens sold to Company A are of substantially higher quality than those sold to Company C and the effect on price of such quality differences cannot be accurately determined. In addition, in order to round out its line of consumer appliances Company A purchases blenders from unrelated parties for resale in the United States. The blenders are resold to substantially the same customers as the toaster ovens, have a similar resale value to the toaster ovens, and are purchased under similar terms and in similar volumes. The distribution functions performed by Company A appear to be similar for toaster ovens and blenders. Given the product differences between the toaster ovens, application of the resale price method using the purchases and resales of blenders as the uncontrolled comparables is likely to provide a more reliable measure of an arm's length result than application of the comparable uncontrolled price method using Company B's sales of toaster ovens to Company C.

Example 3—Resale price method preferred to comparable profits method. (i) The facts are the same as in *Example 2* except that Company A purchases all its products from Company B and Company B makes no uncontrolled sales into the United States. However, six uncontrolled U.S. distributors are identified that purchase a similar line of products from unrelated parties. The uncontrolled distributors purchase toaster ovens from unrelated parties, but there are significant differences in the characteristics of the toaster ovens, including the brandnames under which they are sold.

(ii) Under the facts of this case, reliable adjustments for the effect of the different brandnames cannot be made. Except for some differences in payment terms and inventory levels, the purchases and resales of toaster ovens by the three uncontrolled distributors are closely similar to the controlled purchases in terms of the markets in which they occur, the volume of the transactions, the marketing activities undertaken by the distributor, inventory levels, warranties, allocation of currency risk, and other relevant functions and risks. Reliable adjustments can be made for the differences in payment terms and inventory levels. In addition, sufficiently detailed accounting information is available to permit adjustments to be made for differences in accounting methods or in reporting of costs between cost of goods sold and operating expenses. There are no other material differences between the controlled and uncontrolled transactions.

(iii) Because reliable adjustments for the differences between the toaster ovens, including the trademarks under which they are sold, cannot be made, these uncontrolled transactions will not serve as reliable measures of an arm's length result under the comparable uncontrolled price method. There is, however, close functional similarity between the controlled and uncontrolled transactions and reliable adjustments have been made for material differences that would be likely to affect gross profit. Under these circumstances, the gross profit margins derived under the resale price method are less likely to be susceptible to any unidentified differences than the operating profit measures used under the comparable profits method. Therefore, given the close functional comparability between the controlled and uncontrolled transactions, and the high quality of the data, the resale price method achieves a higher degree of comparability and will provide a more reliable measure of an arm's length result. See § 1.482–1(c) (Best method rule).

Example 4—Comparable profits method preferred to resale price method. The facts are the same as in *Example 3*, except that the accounting information available for the uncontrolled comparables is not sufficiently detailed to ensure consistent reporting between cost of goods sold and operating expenses of material items such as discounts, insurance, warranty costs, and supervisory, general and administrative expenses. These expenses are significant in amount. Therefore, whether these expenses are treated as costs of goods sold or operating expenses would have a significant effect on gross margins. Because in this case reliable adjustments can not be made for such accounting differences, the reliability of the resale price method is significantly reduced. There is, however, close functional similarity between the controlled and uncontrolled transactions and reliable adjustments have been made for all material differences other than the potential accounting differences. Because the comparable profits method is not adversely affected by the potential accounting differences, under these circumstances the comparable profits method is likely to produce a more reliable measure of an arm's length result than the resale price method. See § 1.482–1(c) (Best method rule).

Example 5—Cost plus method preferred to comparable profits method. (i) USS is a U.S. company that manufactures machine tool parts and sells them to its foreign parent corporation, FP. Four U.S. companies are identified that also manufacture various types of machine tool parts but sell them to uncontrolled purchasers.

(ii) Except for some differences in payment terms, the manufacture and sales of machine tool parts by the four uncontrolled

companies are closely similar to the controlled transactions in terms of the functions performed and risks assumed. Reliable adjustments can be made for the differences in payment terms. In addition, sufficiently detailed accounting information is available to permit adjustments to be made for differences between the controlled transaction and the uncontrolled comparables in accounting methods and in the reporting of costs between cost of goods sold and operating expenses.

(iii) There is close functional similarity between the controlled and uncontrolled transactions and reliable adjustments can be made for material differences that would be likely to affect gross profit. Under these circumstances, the gross profit markups derived under the cost plus method are less likely to be susceptible to any unidentified differences than the operating profit measures used under the comparable profits method. Therefore, given the close functional comparability between the controlled and uncontrolled transactions, and the high quality of the data, the cost plus method achieves a higher degree of comparability and will provide a more reliable measure of an arm's length result. See § 1.482–1(c) (Best method rule).

Example 6—Comparable profits method preferred to cost plus method. The facts are the same as in *Example 5*, except that there are significant differences between the controlled and uncontrolled transactions in terms of the types of parts and components manufactured and the complexity of the manufacturing process. The resulting functional differences are likely to materially affect gross profit margins, but it is not possible to identify the specific differences and reliably adjust for their effect on gross profit. Because these functional differences would be reflected in differences in operating expenses, the operating profit measures used under the comparable profits method implicitly reflect to some extent these functional differences. Therefore, because in this case the comparable profits method is less sensitive than the cost plus method to the potentially significant functional differences between the controlled and uncontrolled transactions, the comparable profits method is likely to produce a more reliable measure of an arm's length result than the cost plus method. See § 1.482–1(c) (Best method rule).

Example 7—Preference for comparable uncontrolled transaction method. (i) USpharm, a U.S. pharmaceutical company, develops a new drug Z that is a safe and effective treatment for the disease zeezee. USpharm has obtained patents covering drug Z in the United States and in various foreign countries. USpharm has also obtained the regulatory authorizations necessary to market drug Z in the United States and in foreign countries.

(ii) USpharm licenses its subsidiary in country X, Xpharm, to produce and sell drug Z in country X. At the same time, it licenses an unrelated company, Ydrug, to produce and sell drug Z in country Y, a neighboring country. Prior to licensing the drug, USpharm had obtained patent protection and regulatory approvals in both countries and both countries provide similar protection for intellectual property rights. Country X and country Y are similar countries in terms of population, per capita income and the incidence of disease zeezee. Consequently, drug Z is expected to sell in similar quantities and at similar prices in both countries. In addition, costs of producing drug Z in each country are expected to be approximately the same.

(iii) USpharm and Xpharm establish terms for the license of drug Z that are identical in every material respect, including royalty rate, to the terms established between USpharm and Ydrug. In this case the district director determines that the royalty rate established in the Ydrug license agreement is a reliable measure of the arm's length royalty rate for the Xpharm license agreement. Given that the same property is transferred in the controlled and uncontrolled transactions, and that the circumstances under which the transactions occurred are substantially the same, in this case the comparable uncontrolled transaction method is likely to provide a more reliable measure of an arm's length result than any other method. See § 1.482–4(c)(2)(ii).

Example 8—Residual profit split method preferred to other methods. (i) USC is a U.S. company that develops, manufactures and sells communications equipment. EC is the European subsidiary of USC. EC is an established company that carries out extensive research and development activities and develops, manufactures and sells communications equipment in Europe. There are extensive transactions between USC and EC. USC licenses valuable technology it has developed to EC for use in the European market but EC also licenses valuable technology it has developed to USC. Each company uses components manufactured by the other in some of its products and purchases products from the other for resale in its own market.

(ii) Detailed accounting information is available for both USC and EC and adjustments can be made to achieve a high degree of consistency in accounting practices between them. Relatively reliable allocations of costs, income and assets can be made between the business activities that are related to the controlled transactions and those that are not. Relevant marketing and research and development expenditures can be identified and reasonable estimates of the useful life of the related intangibles are available so that the capitalized value of the intangible development expenses of USC and EC can be calculated. In this case there is no reason to believe that the relative value of these capitalized expenses is substantially different from the relative value of the intangible property of USC and EC. Furthermore, comparables are identified that could be used to estimate a market return for the routine contributions of USC and EC. Based on these facts, the residual profit split could provide a reliable measure of an arm's length result.

(iii) There are no uncontrolled transactions involving property that is sufficiently comparable to much of the tangible and intangible property transferred between USC and EC to permit use of the comparable uncontrolled price method or the comparable uncontrolled transaction method. Uncontrolled companies are identified in Europe and the United States that perform somewhat similar activities to USC and EC; however, the activities of none of these companies are as complex as those of USC and EC and they do not use similar levels of highly valuable intangible property that they have developed themselves. Under these circumstances, the uncontrolled companies may be useful in determining a market return for the routine contributions of USC and EC, but that return would not reflect the value of the intangible property employed by USC and EC. Thus, none of the uncontrolled companies is sufficiently similar so that reliable results would be obtained using the resale price, cost plus, or comparable profits methods. Moreover, no uncontrolled companies can be identified that engaged in sufficiently similar activities and transactions with each other to employ the comparable profit split method.

(iv) Given the difficulties in applying the other methods, the reliability of the internal data on USC and EC, and the fact that acceptable comparables are available for deriving a market return for the routine contributions of USC and EC, the residual profit split method is likely to provide the most reliable measure of an arm's length result in this case.

Example 9—Comparable profits method preferred to profit split. (i) Company X is a large, complex U.S. company that carries out extensive research and development activities and manufactures and markets a variety of products. Company X has developed a new process by which compact disks can be fabricated at a fraction of the cost previously required. The process is expected to prove highly profitable, since there is a large market for compact disks. Company X establishes a new foreign subsidiary, Company Y, and licenses it the rights to use the process to fabricate compact disks for the foreign market as well as continuing technical support and improvements to the process. Company Y uses the process to fabricate compact disks which it supplies to related and unrelated parties.

(ii) The process licensed to Company Y is unique and highly valuable and no uncontrolled transfers of intangible property can be found that are sufficiently comparable to permit reliable application of the comparable uncontrolled transaction method. Company X is a large, complex company engaged in a variety of activities that owns unique and highly valuable intangible property. Consequently, no uncontrolled companies can be found that are similar to Company X. Furthermore, application of the profit split method in this case would involve the difficult and problematic tasks of allocating Company X's costs and assets between the relevant business activity and other activities and assigning a value to Company X's intangible contributions. On the other hand, Company Y performs relatively routine manufacturing and marketing activities and there are a number of similar uncontrolled companies. Thus, application of the comparable profits method using Company Y as the tested party is likely

to produce a more reliable measure of an arm's length result than a profit split in this case.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101 is amended by:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.482–1T	D1545–1298
1.482–2	1545–0123
1.482–3T	1545–1298
1.482–4T	1545–1298
* * * * *	

2. Adding entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.482–1	1545–1364
1.482–4	1545–1364
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 27, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–16456 Filed 7–1–94; 3:59 pm]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8551]

RIN 1545–AS25

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary Regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 1 provide guidance on the imposition of the accuracy-related penalty under Internal Revenue Code section 6662(e) for net section 482 transfer price adjustments. This action is necessary to conform the existing temporary regulations with changes to the section 482 regulations.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1426.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

Section 13236 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) amended sections 6662(e) and (h) of the Code. On February 2, 1994, the IRS published temporary regulations and a notice of proposed rulemaking in the **Federal Register** (58 FR 5263) that proposed amendments to the Income Tax Regulations under sections 6662(e) and (h) and section 6664(c) of the Internal Revenue Code of 1986 (Code), as amended.

Explanation of Provisions

The principal purpose of these regulations is to conform the temporary regulations with the final section 482 regulations contained in this issue of the **Federal Register**. The regulations are amended primarily to conform the provisions to the revised best method rule contained in § 1.482–1(c) and the arm's length range rule contained in § 1.482–1(d). The temporary and proposed regulations provided, with respect to the specified method requirement and in circumstances in which no specified method is applicable, that the selection and application of a method is reasonable only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method and its application of that method provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii). In conformity with the final section 482 regulations, these temporary regulations substitute the term reliable for the term accurate.

These regulations also clarify that if a taxpayer applies a specified or unspecified method, the taxpayer cannot reasonably conclude that the method it selected provided the most reliable measure of an arm's length result if it has not made a reasonable effort to evaluate the potential applicability of the other specified methods under the section 482 regulations in a manner consistent with the principles of the best method rule. This rule does not require that a taxpayer conduct an extensive analysis or detailed application of each method, but merely that, following a reasonably thorough search for relevant data, the taxpayer consider which method would provide the most reliable measure of an arm's length result given that data. In many cases the nature of the data located will make it possible to conclude that a particular method is inapplicable without further analysis.

The regulations add a fifth factor to the analysis of whether a taxpayer reasonably concluded that its application of a specified method provided the most reliable measure of an arm's length result. This factor is relevant if the taxpayer uses a range of results to set its price. In such a case, the district director will consider whether the taxpayer arbitrarily selected a result that corresponded to an extreme point in the range of results. In many cases a point selected in this manner would not be likely to be closest to an arm's length result. The regulations provide that when the taxpayer uses "inexact" comparables, such as those described in § 1.482–1(e)(2)(iii)(B), one reasonable method of selecting a point in the range would be that provided in § 1.482–1(e)(3). Other methods also could be reasonable as long as they are intended to select a point most likely to be closest to an arm's length result.

These regulations also specify, through examples in the text of the regulations, the type of documentation necessary if a profit split method is used. The significance of such documentation has been increased by

the final regulations' elimination of certain proposed restrictions on the use of profit split methods.

These regulations add § 1.6662–6T(d)(2)(iii)(D), which provides that, if a taxpayer uses a profit split method or receives or makes a lump sum payment for the transfer of an intangible, then the taxpayer must annually document that fact on a statement attached to a timely filed income tax return. Similarly, these regulations add § 1.6662–6T(d)(3)(iii)(C), which provides that if a taxpayer applies an unspecified method, then the taxpayer must annually document that fact on a statement attached to a timely filed U.S. income tax return. A taxpayer that fails to comply with these documentation rules would not satisfy the documentation requirements of § 1.6662–6T(d)(2)(iii) and would therefore be unable to qualify for the exclusion from the calculation of a net section 482 adjustment provided under § 1.6662–6T(d).

Effective Date

These regulations apply to taxable years beginning after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, an initial Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

1.6662–6T also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended in the table of contents by adding the entries for § 1.6662–6T(d)(2)(iii)(D) and § 1.6662–6T(d)(3)(iii)(C) to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

Section 1.6662–6T Transactions between persons described in section 482 and net section 482 transfer price adjustments (temporary).

* * * * *

(d) * * *
(2) * * *
(iii) * * *
(D) Tax return documentation.
(3) * * *
(iii) * * *
(C) Tax return documentation.

* * * * *

Par. 3. Section 1.6662–6T is amended as follows:

a. By revising the section heading;
b. By revising paragraph (d)(2)(ii);
c. By revising paragraphs (d)(2)(iii)(A) and (B);
d. By adding paragraph (d)(2)(iii)(D);
e. By revising paragraphs (d)(3)(ii) (B) and (C);
f. By adding paragraph (d)(3)(iii)(C).

The additions and revisions read as follows:

Section 1.6662–6T Transactions between persons described in section 482 and net section 482 transfer price adjustments (temporary).

* * * * *

(d) * * *
(2) * * *

(ii) *Specified method requirement.* The specified method requirement is met if the taxpayer selects and applies a specified method in a reasonable manner. The taxpayer's selection and application of a specified method is reasonable only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule of § 1.482–1(c). A taxpayer can reasonably conclude that a specified method provided the most reliable measure of an arm's length result only if it has made a reasonable effort to evaluate the potential applicability of the other specified methods in a manner consistent with the principles of the best method rule. However, it is not necessary for a taxpayer to conclude that the selected specified method provides a more reliable measure of an arm's length result than any unspecified method. For examples illustrating the selection of a specified method consistent with this paragraph (d)(2)(ii), see § 1.482–8. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include the following:

(A) The experience and knowledge of the taxpayer, including all members of the taxpayer's controlled group.

(B) The extent to which accurate data was available and the data was analyzed in a reasonable manner. A taxpayer must engage in a reasonably thorough search for the data necessary to determine which method should be selected and how it should be applied. Furthermore, a taxpayer must use the most current reliable data that is available before the return is filed. In this regard, the expense of collecting data relative to the dollar amount of the transactions in question is a factor that may be taken into account in determining the scope of a reasonably thorough search for data.

(C) The extent to which the taxpayer followed the relevant requirements set forth in regulations under section 482 with respect to the application of the method.

(D) The extent to which the taxpayer reasonably relied on the analysis of, or a study done by, a professional qualified to conduct such an analysis or study, including an attorney, accountant, or economist. Whether the professional is an employee of, or related to, the taxpayer is not determinative in evaluating the reliability of that analysis or study, as long as the analysis or study is objective, thorough, and well reasoned. Such reliance is reasonable only if the taxpayer disclosed to the professional all relevant information regarding the controlled transactions at issue. A transfer pricing study or analysis that was reasonably relied upon in a prior year may reasonably be relied upon in the current year if the relevant facts and circumstances have not changed or if the study or analysis has

been appropriately modified to reflect any change in facts and circumstances.

(E) If the taxpayer attempted to determine an arm's length result by using more than one uncontrolled comparable, whether the taxpayer arbitrarily selected a result that corresponds to an extreme point in the range of results derived from the uncontrolled comparables. Such a result generally would not likely be closest to an arm's length result. If the uncontrolled comparables that the taxpayer uses to determine an arm's length result are described in § 1.482–1(e)(2)(ii)(B), one reasonable method of selecting a point in the range would be that provided in § 1.482–1(e)(3).

(iii) * * * (A) *In general.* The documentation requirement of this paragraph (d)(2)(iii) is met if the taxpayer maintains sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1(c), and provides that documentation to the Internal Revenue Service within 30 days of a request for it. That documentation must be in existence when the return is filed. The district director may, in his discretion, excuse a minor or inadvertent failure to provide required documents, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known. The required documentation is divided into three categories, principal documents, background documents, and tax return documentation, as described in paragraphs (d)(2)(iii) (B), (C), and (D) of this section.

(B) *Principal documents.* The principal documents should accurately and completely describe the basic transfer pricing analysis conducted by the taxpayer. The documentation must include the following—

(*1*) An overview of the taxpayer's business, including an analysis of the economic and legal factors that affect the pricing of its property or services;

(*2*) A description of the taxpayer's organizational structure (including an organization chart) covering all related parties engaged in transactions potentially relevant under section 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the United States;

(*3*) Any documentation explicitly required by the regulations under section 482;

(*4*) A description of the method selected and an explanation of why that method was selected;

(*5*) A description of the alternative methods that were considered and an explanation of why they were not selected;

(*6*) A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions. For example, if a profit split method is applied, the documentation must include a schedule providing the total income, costs, and assets (with adjustments for different accounting practices and currencies) for each controlled taxpayer participating in the relevant business activity and detailing the allocations of such items to that activity;

(*7*) A description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made;

(*8*) An explanation of the economic analysis and projections relied upon in developing the method. For example, if a profit split method is applied, the taxpayer must provide an explanation of the analysis undertaken to determine how the profits would be split; and

(*9*) A general index of the principal and background documents and a description of the recordkeeping system used for cataloging and accessing those documents.

* * * * *

(D) *Tax return documentation*— (*1*) *Use of profit split method.* If the taxpayer applies a profit split method, as described in § 1.482–6, the taxpayer must attach a statement to a timely filed U.S. income tax return (with extensions) disclosing the kind of profit split method employed, the combined operating profit from the relevant business activity, and the split of that profit among the controlled participants in that activity. Such statement must be titled "Disclosure of profit split methodology required by § 1.6662–6T."

(*2*) *Lump sum payments.* If the consideration for the controlled transfer of an intangible is in the form of a lump sum payment, the taxpayer must attach a statement to a timely filed U.S. income tax return (with extensions) for each taxable year throughout the useful life of the intangible. The statement must disclose the calculation of the arm's length consideration for the transfer under the provisions of § 1.482–4(f)(5), and must be titled "Disclosure of lump sum payment required by § 1.6662–6T."

(3) * * *

(ii) * * *

(B) *Specified method potentially applicable.* If the transaction is of a type for which methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if the taxpayer reasonably concludes, given the available data, that none of the specified methods was likely to provide a reliable measure of an arm's length result, and that it selected and applied an unspecified method in a way that would likely provide a reliable measure of an arm's length result. A taxpayer can reasonably conclude that no specified method was likely to provide a reliable measure of an arm's length result only if it has made a reasonable effort to evaluate the potential applicability of the specified methods in a manner consistent with the principles of the best method rule. However, it is not necessary for a taxpayer to conclude that the selected method provides a more reliable measure of an arm's length result than any other unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(C) *No specified method applicable.* If the transaction is of a type for which no methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if it selected and applied an unspecified method in a reasonable manner. For purposes of this paragraph (d)(3)(ii)(C), a taxpayer's selection and application is reasonable if the taxpayer reasonably concludes that the method (and its application of that method) provided the most reliable measure of an arm's length result under the principles of the best method rule in § 1.482–1(c). However, it is not necessary for a taxpayer to conclude that the selected method provides a more reliable measure of an arm's length result than any other unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(iii) * * *

(C) *Tax return documentation.* If the taxpayer applies an unspecified method, the taxpayer must attach a statement to a timely filed U.S. income tax return (with extensions) disclosing the use of such method for the taxable year in which the method is applied. Such statement must be titled "Disclosure of

use of unspecified method required by § 1.6662–6T."

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by removing the entry for "1.6662–6T. . . .1545–1365" from the table and adding the entry "1.6662–6T. . . .1545–1426" in numerical order to the table.

Dated: June 27, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved:

Leslie Samuels,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–16357 Filed 7–5–94; 12:26 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval guided missile destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 24, 1994.

FOR FURTHER INFORMATION CONTACT: Captain R. R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MITSCHER (DDG 57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the vessel in the athwartship direction; and Rule 21(a), pertaining to the masthead light unbroken arc of visibility over an arc of the horizon of 225 degrees and visibility from right ahead to abaft the beam of 22.5 degrees, without interfering with its special function as a naval vessel. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Four of 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS MITSCHER.	DDG 57	1.93 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS MITSCHER.	DDG 57	94.51 thru 111.15 degree.

3. Table Five of 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MITSCHER	DDG 57	X	X	X	14.3

Dated: June 24, 1994.

Approved:

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 94–16503 Filed 7–7–94; 8:45 am]

BILLING CODE 3810–AE–P

LIBRARY OF CONGRESS

36 CFR Part 704

[Docket No. NFPB 94–1]

National Film Preservation Board; 1992 and 1993 Films Selected for Inclusion in the National Film Registry

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Librarian of Congress is publishing the following list of films selected in 1992 and 1993 for inclusion in the National Film Registry in the Library of Congress pursuant to section 203 of the National Film Preservation Act of 1992, 2 U.S.C. 179a. The films are published to notify the public of the Librarian's selection of twenty-five films selected in each of these years deemed to be "culturally, historically or aesthetically significant" in accordance with Congress' mandate. These fifty new films join the seventy-five films already selected for inclusion in the Registry under the 1988 Act. The Librarian's goal in administering the Act is to promote the preservation of all genres of film, represented by the diverse list of films selected for inclusion in the Registry, and to generate public interest in film as an art form deserving of preservation. Additionally, an amendment is made to delete the film-labeling guidelines no longer applicable under the 1992 Act.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone (202) 707–8350; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On August 9, 1990 (55 FR 32567), the Librarian of Congress published the list of films for 1989 for inclusion in the National Film Registry in the Library of Congress. On December 24, 1990 (55 FR 52844) the Librarian published the list of films for 1990. On September 30, 1991 (56 FR 49413) the Librarian published the list of films for 1991, bringing the total to seventy-five films selected under the 1988 Act. Today, the Librarian publishes the fourth and fifth lists of films for inclusion in the National Film Registry—twenty-five additional films selected in each year, 1992 and 1993, added to the films already selected.

In 1990, the Librarian of Congress issued final regulations establishing criteria for the selection of films and procedures for public participation in the selection of films for the National Film Registry in accordance with section 3 of Public Law 100–446, the National Film Preservation Act of 1988, 2 U.S.C. 178b. That Act expired on September 27, 1991. On June 26, 1992, President Bush signed into law the National Film Preservation Act of 1992, reauthorizing the National Film Preservation Act for an additional four years. The legislation (section 203(b), 2 U.S.C. 179a) requires the Librarian of Congress, in consultation with a newly formed National Film Preservation Board, to continue selecting up to twenty-five films a year for inclusion in the National Film Registry established by the 1988 Act. However, the 1992 Act made some changes from the 1988 Act in the criteria used to select films for the Registry. Under the 1992 Act, films will continue to be selected on the basis of their historical, cultural, or aesthetic significance and they must be at least 10 years old. However, films no longer have to be feature-length nor are they required to have had a theatrical release in order to be included.

The new broader criteria for eligible films allows many more genres of film to be selected for inclusion in the National Film Registry. In addition, the Librarian's procedures for public participation are intended to allow the public the greatest flexibility in nominating films for inclusion. This is in keeping with the broad goals of the Librarian in administering the National Film Preservation Act to promote the preservation of the broadest diversity of films and to generate public interest for this cause.

On December 8, 1992 (57 FR 57979), the Librarian of Congress published a notice of proposed amended criteria for the selection of films in the National Film Registry, and procedures for allowing the general public to make recommendations to the Librarian for the selection of films. The proposed new criteria and procedures reflect changes made in the law in 1992 from the previous 1988 Act, and incorporate recommendations made by the National Film Preservation Board at its meeting in September 1992. On May 27, 1993 (58 FR 30708), the Librarian adopted the final regulations (effective July 12, 1993) setting out criteria for the selection of films and procedures for public participation. In accordance with those final regulations, the following fifty additional films are added to the National Film Registry.

The 1988 Act required the labeling of films selected for inclusion in the National Film Registry if they were colorized or materially altered. The labeling requirements were deleted by the 1992 Act (section 213 and 214, 2 U.S.C. 179 j and k) for the films previously selected to the National Film Registry and for all subsequent films selected. Therefore, because the film labeling guidelines found in Subpart B are no longer applicable for any of the films in the National Film Registry this rule removes and reserves that subpart.

List of Subjects in 36 CFR Part 704

Libraries, Motion pictures.

Publication of 1992 and 1993 Film Titles

In consideration of the foregoing, 36 CFR Part 704 is amended in the manner set forth below.

PART 704—NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS

1. The authority citation for 36 CFR part 704 is revised to read as follows:

Authority: Public Law 102–307, 106 Stat. 267 (2 U.S.C. 179).

Subpart A—Films Selected for Inclusion in the National Film Registry

2. In subpart A, § 704.23 is added to read as follows:

§ 704.23 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1992.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, registers these films in the National Film Registry within the Library of Congress for 1992:

1. Adam's Rib (1949)
2. Annie Hall (1977)
3. The Bank Dick (1940)
4. Big Business (1929)
5. The Big Parade (1925)
6. The Birth of a Nation (1915)
7. Bonnie and Clyde (1967)
8. Carmen Jones (1954)
9. Castro Street (1966)
10. Detour (1946)
11. Dog Star Man (1964)
12. Double Indemnity (1944)
13. Footlight Parade (1933)
14. The Gold Rush (1925)
15. Letter From an Unknown Woman (1948)
16. Morocco (1930)
17. Nashville (1975)
18. The Night of the Hunter (1955)
19. Paths of Glory (1957)
20. Psycho (1960)
21. Ride the High Country (1962)
22. Salesman (1969)

23. Salt of the Earth (1954)
24. What's Opera, Doc? (1957)
25. Within Our Gates (1920)

(b) In keeping with section 206(a) of the Act, 2 U.S.C. 179d(a), the Librarian shall endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Registry Collection of the Library of Congress.

3. In subpart A, § 704.24 is added to read as follows:

§ 704.24 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1993.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, registers these films in the National Film Registry within the Library of Congress for 1993:

1. An American in Paris (1951)
2. Badlands (1973)
3. The Black Pirate (1926)
4. Blade Runner (1982)
5. Cat People (1942)
6. The Cheat (1915)
7. Chulas Fronteras (1976)
8. Eaux D'Artifice (1953)
9. The Godfather, Part II (1974)
10. His Girl Friday (1940)
11. It Happened One Night (1934)
12. Lassie Come Home (1943)
13. Magical Maestro (1952)
14. March of Time: Inside Nazi Germany—1938 (1938)
15. A Night at the Opera (1935)
16. Nothing But a Man (1964)
17. One Flew Over the Cuckoo's Nest (1975)
18. Point of Order (1964)
19. Shadows (1959)
20. Shane (1953)
21. Sweet Smell of Success (1957)
22. Touch of Evil (1958)
23. Where Are My Children? (1916)
24. The Wind (1928)
25. Yankee Doodle Dandy (1942)

(b) In keeping with section 206(a) of the Act, 2 U.S.C. 179d(a), the Librarian shall endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Registry Collection of the Library of Congress.

4. For the reasons outlined in the Supplementary Information, subpart B consisting of § 704.30 is removed and reserved.

Dated: June 30, 1994.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–16510 Filed 7–7–94; 8:45 am]

BILLING CODE 1410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO31–1–6511; FRL–5008–7]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Emission Controls for Alfalfa Dehydrators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is approving a revision to the Colorado State Implementation Plan (SIP) which was submitted by the Governor of Colorado on May 6, 1993. The Governor requested that Colorado Regulation No. 5, which contained emission control regulations for alfalfa dehydration plant drum facilities that had begun operation prior to December 31, 1984, be removed from the Federally-approved SIP. The State made this request pursuant to the repeal of Regulation No. 5 from the State air quality regulations, which was mandated by amendments to the State's laws relating to the regulation of agricultural sources of air pollution. EPA is approving this revision because the State provided a modeling demonstration which showed that the removal of the emission limitations in Regulation No. 5 from the SIP would not interfere with attainment or maintenance of the PM–10 National Ambient Air Quality Standards (NAAQS).

EFFECTIVE DATE: This rule will become effective on August 8, 1994.

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, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

In 1992, the Colorado Air Pollution Prevention and Control Act was signed into law. This State Act significantly revised the previously-existing Colorado statutory provisions relating to air quality, including the regulation of agricultural sources of air pollution. Specifically, Section 25–7–109(8) of the Colorado Revised Statutes states that the State ". . . shall not regulate emissions from agricultural production such as farming, seasonal crop drying, animal feeding, and pesticide application . . ." unless such a source is otherwise required to meet Federal requirements (e.g., construction or operating permits, new source performance standards, etc.). Colorado's Regulation No. 5 contained emission control regulations for existing alfalfa dehydration plant drum facilities, which fall under the category of seasonal crop drying. Because the State Air Quality Control Commission is now prohibited from regulating air pollution emissions from sources such as seasonal crop drying, the State repealed Colorado Regulation No. 5 and, in a May 6, 1993 SIP submittal, requested that it be removed from the Federally-approved SIP.

Section 110(l) of the Clean Air Act (Act), as amended, prohibits EPA from approving a revision to the SIP "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the Clean Air Act]." [1] Thus, in order for EPA to approve a revision to a State's SIP, especially one which weakens or eliminates an existing emission limitation, EPA must ensure that the revision will not interfere with attainment or maintenance of the NAAQS.

In an April 21, 1994 **Federal Register** notice, EPA proposed to find that the State had adequately demonstrated that the repeal of Regulation No. 5 from the SIP would not interfere with attainment or maintenance of the NAAQS. Consequently, EPA proposed to approve the revision to the Colorado SIP. (See 59 FR 18988–18990.) In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of the Act and its rationale for proposing to approve the revision repealing Regulation No. 5 from the SIP. EPA requested public comments on all aspects of that proposed rulemaking (see 59 FR 18990). No comments were received on the proposed rulemaking.

This Action

In this action, EPA is finalizing its approval of the revision to the Colorado SIP which was submitted by the Governor on May 6, 1993. As discussed in EPA's April 21, 1994 notice of

[1] The Clean Air Act ("the Act") is codified in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

proposed approval and related TSD, EPA believes the State adequately demonstrated that the repeal of the emission limitations regarding alfalfa dehydrators in Regulation No. 5 will not interfere with attainment or maintenance of the NAAQS. The approval thus removes Colorado Regulation No. 5, which contained provisions regulating existing alfalfa dehydrators, from the Federally-approved SIP.[2] For further information on the State's demonstration and EPA's rationale for approving this SIP revision, please refer to the April 21, 1994 notice of proposed rulemaking (59 FR 18988–18990) and the TSD accompanying this action.

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 any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Final Action

This document makes final the action proposed on April 21, 1994 (59 FR 18988). As noted elsewhere in this final action, EPA received no public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

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 September 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 22, 1994.

Jack McGraw,

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 G—Colorado

2. Section 52.320 is amended by revising paragraphs (c)(32) and (c)(38) to read as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(32) Revisions to Air Pollution Control Commission Regulation No. 1, section II.A.6 and III.C.2 (a) and (b), submitted by the Governor on April 9, 1985.

(i) Incorporation by reference.

(A) Revisions to Air Pollution Control Commission Regulation No. 1, "Emission Control Regulation for Particulates, Smokes, and Sulfur Oxides for the State of Colorado," sections II.A.6 and III.C.2 (a) and (b), effective March 2, 1985.

* * * * *

(38) Revisions to Regulation 1 to control emissions from alfalfa dehydrators were submitted by the Governor on July 29, 1987.

(i) Incorporation by reference.

(A) Section II.A.6 and introductory text of Section III.C.2.a of Regulation 1 adopted by the Colorado Air Quality Control Commission on January 15, 1987, effective on March 2, 1987.

[FR Doc. 94–16504 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

[2] Note that the new construction or modification of alfalfa dehydration plant drum facilities will continue to be regulated under the State's prevention of significant deterioration (PSD) and new source review (NSR) provisions, which are included in Colorado Regulation No. 3.

40 CFR Part 52

[UT3–1–5452, FRL–5003–5]

Approval and Promulgation of Air Quality Implementation Plan; Utah; Revision to the State Implementation Plan Addressing PM_{10} for Salt Lake and Utah County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving the State Implementation Plan (SIP) submitted by the State of Utah for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by the Governor of Utah to satisfy certain Federal requirements for an approvable nonattainment area PM_{10} SIP for Utah and Salt Lake Counties.

EPA is also approving revisions to the State-wide SIP, chapters 1 through 7 and 10 through 15, which were submitted by the Utah Air Quality Division Director as a supplement to the Governor's submittal. The State-wide revisions pertain to air program elements necessary to implement control strategies to assure attainment and maintenance of the NAAQS, such as resources, emergency episodes, monitoring program, legislative authority, public notification, etc.

The Utah Air Conservation Regulations (UACR) have been revised numerous times since the early 1970's. The regulations have been renumbered and new requirements added. EPA is, therefore, approving the State request to replace, in its entirety, the existing UACR with that which was submitted on November 15, 1991.

EFFECTIVE DATE: Effective on August 8, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: U. S. Environmental Protection Agency Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Lee Hanley at (303) 293–1760.

SUPPLEMENTARY INFORMATION:

1. Background

A. Utah PM_{10} Statutory and Regulatory History

1. 1977 Clean Air Act (CAA) Requirements: Revision and Implementation of PM_{10} NAAQS

The CAA requires EPA to periodically review and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as revise the NAAQS themselves. On July 1, 1987 (52 FR 24634), EPA finalized its decision to revise the particulate matter NAAQS from "total suspended particulate" (TSP) to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

To implement the new particulate matter NAAQS, all areas in the country were divided into three groups, based on the probability that each area would violate the new PM_{10} NAAQS. "Group I" areas were those areas having violated the PM^{10} NAAQS or having air quality data showing a high (greater than 95%) probability of violating the NAAQS. These areas required substantial SIP adjustment. "Group II" areas were those areas estimated at having 20–95% probability of violating the PM_{10} NAAQS and needing less adjustment to their existing SIPs. "Group III" areas were those areas estimated as having less than 20% probability of violating the PM_{10} NAAQS and, therefore, only needing SIP adjustment as required under the preconstruction review program. See 52 FR 24672 and 52 FR 24679–82 (July 1, 1987).

In the State of Utah, Salt Lake and Utah Counties were identified by EPA as Group I areas. The rest of the State was classified as Group III (52 FR 29383, August 7, 1987). The State, therefore, under section 110(a)(1) of the CAA then in effect, was required to submit a PM_{10} SIP by April 1988. On November 15, 1990, the President signed into law revisions to the CAA (Public Law No. 101–549, 104 Stat. 2399). All former "Group I" areas and certain other areas were designated nonattainment for PM_{10} and classified as moderate by operation of law upon enactment of the 1990 Amendments. See Section 107(d)(4)(B) and 188(a) of the Act. Thus, Utah and Salt Lake Counties became moderate PM_{10} nonattainment areas (56 FR 56694, 56840, November 6, 1991) and were subject to the associated moderate PM_{10} nonattainment area SIP requirements.

2. Citizen Lawsuit

In 1989, a lawsuit (*Preservation Counsel* v. *Reilly*, Civil Action No. 89–C–262–G, (D. Utah)) was filed by the Preservation Council, Utah Environment Center and the Utah Valley Citizens for Clean Air against EPA. The plaintiffs claimed that, because the State had failed to submit a PM_{10} SIP within the timeframe provided under the CAA that provided for attainment of the PM_{10} NAAQS, the duty to issue such a plan for Utah had devolved to EPA and that EPA was required to issue a plan for Utah pursuant to Section 110(c)(1) of the CAA then in effect.

A settlement agreement was signed by the parties in January 1990, which called for submittal of a SIP for Utah County and Salt Lake County and EPA approval, or EPA promulgation of a Federal Implementation Plan (FIP) for these counties, if necessary, signed by the EPA Administrator by December 31, 1991. The settlement allowed the State to maintain the SIP development lead, but placed significant emphasis on EPA's involvement and technical oversight.

The Utah County area plan was adopted in September 1990 and submitted to EPA in October 1990. The Salt Lake County area plan was adopted in June 1991, and submitted to EPA in November 1991. EPA's agreement as to the appropriateness of developing separate plans for the two area plans was based on its review of the various complex source contributions in these areas, the effort by the State to address the issues in an equitable and timely manner (numerous scoping and public hearings were held to obtain interested parties' comments), and the different areas' design values.

The State did consider control strategies for area and mobile sources which were common to both counties. The Utah County plan, therefore, was modified in June 1991 to be consistent with the Salt Lake County plan and resubmitted with the Salt Lake County plan in November 1991. The parties voluntarily stipulated to dismissal of the lawsuit (agreeing to vacate the Settlement Agreement and dismiss the complaint) in August 1991.

B. Moderate PM_{10} Nonattainment Area SIP Requirements

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in title I of the Act. The EPA issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements. (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).) Today's final approval rulemaking action will apply EPA's interpretations to the Utah PM_{10} SIP.

Part D of title I contains the provisions applicable to nonattainment areas. Moderate PM_{10} nonattainment areas must meet the applicable requirements set out in Subparts 1 and 4 of Part D. Subpart 1 contains provisions generally applicable to all nonattainment areas and Subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, Subparts 1 and 4 overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. A comprehensive, accurate, current inventory of actual emissions which provides a sufficient basis for determining the adequacy of the attainment demonstration;
2. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) to be implemented no later than December 10, 1993;
3. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;
4. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and
5. Provisions to assure that control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See Sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992. (See Section 189(a).) Such States also must submit contingency measures by November 15,

1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline of December 1994. (See Section 172(c)(9) and 57 FR 13543–13544.)

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565–13566.) In this action, EPA is approving the Utah PM_{10} plan revision submitted to EPA in a letter dated November 15, 1991. This submittal was intended to satisfy those moderate PM_{10} nonattainment area SIP requirements due November 15, 1991. EPA proposed to approve the submittal on December 18, 1992, 57 FR 60149. Comments were received from Geneva Steel and Kennecott Utah Copper Corporation. EPA's response to these comments are discussed below in III. Public Comment.

A. Regulatory Discussion

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. (Also, Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).) 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. Utah held several public hearings after reasonable notice, evaluated the hearing comments, made changes to the SIPs and regulations as needed, and provided EPA with documentation of this process. The state documentation can be found in the State's Technical Support Document (TSD), Evaluation of the PM_{10} SIPs Compliance with 40 CFR 51, Appendix V Requirements.

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.) The EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The Utah PM_{10} SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1992). The submittal was found to be complete, and a letter dated January 19, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The reader is referred to the Federal Register dated December 18, 1992, 57 FR 60149, for the detailed discussion on the Utah PM_{10} SIP and corresponding regulatory requirements. In summary, the Utah PM_{10} SIP must address various elements such as: emissions inventory, RACM (including RACT), demonstration of attainment, PM_{10} precursors, quantitative milestones and reasonable further progress (RFP), and enforceability issues.

C. The Utah PM_{10} SIP

1. Utah County

The Utah County area has three monitoring sites, each of which recorded violations of the PM_{10} NAAQS. The Lindon site had 666 total number of days of available data; the second highest value is 254 $\mu g/m^3$, measured in February 1989. The North Provo site had 226 days of available data; the first high is 191 $\mu g/m^3$ measured in January 1988. The West Orem site had 339 days of available data; the first high is 263 $\mu g/m^3$. These high/second high days represent the design value for these sites; they were determined using the "look-up table," Table 6–1, in the PM_{10} SIP Development Guideline document (EPA—450/2–86–001).

The Utah County monitoring network recorded additional data other than those stated above. However, to ensure that each season of the year is represented by the data used in determining the design value, EPA requires the use of a complete discrete 12-month data set, or sets which are multiples of 12-month periods. The use of the most recent data sets which represents the area is also encouraged.

The Utah County area had a unique data base involving the operation-shutdown-startup of Geneva Steel. The steel mill was down for the period August 1986 to September 1987. Data comparison showed the facility as a major contributor to the PM_{10} violations. The days of violations, the average winter concentration, and average iron content on the filters were significantly greater during the operation of the facility than during the down period.

EPA recommends the use of certain methods to demonstrate whether a plan will provide for timely attainment (57 FR 13538–39). Dispersion and receptor modeling are among the recommended methods and these methods were initially used by the State to define the design value(s) and control strategies.

Within the time constraints in meeting the settlement agreement imposed deadlines to complete a SIP, there were extensive reanalyses of the monitoring network, Chemical Mass Balance (CMB) filters, and the emission inventory (CMB is a receptor modeling effort which can be used to define PM_{10} emissions). EPA determined that, with the information available from the detailed emission inventory (supported by a micro inventory) and CMB analyses, the SIP would not result in additional or different control strategies if there was sufficient time to run a dispersion modeling analysis, adjusting for the concerns regarding stagnation and secondary contributions.

As indicated in the General Preamble, 57 FR 13539, EPA has developed a supplemental attainment demonstration policy that applies to the initial moderate PM_{10} nonattainment areas. See "PM_{10} SIP Attainment Demonstration Policy for Initial Moderate Nonattainment Areas," issued by John Calcagni on March 4, 1991. The policy indicates that in certain circumstances (where time constraints, inadequate resources, inadequate data bases, lack of a model for some unique situations, and other unavoidable circumstances would leave an area unable to submit an attainment demonstration by November 15, 1991), "modified demonstrations" may be accepted on a case-by-case basis. The policy recommends that a modified demonstration be accompanied with the following: (1) documentation of the procedures or analyses used in the modified method; (2) an explanation why alternative methods identified in EPA guidance were not used; (3) a description of how the modified method demonstrates, adequately and appropriately, area-wide attainment; and (4) when the design value is based on monitoring data, a showing that the SIP is based on one full year of adequate data for an approved network, a review of the monitoring data and network, and provision for appropriate followup monitoring to address issues raised during the review. For the reasons stated previously, EPA believes it was appropriate for the State to use a modified demonstration for Utah County. The State TSD describes how the Utah County analyses are consistent with this policy.

The base year emission inventory was for 1988. Since the exceedances are wintertime occurrences, the State focused on a wintertime (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.3 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volume II, Utah County, State Technical Support Document.

Although the design values varied by site, the source apportionments were similar. The source apportionment at the West Orem monitoring site, which had the County's highest design value, was representative of the source apportionment of the Lindon and North Provo monitoring sites. Thus, if attainment can be demonstrated at West Orem, attainment could also be assured at the other two sites. The categories of sources contributing to the design day include Geneva Steel (62.5%, primary and secondary), automobile (10.9%, primary and secondary), space heating (including wood and coal burning, primary and secondary, 16.6%), and other point sources (10%, primary and secondary).

To demonstrate attainment by December 1994 (and to show on-going maintenance of the NAAQS), the SIP provided for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to 2003):

(1) New operating parameters and emission limitations for PM_{10}, SO_2, and NO_x for existing sources of primary and secondary PM_{10} impacting the ambient concentrations at the monitoring sites are detailed in Appendix A.1. of the Utah Air Conservation Regulation (UACR). These control measures include:

(a) a 54.4% emission reduction for Geneva Steel (primarily from the coke oven stacks and open hearth) includes facility-wide emission limitations and reporting and recordkeeping requirements specified in Appendix A.1.2.F of the SIP;

(b) fourteen other sources, which include a nitric acid plant, power plants, and asphalt & cement plants, have emission limitations specified in Appendix A.1.2.A through A.1.2.O;

(c) provisions limiting fuel burning to natural gas or to a specific sulfur content in the fuel, with specific permitting and recordkeeping requirements, apply to all major fuel burning units or facilities in the County;

(d) general provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc., are specified in Appendix A.1.1;

(e) regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, and emergency episode requirements.

(2) No burn periods, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (Section 9.A.6(4)(a) of the SIP):

(a) area coverage is north of the southernmost border of Payson City and east of State Route 68 (this covers virtually all the populated areas in Utah County; the areas not covered are mountainous areas and Utah Lake);

(b) program is triggered when ambient PM_{10} concentrations reach 120 $\mu g/m^3$ as measured by the real-time monitor located at the Lindon monitoring site;

(c) City and County Health Department commits to adopt local regulations to promulgate plan consistent with the State regulations;

(d) the State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(e) a regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local Health District (UACR 4.13.3); [1] and

(f) guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii)).

(3) Reducing sand/salt/slag applied to roads during the wintertime by 20% (Section 9.A.6(7) of the SIP). In addition, a study is to be conducted to confirm 20% reduction. Within six months from completion of the study, agencies responsible for application of these materials on the road must submit a plan and implementation schedules to reduce initial silt loading by 25% from the amount applied during the 1990 base year. The methods included in the Plan must be implemented by October 1, 1993. Regulations specifying the requirements for those who apply salt, slag or sand to roads are located in UACR 3.2.7.A & B.

EPA requires that attainment be demonstrated at all sites violating the PM_{10} standard. The control measures discussed above are necessary for all the sites to attain the standard, although the impact of a specific source category at a site may vary. The attainment summary for the 24-hour PM_{10} NAAQS at each of the three monitoring sites (Lindon, North Provo, and West Orem) through the year 2003 can be found in Tables 9.A.5, 9.A.7 and 9.A.9 of the SIP, respectively. Changes in emissions between 1993 and 2003 show a slight decrease in mobile source emissions, but a slight increase in residential space heating (woodburning) emissions.

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average in Utah County occurred in 1988 at the Lindon site and was 54 $\mu g/m^3$. Since attainment of the 24-hour design value results in an emission reduction of 43% in Utah County, the 24-hour emission limits are the more restrictive and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

The State has also committed to adopt a diesel inspection and maintenance (I/M) program to reduce diesel particulate emissions by 20%. The SIP contains a detailed discussion of the program elements, committed to by the State, including, among other things, the following measures:

(a) opacity inspections and mandatory repair upon failure;

(b) compliance monitored through diesel vehicle registration;

(c) certification of mechanics and stations upon their demonstration of adequate training, skill, and resources;

(d) opacity compliance test methods and roadside opacity enforcement;

(e) fleet self-certification;

(f) limited waiver provisions;

(g) public education on the program requirements provided to diesel vehicle owners and diesel industry organizations;

(h) enforcement program, penalties and annual program evaluation.

The SIP contains a detailed schedule of the State's action on the diesel I/M program that indicates, among other things, the program provisions will become effective on July 1, 1993. The State has since advised EPA that the implementation of this program has slipped due to delays in the national

[1] The SIP requires that the County develop regulations/ordinances for fireplace and woodstove installer and operator training programs, a solid fuel burner inspection program, weatherization requirements for homes, and banning of coal burning. EPA notes that when implemented, this program should help ensure maintenance of the NAAQS in the area.

opacity testing and measurement specifications.

2. Salt Lake County

Two distinct PM_{10} problems have been identified in Salt Lake County: (1) the summertime exceedances due to blowing dust from the Kennecott tailings in Magna, and (2) the winter exceedances during winter inversion periods in Salt Lake and Davis Counties.

a. Magna

Based on 724 observations in a three-year period, 1987 through 1989, the design value was determined to be the third-high reading, 304 $\mu g/m^3$. The exceedances were specifically caused by blowing dust from the Kennecott tailings pond while the facility was shut down. Additional analyses to determine any other source contribution were not necessary.

Kennecott and the State agreed to various control measures to ensure dust control of the tailings pond during current operation, and temporary or permanent shutdown of the mine, smelter and/or associated tailings pond operations.

The control measures (which included slurry distribution throughout the periphery and surface top of the pond) were completed in July 1988. Vegetation planting was also initiated. The meteorological conditions (winds at 15 mph or greater) which caused the past exceedances have occurred since the implementation of the control measure and no exceedances were recorded. The control measures are defined in Section 9.A.6(1) of the SIP and Appendix A.2.2.BB.B of the Utah Air Conservation Regulation.

b. Salt Lake County

The Salt Lake County exceedances, with the exception of the Magna area problem, occurred only during the winter season (November through February). The County has three monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake), which recorded violations of the PM_{10} NAAQS. The North Salt Lake design value is 169 $\mu g/m^3$. The Air Monitoring Center design value is 177 $\mu g/m^3$. The Salt Lake design value is 170 $\mu g/m^3$.

The source apportionments for these sites are fairly similar, showing significant PM_{10} contribution from secondary emissions. The Salt Lake area has different types of major stationary sources which emit SO_2 and NO_x emissions, including refineries, a copper smelter, power plants, and asphalt plants. Significant emissions were also identified from industrial vehicles, trains, and planes (Salt Lake has an international airport and a major railroad distribution center), woodburning, and from gasoline vehicles. The State concluded that showing attainment at the Air Monitoring Center, where the design value was highest, would also show attainment at the remaining two sites.

Analyses of the gridded emission inventory and the CMB indicated that the Salt Lake monitors, especially the North Salt Lake site, were impacted by PM_{10} and its precursors (SO_2 and NO_x) in Davis County. Therefore, to adequately address the nonattainment problem in Salt Lake County, sources were evaluated and controls required in Davis County, as well as in Salt Lake County.

As with the Utah County effort, the Salt Lake modeling analysis was receptor modeling, or CMB, due to difficulties with using dispersion modeling. Low wind speed (stagnation) and inversions were recurring meteorological conditions; they were not necessarily as severe as the conditions in Utah County. The area, however, had significant mountain-valley-lake effects. (The Wasatch Mountains are to the east and the Great Salt Lake is to the west.) The State has only vector wind data, which could not be changed to scaler units in a timely manner. Therefore, to meet the deadlines of the Settlement Agreement, EPA and the State agreed to proceed with the Salt Lake analysis using CMB and emission inventory rollback. A micro inventory and critical review of the CMB provides an adequate and appropriate analysis of the PM_{10} contribution and the required emission reduction necessary for attainment in Salt Lake County. In addition, Kennecott Copper performed a tracer study in February 1990 to determine if its emissions impact the Salt Lake monitoring sites. That study confirmed that the 1215 ft. stack and emissions from low heights at the smelter do impact the monitoring sites.

As discussed in II.C.1. above, EPA's policy indicates that, in certain circumstances, "modified demonstrations" may be accepted on a case-by-case basis. The policy is applicable to the Salt Lake County attainment demonstration due to the meteorological and topographical concerns, as well as the secondary particulate contribution issues. These issues were documented in Volume I, Salt Lake County, General Data Technical Support Document.

The base year emission inventory was for 1988. Since the exceedances were wintertime occurrences, the State focused on a wintertime (1988–89 season) inventory and an annual inventory. Summaries of these inventories, as well as the attainment year inventory, are provided in Table 9.A.13 of the SIP. Specific details of the base year and attainment year (after controls) inventories are provided in Volumes II through VI, Salt Lake County, State Technical Support Document.

The Air Monitoring Center site, with the highest design value in the area, was used as the "control" site for demonstrating attainment of the PM_{10} NAAQS in Salt Lake County. The categories of source contribution for the highest design value site include refineries (5.35% primary), other point sources (12.42% primary), secondary sulfates (12.97%, primarily from Kennecott smelter and refineries), secondary nitrates (10.42%, primarily from Kennecott mine and refineries), automobiles (29.28% primary and secondary), space heating (including wood and coal burning, 24% primary and secondary), and other sources (trains and planes, 3.52% primary and secondary). The source contribution for all the sources, except Kennecott, is similar at the other monitoring sites. The Kennecott source contributions were 4 to 6% for primary PM_{10} at the North Provo and Salt Lake sites and 0% at the Air Monitoring Center.

To demonstrate attainment by December 1994 (and to show ongoing maintenance of the NAAQS), the SIP provides for implementation of the following control measures (the SIP shows attainment by 1993 and maintenance to at least 2000):

(1) New operating parameters and emission limitations for PM_{10}, SO_2, and NO_x for existing sources of primary and secondary PM_{10} impacting the ambient concentrations at the monitoring sites are detailed in Appendix A.2. of the UACR. These control measures include:

(a) significant emission reduction for Kennecott's facilities (concentrator, power plant, refinery, gold mine, copper mine and smelter). The smelter's 1215 ft. stack previously was allowed to emit SO_2 emissions of 18,000 lbs/hr, annual average and a maximum 3-hour average of 98,400 lbs/hr. The new emission limit which requires emission reduction equivalent to that which would be realized from a double contact acid plant is 3240 lbs/hr, annual average and 5700 lbs/hr, 24-hour average.

(b) emission reduction for the refineries (the major control requirements are the installation of a sulfur recovery unit, and emission limitations on the boilers, furnaces, flares, catalytic crackers, etc.);

(c) provisions allowing the burning of only natural gas fuel during the wintertime (November through February) at all power plants; year-round burning of natural gas fuel is required at Utah Power and Light (Gadsby and 40 N. 100W.) and Murray City Power;

(d) sources are considered major if they emit 50 tpy of PM_{10}, SO_2, or NO_x, or any combination of the three pollutants.

(e) general provisions relating to stack testing, opacity, compliance with annual limitations, recordkeeping requirements of consumption/production, on-site fugitive dust control requirements from unpaved operation areas, etc.

(f) regulations to ensure implementation and enforcement provisions were revised or added, such as definitions, general requirements applicable to all sources or source categories, permitting regulations, emission standards, emergency episode requirements and malfunction provisions.

(2) No burn period, beginning September 1992, will achieve 60% emission reduction from fireplaces and 50% from woodstoves (Section 9.A.6(4)(b) of the SIP):

(a) area coverage is all of Salt Lake County and for areas in Davis County which are south of the southernmost border of Kaysville; the prohibition applies when the ambient concentration of PM_{10} reaches 120 $\mu g/m^3$ and the forecasted weather includes a temperature inversion which is predicted to continue for at least 24 hours;

(b) the State commits to eight inspectors round-the-clock during mandatory no burn periods and inspections to include investigation of calls made by private citizens;

(c) a regulation which specifically prohibits any visible emissions during the mandatory no burn period, except for those residences with burning as the sole source of heat for the entire residence and registered with the Executive Secretary or the local health department (UACR 4.13.3); and

(d) guidelines established for assessing the amount of penalty for violation of the no burn regulation (UACR 9.A.6.(4)(c)(viii))

(3) Reducing sand/salt/slag applied to roads during the wintertime by 20%, as described above in the Utah County plan, B.1.d.3. EPA's position regarding this measure is also the same as described above in the discussion of the Utah County plan and is incorporated here by reference. In short, EPA is approving the road salting and sanding rules contained in the SIP. Based on the information currently available, EPA believes the 20% reduction estimated by the State is reasonable. However, in acting on any SIP revision following from the study described in B.1.d.3 above, EPA would review the sufficiency of any new measures in light of the new information. EPA also may find it necessary to assess the sufficiency of the area's attainment demonstration in light of such new information. See Section 110(k)(6) of the Act.

The control strategies discussed above are necessary to demonstrate attainment at the three monitoring sites, although the impact of a specific source category at a site may vary. The attainment summaries for the 24-hour PM_{10} NAAQS at each of the monitoring sites (North Salt Lake, Air Monitoring Center, and Salt Lake City) through the year 2000 can be found in Tables 9.A.16, 9.A.a and 9.A.22, respectively. Changes in emissions between 1993 and 2000 show a slight decrease in mobile source emissions, but an increase from residential space heating (woodburning).

Although the State focused on the emissions and exceedances during the winter months, the control measures specific to the stationary sources are year-round. The highest annual average, 54 μm^3, in Salt Lake County occurred in 1988 at the North Salt Lake site. Since the 24-hour design value results in a PM_{10} emission reduction of 19.6% in Salt Lake County, the 24-hour emission limits are more restrictive, and will ensure attainment of the annual standard (as summarized in Table 9.A.24 of the SIP).

The State's commitment to adopt a diesel I/M program to reduce diesel particulate emission by 20% applies to Salt Lake and Davis County as well as Utah County (Section 9.A.6(6) of the SIP). In the Utah County portion of this notice, EPA described in broad terms the program elements and associated schedules committed to by the State. The prior discussion of the commitment applies with equal force here. EPA's position regarding the State's commitment to adopt this program is also the same as that described in the Utah County discussion above and is incorporated here by reference.

D. Additional Section 110(a)(2) and Section 172 CAA Requirements

The Utah State-wide SIP was last revised in 1978 and, at that time, the State addressed major SIP elements such as resources, ambient monitoring program, emergency episodes, permitting, etc. These program elements are required by Section 110(a)(2) and Section 172 (Part D) of the CAA. The Utah SIP has been revised since 1978, but the revisions were only for pollutant specific nonattainment areas. To ensure adequate implementation and enforcement of the PM_{10} SIP, the State reviewed and updated its State-wide SIP and regulations. The regulations were revised, as necessary, to enforce the PM_{10} SIP. The State-wide SIP, excluding Section 9 (pollutant-specific nonattainment area plans), and Section 8 (Prevention of Significant Deterioration), was revised to address changes in EPA guidance and other Federal requirements. A public hearing was held on these revisions on December 16, 1991. The revisions were made effective on March 31, 1992 and officially submitted to EPA on October 16, 1992.

Prior to this revision, the UACR were incorporated into the State-wide SIP, Chapter 12. During the public hearing process, the State identified administrative and publishing concerns which justified the "rearranging" of the regulations and the document titled "SIP". The State clarified that the SIP has always been incorporated by reference into the regulations, as stated in UACR R446–2. Past inclusion of the regulations into the SIP creates a double incorporation. The State clarified that the regulations and the revised "SIP" will continue to be federally enforceable for the State-wide program. Clarification of the State's position on this issue is documented in the State's response to public hearing comments on the revisions to Chapter 1–7 and 10–15; the State's internal memorandum of its response to public hearing comments is dated December 23, 1991, and is included in the State TSD.

E. Post SIP Submittal Issues

EPA reviewed the Utah PM_{10} submittal dated November 15, 1991, and determined the package as administratively and technically complete. This finding was documented in a letter to the Governor of Utah on January 17, 1992. EPA, however, had several concerns on the approvability of the SIP due to missing documentation. Documentation on the State's analyses on various stationary source control measures and how they were to be revised in the SIP and specified in the permits was needed. EPA has since received a majority of the documentation requested or has received an adequate State response with respect to correcting any stationary-source emission-limitation clarity issues. The State did not need a formal SIP revision (i.e., that which has

gone to the public hearing process) to correct these changes (with the exception of the Pacific States Cast Iron opacity and the 202 test method, discussed below) because the changes were not significant and substantive modifications.

The Pacific States Cast Iron Company (this source is located in Utah County) opacity limit stated in the SIP is 30%. Generally, EPA policy provides that, for any major stationary source emitting particulates in a nonattainment area, the opacity should be restricted to 20% unless the source can demonstrate that 20% is not feasible. In that case, the source must demonstrate the lowest opacity level that is feasible. The 30% opacity was a requirement that was stated in the public hearing document. This opacity limit was an oversight in the review of the Pacific States Cast Iron emission limitations. In a letter dated October 23, 1992, the Director of the Utah Division of Air Quality committed to review the emission limit (the 20% or feasible opacity level) for this source and to adopt a SIP revision, if appropriate, by March 1993. This review must be completed by the State.

When the Utah PM_{10} SIP was finalized, Method 202 had not been promulgated by EPA. Therefore, the absence of Method 202 is not a basis for disapproving any requirements or elements in the SIP submittal being acted on today. However, Method 202 is now available and should be specified in the future as appropriate in the SIP and in the stationary source permits. The State was aware of this potential requirement and has agreed to address this issue as part of its State/EPA Agreement for fiscal year 1994.

During the review of the November 15, 1991 submittal, EPA and the State identified typographical errors in the final printing of the SIP. The State has committed to correct these errors in a letter dated July 1, 1992. The typographical errors on (1) page 42 of the SIP, Section 9.A.6.(2)(a), (2) page 52 of the SIP, third paragraph, sixth line, and (3) page 185, Section 9 of the SIP, Appendix A.2.2.RR, Condition 6, have been corrected in September 1993.

Since State adoption of this PM_{10} SIP, the State has been finalizing the permit conditions for stationary sources. EPA has discussed and advised the State on the need to ensure consistency with the State's permits and the federally-enforceable SIP. The State's permit program is in the federally-approved SIP. The final approval to the PM_{10} SIP will also make the emission limitations for the stationary sources federally enforceable. EPA is giving notice that should different emission limitations exist, EPA will enforce the more stringent of the two (or more) emission limitations. EPA must have assurance that the attainment demonstration of a nonattainment area plan is maintained. The less stringent emission limitation may not provide that assurance without a reanalysis of the attainment demonstration. It is, therefore, critical that the State maintain consistent emission limitations in the permits and in the federally-approved nonattainment-area plan. EPA has agreed to allow the State to update the emission limitations section of the SIP once a year, i.e., by September of each year beginning 1993. The tracking of this effort will be documented annually in the EPA/State Agreement.

III. Public Comment

EPA proposed to approve the Utah PM_{10} SIP on December 18, 1992, 57 FR 60149. Comments were received from Geneva Steel and Kennecott Utah Copper Corporation. The Geneva comments consisted of two parts: general comments in support of the SIP and a specific comment regarding equity on where controls were required and what controls are necessary for growth. The Kennecott comments contained a status report of its control measures on its tailings pond and the belief that the Federal approval of the PM_{10} SIP, which includes sulfur emission limitations for the smelter, would automatically imply resolution of the stack-height issues at the smelter. (The Kennecott smelter has a long history of issues surrounding its 1215 ft. stack. These issues are being addressed in a separate **Federal Register** action.) The Geneva and Kennecott comments are discussed in more details below.

A. Geneva Comments

The Geneva comments raised interesting issues, some of which have been raised previously during the PM_{10} SIP development, others which would be more appropriately addressed by the State in its current work on the PM_{10} contingency plan SIP Revision or the Carbon Monoxide SIP Revision. The comments are summarized below:

1. Geneva believes it has done its fair share to reduce emissions, but the SIP does not provide an adequate margin for growth from area and mobile sources. Geneva claims it has submitted data in February 1993 suggesting that ignoring the increasing vehicle emissions has resulted in overcontrol at Geneva.

Response: EPA has not seen the February 1993 data. The SIP, however, cannot be changed simply by the submittal of new data. EPA believes the State made the best decision with the data available at the time of the SIP development in 1990. The State can evaluate new data and revise the SIP accordingly. The State is required to submit a SIP Revision by November 15, 1993, to address contingency measures. The State should work with Geneva in considering the February 1993 data in the next SIP Revision.

2. Geneva commented that no Up-Down-Up analysis was performed on a similar source [the Kennecott smelter] in Salt Lake County which was also temporarily shut down during the PM_{10} data collection period. If the Up-Down-Up analysis is really useful, equivalent use for source apportionment in Salt Lake County would be expected.

Response: EPA believes that the State did not have sufficient data or time to perform an Up-Down-Up analysis for the Kennecott facility. Instead, the State used a tracer study which Kennecott funded. EPA and the State reviewed the data and believed they adequately evaluated the Kennecott emissions impact in the Wasatch Front. EPA believes that for PM_{10}, equitable emission reduction was applied to this stationary source category.

3. Geneva claims significantly different approaches were applied in defining the design values for the Utah County and Salt Lake County SIPs.

Response: The design value determination had been discussed between EPA, the State and Geneva prior to and during the State public hearing period. EPA continues to believe that the State adequately applied the appropriate rationale for evaluating quality assured complete data sets for both area SIPs. EPA Headquarters specifically documented the procedures for review of PM_{10} data in Utah County in EPA internal memoranda dated May 11, 1990 and July 11, 1990. The Salt Lake data were reviewed in the same manner.

4. Geneva pointed out that reductions in coal burning emissions were not adequately considered in the Utah County SIP and credit inappropriately applied in the Salt Lake County SIP.

Response: EPA agrees that coal burning emissions may not have been adequately addressed in the Utah County or Salt Lake County SIPs. EPA, however, did not give emission reduction credit for coal burning control measures in either SIP. EPA does agree that significant data were gathered on coal burning emissions in the Utah County area and that more data gathering may be needed in Salt Lake County. EPA believes the State could address these issues when it develops its PM_{10} contingency plan.

5. Geneva commented that the oxygenated fuels program may increase mobile source NO_X emissions which could jeopardize the success of the PM_{10} SIP (NO_X has been determined to be a PM_{10} precursor in the Utah County area).

Response: The oxygenated fuels program is being implemented in Utah County in response to the CAA mandate for moderate CO nonattainment areas with design values greater than 12.7 ppm. It was adopted and implemented *after* the PM_{10} SIP was adopted and submitted to EPA. That is, the PM_{10} SIP did not and could not have anticipated the impact of other future CAA requirements. EPA believes that the State should address the Utah County oxygenated fuels issues through the Carbon Monoxide (CO) SIP and filter data analyses to demonstrate that mobile source emissions, during the oxygenated fuels program, did in fact raise the NO_X emissions in the area. EPA has seen much of the data referenced by Geneva, but has also seen data to the contrary. EPA Headquarters has not made a conclusive determination on either data base.

6. Geneva suggested that the diesel emissions may not have been accurately apportioned; emissions assigned to diesel vehicles should have been assigned to gasoline vehicles.

Response: The PM_{10} SIP does break out diesel and gasoline fueled PM_{10} emissions, but does not break out NO_X emissions; there is only a single category for secondary nitrate. The NO_X emission estimates came from the MOBILE model, which includes both EPA's tailpipe emission factors and VMT shares for gasoline and diesel fueled vehicles. The model provides one composite NO_X emission factor, which is multiplied by total VMT in the County to produce one NO_X emissions number. Since the MOBILE model includes the necessary emission factors for the different vehicle types, the only way the State could have produced an erroneous NO_X estimate using the model would have been to input faulty VMT share information for gas and diesel vehicles. EPA believes the State used EPA's default inputs for VMT share.

7. Geneva claims that EPA and the State used the Kennecott tracer study for the PM_{10} SIP but that EPA was not in favor of applying the Geneva tracer study in the same manner for the Utah County CO SIP.

Response: EPA believes the intent and application of the Kennecott PM_{10} tracer study differed from the Geneva CO study. The Kennecott study was to determine if there was an impact from Kennecott in the Salt Lake or Utah County PM_{10} nonattainment area. The Kennecott emission limitations were then set using emission rollback and CMB analyses. The Geneva study was to determine Geneva's impact in downtown Provo, but EPA has questioned the emission rates used during the study *and* the length of the study time. EPA believes that the study contains good information, but is inadequate to define the CO impact during stagnation conditions or establish emission rates as was done with the Kennecott study. This discussion, however, is not applicable to the approval of the Utah County PM_{10} SIP.

In summary, the Geneva comments raised interesting issues, some of which have been raised previously, and others which are more appropriate for the State to address during the PM_{10} contingency SIP revision or for the CO SIP revision.

B. Kennecott Comments

Kennecott made two specific comments. The first is the status of the vegetation cover around the tailings pond and its success in attaining the standard in the Magna area in the past four and a half years. In the second comment, Kennecott indicates that for PM_{10}, attainment was demonstrated using receptor modeling and ambient monitoring data. Kennecott states that "If the smokestacks used by one or more of the PM_{10} sources had been taller or shorter than they actually are, the ambient data would have been different and the results of the CMB analysis would have been different. Therefore, if any of the stacks were taller than GEP, credit could not be given for the height above GEP and an attainment demonstration based on CMB would not be valid." Kennecott reiterates its commitment to install a double contact acid plan and asserts that EPA's approval of the PM_{10} SIP implies approval of the GEP SIP.

Response: EPA acknowledges the good faith effort Kennecott has made in successfully implementing the control measures for the tailings pond. The comment on GEP, however, is not applicable here. The PM_{10} SIP did not attempt to review stack height issues in the Salt Lake or Utah County areas. (Stack heights could have been reviewed if any of the stationary sources emitted greater than 5000 tpy total suspended particulates. Such sources did not exist in these PM_{10} nonattainment areas.)

As stated in I.C.2.b above, Kennecott emissions from the tall stack and from other sources did impact PM_{10} monitoring sites in Utah and Salt Lake Counties. The Salt Lake PM_{10} SIP is related to the stack height (GEP) issue because SO_2 emissions in the Wasatch Front have been determined to be precursors of PM_{10}. To demonstrate attainment for the Utah SIP, "major" PM_{10} sources and their precursors must demonstrate RACT. For the Kennecott smelter, RACT was a double contact acid plant or its equivalent. A double contact acid plant has been determined by EPA to be RACT for the SO_2 SIP, but it is a control measure that was highly contested by Kennecott over the past two decades in favor of other control measures. Emissions rollback was used to determine the level necessary for PM_{10} attainment of the area. Stack height (or GEP) was not an issue which had to be resolved for the PM_{10} SIP. EPA did encourage the double contact acid plant control measure since such control measure, combined with other requirements, was necessary for both the PM_{10} and SO_2 attainment demonstration. The GEP SIP is focused on another criteria pollutant, was not discussed in the proposed approval rulemaking of the Utah PM_{10} SIP, and must be processed in a separate **Federal Register** action.

As with the Geneva comments, the Kennecott comments/issues do not affect the approvability of the PM_{10} SIP.

IV. Implications of Today's Action

The EPA is approving the plan revision submitted to EPA for the Utah and Salt Lake Counties, Utah, in a letter from the Governor dated November 15, 1991. Among other things, the State of Utah has demonstrated that the Utah and Salt Lake Counties PM_{10} nonattainment areas will attain the PM_{10} NAAQS by December 31, 1994.

The Utah Air Conservation Regulations (UACR) have been revised numerous times since the early 1970's. The regulations have been renumbered and new requirements added. EPA is today approving the replacement of the entire UACR submitted on November 15, 1991.

EPA is approving the State-wide SIP revisions (Chapters 1–7 and 10–15) submitted in a letter dated October 15, 1992, by the Director, Utah Air Quality Division. As with the UACR, the State-wide SIP was updated to clarity and consistency with current State and Federal requirements. The October 15, 1992 submittal was referenced in the Governor's original November 15, 1991 letter.

As noted, additional submittals for the initial moderate PM_{10} nonattainment areas were due at later dates. These include a new source review program for new and modified major sources of

PM_{10} (and PM_{10} precursors, where applicable), which was required to be submitted by June 30, 1992 (see Section 189(a) of the Act) and contingency measures, which were required to be submitted by November 15, 1993 (see Section 172(c)(9) of the Act and 57 FR 13543). The EPA will determine the adequacy of any such submittal as appropriate.

The approval of the PM_{10} plans for the Salt Lake and Utah Counties has benefits that extend to other criteria pollutant efforts. The approval of these PM_{10} plans, however, does not automatically resolve the other criteria pollutant issues, such as GEP and the SO_2 SIP. The GEP issue and the SO_2 SIP for Salt Lake County will be addressed in a separate **Federal Register** notice.

The approval of this PM_{10} plan for Salt Lake and Utah Counties establishes emission limitations and implementation milestones. The State must update its SIP for changes to these emission limitations, especially for stationary sources. EPA and the State agree that such updates (which are SIP Revisions) will occur each September, as appropriate. Should differences exist between emission limitations, EPA will enforce, as necessary, the most stringent limitation.

Final Action

This document makes final the action proposed at 57 FR 60149, December 18, 1992, including the clarifications discussed above. As noted elsewhere in this notice, EPA received public comments in support of its proposed approval and on comments more applicable to other pollutant (SO_2 and CO) issues; no adverse public comments were believed to have been submitted on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table I to a Table III under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population 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 a substantial number of small entities affected. 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 (1976); 42 U.S.C. 7410(a)(2).

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

Executive Order 12866

OMB has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, hydrocarbons, intergovernmental relations, nitrogen dioxide, particulate matter, reporting and recordkeeping requirements, and sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Utah was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 26, 1994.

William Yellowtail,

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 TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(25) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(25) The Governor of Utah submitted a PM_{10} State Implementation Plan (SIP) for Salt Lake and Utah Counties, Utah with a letter dated November 15, 1991. The submittals were made to satisfy those moderate PM_{10} nonattainment area SIP requirements due for Salt Lake and Utah Counties as outlined in the Clean Air Act of 1990. The Governor's submittal also included revisions to the Utah Air Quality Rules and to other sections of the State-wide SIP. The Utah Air Conservation Regulations have been revised and renumbered over the past decade and are being replaced in its entirely with this Governor's submittal.

(i) Incorporation by reference.

(A) Utah Air Conservation Regulations, printed January 27, 1992.

(B) Utah State Implementation Plan, Section 1–7 and 10–15, effective March 31, 1992.

(C) Utah State Implementation Plan, Section 9, Part A and Section 9, Part A, Appendix A effective August 14, 1991.

[FR Doc. 94–16505 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[IN15–2–6326A; FRL–5008–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving three requests to redesignate marginal ozone nonattainment areas in the State of Indiana to attainment. The USEPA is also approving their accompanying maintenance plans as State Implementation Plan (SIP) revisions. The redesignation requests and maintenance plans were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: St. Joseph and Elkhart, Vanderburgh, and Marion Counties. The State has met the requirements for redesignation contained in the Clean Air Act (the Act), as amended in 1990. The redesignation requests are based on ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period from 1990

through 1992. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on these requested redesignations and SIP revisions. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Adverse comments received concerning a specific geographic area, St. Joseph and Elkhart, Vanderburgh, or Marion Counties, will only affect this final rule as it pertains to that area and only the portion of this final rule concerning the area receiving adverse comments will be withdrawn.

EFFECTIVE DATES: This action will be effective September 6, 1994, unless notice is received by August 8, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of these SIP revisions is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6069.

SUPPLEMENTARY INFORMATION: The redesignation requests and maintenance plans considered in this rulemaking were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: South Bend/Elkhart (St. Joseph and Elkhart Counties, submitted on September 22, 1993); Evansville (Vanderburgh County, submitted on November 4, 1993); and Indianapolis (Marion County, submitted on November 12, 1993).

I. USEPA Redesignation Policy

The Act's requirements for redesignation to attainment are contained in section 107(d)(3)(E) of the Act, and discussed in a September 4, 1992 memorandum from the Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions. As outlined in this memorandum, section 107(d)(3)(E) of the Act requires that the following conditions be met for redesignation to attainment:

1. The USEPA must determine that the areas subject to the redesignation request have attained the National Ambient Air Quality Standard (NAAQS);
2. The USEPA must have fully approved the applicable SIP for the areas under section 110(k) of the Act;
3. The USEPA must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal air pollution control regulations, and other federally enforceable emission reductions;
4. The USEPA must have fully approved maintenance plans for the areas as meeting the requirements of section 175A of the Act; and
5. The State must have met all requirements applicable to the areas under section 110 and Part D of the Act.

To demonstrate that the areas have attained the ozone NAAQS, the State must show that the ozone data representative of the highest ozone concentrations in the areas do not indicate violations of the NAAQS at any monitoring site in the areas during the most recent three years of monitoring at the sites. In accordance with 40 CFR 50.9, the annual average number of expected exceedances of the ozone standard (0.12 parts per million [ppm], one-hour averaged) at any monitor can not exceed 1.0 during the preceding three year period. The data used in this demonstration must be quality assured, in accordance with 40 CFR part 58, and collected in accordance with 40 CFR part 50, appendix H. The data should be recorded in USEPA's Aerometric Information Retrieval System (AIRS).

The SIP for the areas must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply to the areas. These requirements include new requirements added by the 1990 Act amendments. The State must meet all requirements of section 110 and Part D of the Act that were applicable prior to the submittal of the complete, finally adopted redesignation request(s). (It should be noted that, based on section 175A of the Act, other requirements of Part D of the Act remain in effect until the USEPA approves the maintenance plan and redesignation to attainment. If the USEPA disapproves the request to redesignate an area, these requirements remain in effect with no delay.) A SIP which meets the pre-redesignation request submittal requirements must be fully approved by the USEPA prior to USEPA's approval of the redesignation of the areas to attainment of the NAAQS. The requirements of Title I of the Act, which includes section 110 and Part D of the Act, are discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992).

The State must be able to reasonably attribute the improvements in air quality to permanent and enforceable emission reductions. Attainment resulting from temporary emission reductions or from favorable (not conducive to high ozone concentrations) meteorology would not qualify as a permanent air quality improvement. The State should demonstrate that the emission reductions from a past high ozone period (generally the year or period for which the area ozone classification design values were determined), to the period of attainment were due to permanent and enforceable emission control measures and were sufficient to explain the attainment of the ozone NAAQS.

Prior to the redesignation of an area to attainment, the USEPA must fully approve a maintenance plan (as a SIP revision) which meets the requirements of section 175A of the Act. The maintenance plan must provide for maintenance of the NAAQS attainment in the area(s) for at least 10 years after the USEPA approval of the redesignation request. The maintenance plan must contain additional emission control measures as necessary to assure maintenance of the NAAQS (generally this means maintaining the ozone precursor emissions at or below the attainment year levels). The Act also requires (section 175A(b)) a second SIP revision 8 years after an area is redesignated to attainment to assure maintenance of the NAAQS for an additional 10 years beyond the first 10 year maintenance period.

The maintenance plan must contain such contingency measures as the

USEPA deems necessary to ensure prompt correction of any violation of the NAAQS occurring after an area is redesignated to attainment or exceedance of other triggering levels, such as emissions exceeding attainment levels (this could be caused by emission increases not anticipated in the maintenance plan).

At a minimum, the maintenance plan should contain the following elements:

1. Attainment Inventory

The State must develop an emissions inventory for the initial period of attainment to identify the level of emissions in each area which is associated with attainment of the NAAQS. This emissions inventory must be consistent with USEPA's most recent guidance on preparation and documentation of emission inventories. For ozone nonattainment areas, the inventory should be based on actual, typical summer weekday emissions of ozone precursors (Volatile Organic Compounds [VOC], Oxides of Nitrogen [NOx], and Carbon Monoxide [CO]).

2. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of the ozone precursors will not exceed the levels of the emissions in the attainment inventory or by modeling to demonstrate that the future mix of sources and emission rates will not cause a violation of the NAAQS. The maintenance plan should be based on the same type and level of modeling used to demonstrate attainment of the NAAQS in the SIP. Regardless of which approach is used, the State must project the emissions for the 10 year period following the anticipated time of the USEPA approval of the redesignation request (the State should assume that the USEPA will take two years to complete the rulemaking on the redesignation request). The projected emissions must reflect the expected actual emissions based on enforceable emission rates and typical source activity rates (such as production rates) adjusted for expected source growth. Projected emission reductions must reflect the impacts of permanent, enforceable emission control measures. The assumptions of emission reductions and source growth and techniques used to project the emissions must be clearly documented.

3. Monitoring Network

The maintenance plan must contain provisions for the continued operation of air quality monitors of the applicable type (ozone monitors in this case) in the areas to be redesignated to attainment. This is needed to provide verification of the maintenance of the NAAQS attainment, and is also needed to provide triggering data for the possible activation of the contingency measures in the event of a future violation or exceedance of the NAAQS (the State may choose to activate some contingency measures even when the NAAQS is simply exceeded but not yet violated to prevent future NAAQS violations).

4. Verification of Continued Attainment

The State must assure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS. In addition, the maintenance plan must indicate how the State will track the progress and success of the maintenance plan. This includes tracking air quality levels and emissions.

5. Contingency Plan

Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after the redesignation of an area to attainment. For the purposes of section 175A, a State is not required to fully adopt contingency measures that will take effect without further action by the State. The contingency plan, however, is considered to be an enforceable part of the SIP and must ensure that the contingency measures will be adopted and implemented expeditiously after they are triggered. The plan must clearly identify the measures that will be adopted, a schedule and procedure for their adoption and implementation, and a specific time limit for action by the State. The plan must also identify the specific indicators or triggers that will be used to determine when the contingency measures will be required.

II. Summary of the Indiana Redesignation Submittals

Summarized below are the contents of the three IDEM redesignation requests and maintenance plans.

A. Current Designations and Area Definitions

On November 6, 1991 (56 FR 56694) the USEPA formally designated the Evansville, (Vanderburgh County); Indianapolis, (Marion County); and South Bend/Elkhart (Elkhart and St. Joseph Counties) areas as marginal ozone nonattainment areas. These designations and classifications were based on ozone standard violations monitored in these areas in 1988.

B. Monitored Attainment of the NAAQS

B.1. Evansville Area

During the most recent three years with quality assured monitoring data as addressed in the Evansville area redesignation request (1990 through 1992), ozone was monitored at six sites in Indiana and at two sites in Kentucky. No exceedance of the ozone standard was monitored during this period, with the highest monitored ozone concentration being 0.122 ppm, one-hour averaged, at the Mount Vernon monitoring site in 1990.

The worst-case historical sites (AIRS site 19–173–0002 in Warrick County and the Old State Road site in Vanderburgh County) recorded a number of ozone standard exceedances in 1988 and 1989. The Warrick County site recorded three exceedances in 1988, 0.133 ppm, 0.132 ppm, and 0.128 ppm. The Old State Road site recorded two exceedances in 1988, 0.146 ppm and 0.127 ppm, and one exceedance, 0.146 ppm, in 1989. The exceedances recorded in Warrick County are believed by the State to be due to the impact of emissions from Vanderburgh County, which is an adjoining county just west of Warrick County. The 1990 through 1992 data for these sites show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak ozone concentration at the Warrick County site being 0.118 ppm and that at the Old State Road site being 0.115 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the Evansville area based on the most recent air quality data available at the time of the redesignation request submittal. To further support this case, the 1993 data showed no exceedances of the ozone standard.

B.2. Indianapolis Area

During the most recent three years with quality assured monitoring data prior to the redesignation submittal (1990 through 1992), ozone was monitored at seven sites in the Indianapolis area. Only one exceedance, 0.125 ppm, was recorded (recorded at the Trailer Court Road site in Indianapolis in 1990) in this area during this period.

The worst-case historical sites (1321 South Harding in Indianapolis and Noblesville in Hamilton County) recorded a number of exceedances of the ozone standard during the 1987 through 1989 period. The Noblesville monitor recorded three exceedances, 0.130 ppm, 0.130 ppm, and 0.127 ppm, during this period. The 1321 South Harding monitor also recorded three

exceedances, 0.147 ppm, 0.142 ppm, and 0.137 ppm, during this period. The 1990 through 1992 data for these sites show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak concentration at the Noblesville site being 0.117 ppm and that at the 1321 South Harding site being 0.104 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the Indianapolis area. To further support this case, the 1993 data showed no exceedances of the ozone standard at any of the monitoring sites in the Indianapolis area.

B.3. South Bend/Elkhart Area

During the 1990 through 1992 period, ozone was monitored at five sites in the South Bend/Elkhart area. No exceedance of the ozone standard was monitored during this period, with the maximum monitored concentration being 0.124 ppm, monitored at the Ross Beatty High School in Cass County, Michigan in 1991.

The worst-case historical site, Childrens Hospital in South Bend, recorded three ozone standard exceedances, 0.137 ppm, 0.135 ppm, and 0.130 ppm, in 1988. The 1990 through 1992 data for this site show no exceedances of the ozone standard (0.12 ppm one-hour averaged), with the peak monitored ozone concentration being 0.107 ppm.

These data show that attainment of the ozone NAAQS has been monitored in the South Bend/Elkhart area. To further support this case, the 1993 data showed no exceedances of the ozone standard at any of the monitoring sites in the area.

C. Meeting Applicable Requirements of Section 110 and Part D

As noted in 40 CFR 52.773, the USEPA has approved Indiana's ozone SIP as meeting the requirements of section 110(a)(2) and Part D of the Act, as amended in 1977, for Elkhart, Marion, and St. Joseph Counties. (Since Vanderburgh County was designated as attainment for ozone prior to the 1990 amendment of the Act and prior to the submittal deadlines covered under other requirements of the pre-1990 Act, Vanderburgh County was subject only to Prevention of Significant Deterioration (PSD) regulations, which the USEPA has promulgated for Indiana and has delegated to the State of Indiana for implementation. Vanderburgh County, however, is subject to the amended requirements of Part D as addressed below.) The 1990 Act amendments, however, modified section 110(a)(2) and, under Part D, revised sections 172 and 182 adding new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to satisfy the requirement that the SIP meet all applicable requirements under the Act, USEPA has reviewed the SIP to ensure that it contains all measures and information that were due under the Act, as amended in 1990, prior to or at the same time Indiana submitted its redesignation requests as considered here. The USEPA interprets section 107(d)(3)(E)(V) of the Act to mean that, for a redesignation request to be approved, the State must have met all requirements that applied to the subject areas prior to or at the same time of the submission of the complete redesignation requests. Requirements of the Act that come due subsequently continue to be applicable to the areas at later dates (see section 175A(c)) and, if the redesignation of any of the areas is disapproved, the State remains obligated to fulfill those requirements.

C.1. Section 110 Requirements

Although section 110 was amended in 1990, the Indiana SIP for the areas addressed in this rulemaking meets the requirements of amended section 110(a)(2). A number of the requirements in section 110(a)(2) did not change in substance and, therefore, USEPA believes that the pre-amendment SIP meets these requirements. As to those requirements that were amended (57 FR 27936 and 23939, June 23, 1993), many duplicate other requirements of the Act, which are addressed below.

C.2. Part D Requirements

Before the subject Indiana areas may be redesignated to attainment, the areas must meet the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title I, specific requirements of Subpart 2 may override Subpart 1's general provisions (57 FR 13501, (April 16, 1922)). Elkhart, Marion, St. Joseph, and Vanderburgh Counties were classified as marginal ozone nonattainment areas (56 FR 56694, (November 6, 1991)). Therefore, in order to be redesignated to attainment, the State, for these Counties, must meet the applicable requirements of subpart 1 of Part D, as well as the applicable requirements of Subpart 2 of Part D.

C.2.a. Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable on a schedule as determined by the Administrator, but no later than three years after an area has been designated as nonattainment under the amended Act. The USEPA has not determined that these requirements were applicable to ozone nonattainment areas on or before November 12, 1993—the date by which the State of Indiana submitted the complete redesignation requests considered here. Therefore, the State of Indiana was not required to meet these requirements for redesignation purposes. In addition, as discussed below, Indiana has either satisfied the section 172(c) requirements or, as is the case for several of them, they lose their continued force once an area has demonstrated attainment and maintenance of the ozone NAAQS.

The requirements of section 172(c) are discussed below along with their relevancy to the redesignation requests at hand:

(1) Section 172(c)(1) requires SIPs to provide for all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. As discussed elsewhere in this rulemaking, Indiana has completed the adoption of stationary source Reasonably Available Control Technology (RACT) require for the Indianapolis and South Bend/Elkhart ozone nonattainment areas. The USEPA has approved these RACT regulations in prior rulemaking.

In addition, the USEPA notes that, with respect to all three of the areas that are the subject of this notice, no additional RACM controls beyond what may already be required in the SIP are necessary upon redesignation to attainment. The General Preamble (57 FR 13560, (April 16, 1992)) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. The USEPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area components of the areas' attainment demonstrations. Because attainment has been reached in all three areas, no additional measures are needed to provide for attainment.

(2) Section 172(c)(2) requires the SIP to provide for Reasonable Further Progress (RFP) towards attainment of the NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the areas covered by this rulemaking have already attained the NAAQS, the SIP has already achieved the necessary RFPs toward that goal for the three areas.

(3) Section 172(c)(3) requires the SIP to contain a comprehensive, accurate, current inventory of actual emissions from all source of the relevant pollutants. As noted elsewhere in this rulemaking, the State of Indiana has developed and submitted such an emissions inventory for the areas covered here. As also noted elsewhere in this rulemaking, the USEPA has approved this emissions inventory.

(4) Section 172(c)(4) requires the SIP to identify and quantify the emissions which will be allowed to result from the construction of major new or modified stationary sources in each of the areas. This requirement has been addressed in Indiana's revised New Source Review (NSR) regulations, which have been submitted to the USEPA (see a discussion of this submittal below). The approval of Indiana's NSR regulations would also satisfy section 172(c)(5) NSR provisions.

Although the USEPA has not completed approval of Indiana's NSR regulations, it should be noted that once an area is redesignated to attainment, nonattainment NSR requirements are not generally applicable. The redesignated area(s) then becomes subject to Prevention of Significant Deterioration (PSD) requirements instead of the NSR requirements. The USEPA has promulgated acceptable PSD regulations for Indiana and has delegated the implementation of these regulations to the State.

(5) Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, the USEPA believes the Indiana SIP meets the requirements of section 110(a)(2).

(6) Section 172(c)(9) requires the SIP to contain contingency measures to be undertaken if an area fails to make RFP or fails to attain the NAAQS. Since the areas covered by this rulemaking have attained the NAAQS, the section 172(c)(9) contingency measure requirements are not applicable unless the redesignation requests and maintenance plans are not fully approved. It should be noted that section 175A contingency measures apply to areas that are redesignated to attainment.

C.2.b. Other Part D Requirements

See the discussion below concerning the implementation of the new requirements of Part D of the 1990 amended Act.

D. Improvement of Air Quality Due to Permanent and Enforceable Emission Reductions

Indiana has developed and submitted 1990 base year ozone precursor emission inventories for all of the State's ozone nonattainment areas. Indiana used the 1990 base year emissions data available at the time the redesignation requests were prepared to backcast (the use of source category annual growth factors, emission control impacts, and other source-specific data to estimate past year emissions) to 1988 emission levels. The 1988 backcasted emissions were compared to the 1990 emissions to show that emission reductions could explain the observed improvement in ozone concentrations between 1988 and the 1990–1992 period.

D.1. Evansville Area

A listing of major source VOC emissions for 1988 and 1990 shows that stationary source VOC emissions in Vanderburgh County declined by 339 tons per year (approximately 1.1 tons per day) between 1988 and 1990. Permanent VOC emission reductions due to source closures and implementation of emission controls totalled 570 tons per year in the same period (some of this emission reduction was offset by source growth). Indiana asserts that these point source emission reductions are permanent and enforceable. Indiana will not renew the source permits of closed sources, will require these sources to undergo review under PSD or NSR requirements if they seek to restart, and will prohibit these facilities from banking the pre-closure emissions against future source growth. Documentation is also given in the redesignation submittal showing that NO_x emissions declined by approximately 17.5 tons per day at stationary point sources between 1988 and 1990, due primarily to source closures.

In addition to emission reductions from the major stationary source closures and emission controls, Vanderburgh County has also experienced VOC emission reductions as the result of the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP) and the implementation of gasoline Reid Vapor Pressure (RVP) reduction requirements.

D.2. Indianapolis Area

Revised VOC point source emissions for 1988 and 1990 were included in the redesignation submittal. VOC emission reductions due to permanent source closures (see discussion above for the Evansville area regarding Indiana's approach to dealing with source closures) and application of emission controls have reduced point source VOC emissions by 2,239.22 tons per year between 1988 and 1990.

In addition to emission reductions from the major stationary source closures and emission controls, Marion County has also experienced VOC emission reductions as the result of the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP) and the implementation of gasoline RVP reduction requirements.

D.3. South Bend/Elkhart Area

IDEM has provided emissions data for individual stationary point source facilities in St. Joseph and Elkhart Counties showing that a permanent, enforceable VOC emission reduction of 857 tons per year (2.7 tons per day assuming 312 days per year of source operation) occurred between 1988 and 1990.

In addition to emission reductions from the major stationary source closures and emission controls, Elkhart and St. Joseph Counties have also experienced VOC emission reductions as the result of the implementation of the Federal Motor Vehicle Emission Control Program (FMVCP) and the implementation of gasoline RVP reduction requirements.

E. Maintenance Plans

The redesignation requests for all three areas contain common maintenance plan elements. First, the State commits to continue monitoring of ozone during the 10-year maintenance period following the redesignation of the areas. Any changes in the monitoring systems will be subject to USEPA approval. Second, the State commits to revise the maintenance plans 8 years after the areas are redesignated to cover an additional 10-year period beyond the initial 10-year maintenance period. The State has selected 2006 as the year ending the initial 10-year maintenance period. Third, to help verify maintenance of the standard, the State commits to require major stationary sources to annually submit information on their emissions in accordance with the State's emission statement rule (326 IAC 2–6). Finally, the State has selected a joint set of possible contingency emission control

measures and a common approach to triggering the need for contingency measures in each area.

Indiana plans on a two-level approach for the triggering of contingency measures. A Level I response would occur in the event that the ozone NAAQS is violated. This response would entail conducting an analysis to determine the level of the control measures needed to assure expeditious future attainment of the ozone NAAQS. Measures that could be implemented quickly would be selected so as to be in place within 12 months after the State becomes aware of a NAAQS violation. This will require the State to adopt the regulations prior to and in time to achieve the 12-month implementation deadline.

A Level II response would be implemented in the event that:

a. The monitored ambient levels of ozone exceed 0.115 ppm more than once in any year at any site in any one of the redesignated areas;

b. The level of VOC, CO, or NO_x emissions increase above the level of the 1990 emissions, corrected for any errors found prior to the approval to the redesignation requests. (The State is in a continual process of upgrading the emissions inventory as a result of updated emission factors and ongoing quality assurance procedures. Significant future changes in the base year emission inventories resulting from this process must be addressed in SIP revisions); or

c. The level of total VOC emissions for any area determined for any future year has increased above the level recorded in the prior year sufficiently so that an increase of the same magnitude in the following year would result in a level of emissions exceeding those recorded in 1990 by 5 percent or more.

A Level II response would consist of a study to determine whether the noted trends are likely to continue, and, if so, to determine control measures necessary to reverse the trends, taking into consideration ease and timing of implementation as well as economic and social considerations. Implementation of necessary controls in response to a Level II trigger will take place as expeditiously as practicable but no later than 18 months after the State is aware that a contingency measure trigger level has been exceeded. This will require the State to adopt the required emission reduction regulations prior to and in time to achieve the 18 month implementation deadline.

The analysis technique used to select emission control measures under Level I and Level II will be mutually agreed upon by the State and the USEPA.

The maintenance plan contingency measures to be considered and selected will be chosen from the following list or any other emission control measures deemed appropriate based on a consideration of cost-effectiveness, VOC reduction potential, economic and social considerations, or other factors that the State deems to be appropriate:

a. Lower Reid Vapor Pressure for gasoline;

b. Reformulated gasoline program;

c. Stage II gasoline vapor recovery;

d. Vehicle anti-tampering program;

e. Broader geographic coverage of existing regulations;

f. Application of RACT on sources covered by new control techniques guidelines issued in response to the 1990 Act amendments;

g. Application of RACT to smaller existing sources;

h. Vehicle inspection/maintenance program;

i. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual area wide VOC emissions. The transportation control measures to be considered would include: (1) Trip reduction programs, including but not limited to employer-based transportation management programs, area wide rideshare programs, work schedule changes, and telecommuting; (2) transit improvements; (3) traffic flow improvements; and (4) other measures;

j. Alternative fuel programs for fleet vehicle operations;

k. Controls on consumer products consistent with those adopted elsewhere in the United States;

l. Enhanced vehicle inspection/maintenance program;

m. VOC offsets for new or modified major sources;

n. VOC offsets for new or modified minor sources;

o. Increased ratio of VOC offsets required for new sources; and

p. Require VOC controls on new minor sources.

The demonstration of maintenance differs for each area as discussed below.

E.1. Evansville Area

Indiana has projected 2006 mobile source emissions using USEPA's MOBILE 5.0 model and documented growth factors for Vehicle Miles Travelled (VMT). Emissions for the year 2006 were determined for the other source categories using documented growth factors, including growth data supplied by the United States Department of Commerce, Bureau of Economic Analysis (BEA), and accounting for known post-1990 source closures. Indiana also used guidance and techniques provided in the USEPA guideline "Procedures for Preparing Emission Projections" (EPA–450/4–91–019). The year 2006 was assumed to be 10 years after the anticipated time for USEPA's approval of the redesignation request. Emission estimates have been updated to reflect Indiana's current estimates of the 1990 base year ozone precursor emissions inventory. Emissions estimates for the attainment base year (1990), 2006, and several interim years are given below:

VOC Emissions (Tons Per Day)

	1990	1995	2000	2006
Point sources	12.76	13.74	14.73	15.91
Area sources	12.46	12.82	13.18	13.61
On-road mobile sources	25.25	20.77	16.29	10.91
Off-road mobile sources	7.50	7.74	8.00	8.28
Biogenic sources	8.37	8.37	8.37	8.37
Total	66.34	63.44	60.57	57.08

CO Emissions (Tons Per Day)

	1990	1995	2000	2006
Point sources	1.20	1.28	1.36	1.46
Area sources	1.71	1.77	1.84	1.91

CO EMISSIONS (TONS PER DAY)—Continued

	1990	1995	2000	2006
On-road mobile sources	155.33	131.15	106.96	77.94
Off-road mobile sources	41.00	42.93	44.86	47.18
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Total	199.24	177.13	155.02	128.49

NO_X EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	2.78	2.98	3.18	3.42
Area sources	2.14	2.27	2.41	2.57
On-road mobile sources	14.11	13.31	12.52	11.56
Off-road mobile sources	7.70	7.86	8.02	8.21
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Total	26.73	26.42	26.13	25.76

It should be noted that the interim year emissions above were determined by the USEPA based on discussions with IDEM. USEPA and IDEM agreed that the interim year emission estimates should be based on linear interpolation between the 1990 and 2006 emission estimates for all three areas subject to this redesignation rulemaking. This is consistent with the source growth estimation procedure used by the State to estimate the 2006 emission levels, and the USEPA believes that this method is appropriate and reasonable for estimating the interim year emissions. The USEPA believes that this method provides reasonable estimates of the emission levels in those years and does not underestimate those emissions.

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 14.0 percent, CO emissions are projected to decrease by 35.5 percent, and NO_x emissions are projected to decrease by 3.7 percent over the 16 year period. Interim year emissions are expected to remain below the attainment year emission level. IDEM believes maintenance of the ozone standard has been demonstrated because VOC emissions are projected to decrease between 1990 and 2006.

E.2. Indianapolis Area

The City of Indianapolis, which was responsible for the 1990 base year emission estimates for Marion County, used the same approach followed by IDEM for Evansville to project 1990 base year emissions to 2006. The following emissions for 1990 and 2006 (expressed in tons per summer weekday) are contained in a March 21, 1994 supplement to the Indianapolis redesignation request (Indiana revised its attainment year and projected emission estimates based on comments on the States 1990 base year emission inventories received during public hearings). The interim year emissions were determined by the USEPA based on linear interpolation between the 1990 and 2006 emission estimates.

VOC EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	29.2	29.9	30.6	31.5
Area sources	48.7	52.3	55.9	60.2
On-road mobile sources	107.2	96.1	85.0	71.7
Off-road mobile sources	19.2	20.6	22.0	23.6
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	204.3	198.9	193.5	187.0

CO EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	124.4	127.9	131.3	135.5
Area sources	37.9	39.2	40.5	42.0
On-road mobile sources	731.5	665.9	600.3	521.6
Off-road mobile sources	147.7	158.1	168.5	181.0
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	1041.5	991.1	940.6	880.1

NO_X EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	53.6	49.7	45.8	41.1

NO_X EMISSIONS (TONS PER DAY)—Continued

	1990	1995	2000	2006
Area sources	30.9	32.6	34.5	36.6
On-road mobile sources	63.4	63.3	63.2	63.1
Off-road mobile sources	28.6	29.0	29.4	29.8
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	176.5	174.6	172.9	170.6

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 8.5 percent, CO emissions are projected to decrease by 15.5 percent, and NO_x emissions are projected to decrease by 3.3 percent over the 16 year period. IDEM and the City of Indianapolis believe maintenance of the ozone standard has been demonstrated because VOC emissions are projected to decrease between 1990 and 2006.

E.3. South Bend/Elkhart Area

Indiana has projected the 2006 mobile source emissions using USEPA's MOBILE 5.0 model and documented growth factors for VMT. Emissions for 2006 were determined for the other source categories using documented growth factors, including growth data supplied by the Bureau of Economic Affairs (BEA), and known source closures occurring after 1990. Indiana also used guidance and techniques provided in the USEPA guideline "Procedures for Preparing Emission Projections" (EPA–450/4–91–019). Emission estimates have been updated to reflect Indiana's current estimates of the 1990 base year ozone precursor emissions inventory.

The following 1990 and 2006 emissions for Elkhart and St. Joseph Counties in tons per summer weekday are contained in a February 25, 1994, supplement to the Evansville and South Bend/Elkhart redesignation requests (Indiana revised its attainment year and projected emission estimates based on comments on the States 1990 base year emission inventories received during public hearings). The interim year emissions were linearly interpolated by the USEPA.

VOC EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	14.44	15.79	17.13	18.75
Area sources	41.83	43.64	45.45	47.62
On-road mobile sources	39.83	33.85	27.86	20.68
Off-road mobile sources	10.13	10.58	11.02	11.56
Biogenic sources	19.62	19.62	19.62	19.62
Totals	125.85	123.48	121.08	118.23

CO EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	1.06	1.14	1.23	1.33
Area sources	5.47	5.64	5.80	6.00
On-road mobile sources	249.95	216.29	182.63	142.24
Off-road mobile sources	56.42	59.32	62.22	65.70
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	312.90	282.39	251.88	215.27

NO_X EMISSIONS (TONS PER DAY)

	1990	1995	2000	2006
Point sources	10.81	11.61	12.42	13.38
Area sources	6.32	6.70	7.08	7.53
On-road mobile sources	31.36	30.07	28.78	27.24
Off-road mobile sources	17.82	17.70	17.58	17.44
Biogenic sources	N.A.	N.A.	N.A.	N.A.
Totals	66.31	66.08	65.86	65.59

Based on the 1990 base year and 2006 projected emissions, VOC emissions are projected to decrease by 6.1 percent, CO emissions are projected to decrease by 31.2 percent, and NO_X emissions are projected to decrease by 1.1 percent over the 16 year period. These emission decreases between 1990 and 2006 demonstrate maintenance of the ozone standard.

F. Implementation of New Requirements of Section 110 and Part D of the Act

Although the SIPs for the three areas were previously approved by the USEPA under section 110 of the Act, the

Act, as amended in 1990, has added new requirements. Below is a summary of the status of Indiana's compliance with the requirements for marginal nonattainment areas, such as the areas covered by this rulemaking.

F.1. Submittal of a Comprehensive Base Year Emissions Inventory

Indiana has submitted final, adopted 1990 base year emission estimates and associated documentation for the subject areas. The emission inventories for these areas have been reviewed in a separate technical support document and have been found to be acceptable. A direct final rulemaking approving these emission inventories was published on June 20, 1994 (59 FR 31544).

F.2. Emission Statement SIP Revision

Indiana has submitted a SIP revision covering regulations requiring the submittal of annual emission statements by facilities with potential VOC emissions equal to or exceeding 25 tons per year. This SIP revision has been reviewed in a separate rulemaking. A direct final rulemaking approving this SIP revision was published on June 10, 1994 (59 FR 29953).

F.3. New Source Review Regulations

The State of Indiana has submitted NSR regulations in compliance with section 182(a)(2)(C) of the Act. The USEPA is in the process of reviewing these regulations. Although the USEPA has not approved these regulations, it should be noted that the USEPA does not consider compliance with these requirements to be a prerequisite to the redesignation of an area to attainment of the ozone NAAQS. The USEPA believes that the applicability of the Part C PSD program to maintenance areas makes it unnecessary to require that an area have obtained full approval of NSR revisions required by Part D of the Act in order to be redesignated. The USEPA believes that this interpretation of the Act is appropriate notwithstanding section 175A(d)'s requirement that the contingency provisions of a maintenance plan include a commitment on the part of the State to implement all measures to control the relevant air pollutants that were contained in the SIP prior to redesignation. The term "measure" is not defined in section 175A(d) and it appears that Congress utilized the terms "measure" or "control measure" differently in different provisions of the Act that concern the PSD and NSR permitting programs. Compare section 110(a)(2)(A) and (C) with section 161. In light of this ambiguity in the use of the term "measure," USEPA believes that term "measure" as used in section 175A(d) may be interpreted so as not to include NSR permitting programs. That this is an appropriate interpretation is further supported by USEPA's historical practice, dating back even before the 1990 amendment of the Act, of not requiring redesignating areas to demonstrate through modeling or to otherwise justify replacing the nonattainment NSR program with the PSD program once the areas were redesignated. Rather, the USEPA has historically allowed the NSR programs to be automatically replaced by the PSD programs upon redesignation.

F.4. RACT Corrections

As required by section 182(a)(2)(A) of the Act, Indiana has corrected RACT deficiencies previously identified by the USEPA. These RACT corrections were approved by the USEPA on March 6, 1992 (57 FR 8086).

F.5. Conformity of Federal Actions With the SIP

Section 176(c) of the CAA requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the CAA required USEPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final USEPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (*see* 57 FR 13498, 13557 (April 16, 1992)).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require the States to adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the CAA. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of Indiana is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Indiana is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of the redesignation request. It should be noted, however, that the State of Indiana has committed to the submittal of these SIP revisions by the required submittal deadlines.

F.6. Vehicle Inspection and Maintenance

Section 182(a)(2)(B) of the Act presents the savings clause for vehicle inspection and maintenance, requiring the adoption and implementation of a vehicle inspection and maintenance program if already included in the SIP (prior to the 1990 amendments of the Act) or if required by section 172(b)(11)(B) of the pre-1990 Act. The USEPA fully approved Indiana vehicle inspection and maintenance plan on July 31, 1990 (55 FR 31048). The approved plan only applied to Clark, Floyd, Lake, and Porter Counties. The areas subject to this redesignation rulemaking were not required to implement a vehicle inspection and maintenance program.

III. Summary of USEPA Review of Redesignation Requests

1. Monitored Attainment of the NAAQS

IDEM has collected quality assured ozone data in all three areas showing attainment of the ozone standard at all monitoring sites during the most recent three years of monitoring (1990–1992). These data are recorded in AIRS. These data show compliance with this redesignation requirement. Additionally, the 1993 data show continued monitored attainment of the ozone NAAQS.

2. Approved State Implementation Plans

All three areas are covered by a SIP approved under section 110 and Part D of the Act. Indiana has implemented this SIP in all three areas. This implementation includes the adoption and implementation of USEPA approved RACT regulations and other

required reasonably available control measures required by the pre-1990 Act. Indiana has corrected all previously noted RACT deficiencies, and USEPA has fully approved Indiana's RACT regulations.

3. Improvement of Air Quality Due to Permanent and Enforceable Emission Reductions

In all three areas, implementation of VOC emission control requirements and permanent, enforceable emission reductions from source closures have led to VOC emission reductions.

4. Maintenance Plans

The contingency portions of the maintenance plans were found to be acceptable. In addition, demonstrations of maintenance have been made for all three areas through emission projections to 2006.

One issue concerning the contingency measures, however, must be noted. As discussed above, Indiana has chosen to include the implementation of tighter gasoline RVP (requiring lower RVP) requirements as a contingency measure. At the same time Indiana was finalizing its maintenance plans, the USEPA issued new guidance concerning the use of lower RVP as contingency measures in maintenance plans. This new guidance was provided in a November 8, 1993 memorandum from Michael Horowitz, Office of General Counsel, to Directors of Air and Radiation Divisions. The guidance indicates that, for States to include lower RVP as a contingency measure in maintenance plans, the maintenance plan must include several things with respect to this contingency measure. First, the maintenance plan must indicate that if the former nonattainment area fell back into nonattainment, the State would submit a request to the USEPA to find under section 211(c)(4)(C) of the Act that the lower RVP requirement is necessary for the area to achieve the ozone NAAQS. Second, since the implementation of a lower RVP would rely upon USEPA's determination of whether it was necessary to achieve attainment, the State must provide for the possibility that a lower RVP could not be implemented. To do so, the State would need to provide for a backup measure in the maintenance plan. The maintenance plan could also include a commitment to adopt, as an alternative to the specified measure, measures identified by the USEPA as practicable in its denial of the State's request for a lower RVP requirement. If the State chooses to adopt measures specified by the USEPA and the USEPA has provided several options for acceptable measures, the State must adopt the requisite number of these measures as is necessary to again achieve the standard. The State would need to include a schedule for submittal of the section 211(c)(4)(C) request to the USEPA and a schedule for final adoption and implementation of a lower RVP standard, or the back-up measure(s), or the alternative measures selected by the USEPA. The schedule would need to be tied to the triggering event for the contingency measure, not to USEPA action on the 211(c)(4)(C) request.

Notwithstanding the November 8, 1993 policy discussed above, which was not available to Indiana at the time the State was finalizing and submitting its maintenance plans to the USEPA, USEPA is approving Indiana's maintenance plans as they currently exist. This is because Indiana has identified a wide range of contingency measures to choose from in the maintenance plan and is, therefore, not relying exclusively on lower RVP requirements as a contingency measure. If Indiana, however, upon the triggering of the need to implement contingency measures, chooses to implement requirements for lower RVP, Indiana must submit the section 211(c)(4)(C) request in compliance with the Act.

5. Implementation of All Requirements of Section 110 and Part D of the Act

As indicated above, all requirements of the Act applicable to these areas have been met through SIP revision submittals. These SIP revisions must be approved through final rulemaking before or at the same time as final rulemaking on the redesignation of the areas.

IV. Final Rulemaking Action

The State of Indiana has met the requirements of the Act revising the Indiana ozone SIP. The USEPA approves the redesignation of Evansville (Vanderburgh County); Indianapolis (Marion County); and South Bend/Elkhart (St. Joseph and Elkhart Counties) to attainment for ozone.

Because USEPA considers this action to be noncontroversial and routine, the USEPA is approving it without prior approval. This action will become effective on September 6, 1994. However, if the USEPA receives adverse comments by August 8, 1994, then the USEPA will publish a notice that withdraws the action, and will address these comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**. The comment period will not be extended or reopened. This withdrawal will be done on a geographic basis if the adverse comments received do not concern all three geographic areas. For example, if USEPA receives adverse comments concerning the South Bend/Elkhart Area redesignation request, only that portion of the final rule concerning the South Bend/Elkhart Area will be withdrawn.

The OMB has exempted this regulatory action from Executive Order 12866 review.

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 any 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., USEPA 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, USEPA 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.

The SIP approvals under section 110 and subchapter I, part D, of the 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976).

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: June 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are 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 P—Indiana

2. Section 52.777 is amended by adding paragraph (f) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(f) Approval—The Indiana Department of Environmental Management submitted three ozone redesignation requests and maintenance plans requesting the ozone nonattainment areas to be redesignated to attainment for ozone: South Bend/Elkhart (St. Joseph and Elkhart Counties), submitted on September 22, 1993; Evansville (Vanderburgh County), submitted on November 4, 1993; Indianapolis (Marion County), submitted on November 12, 1993. The redesignation requests and maintenance plans meet the redesignation requirements in section 107(d)(3)(d) of the Act as amended in 1990. The redesignations meet the Federal requirements of section 182(a)(1) of the Clean Air Act as a revision to the Indiana ozone State Implementation Plan for the above mentioned counties.

* * * * *

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7871q.

2. In Section 81.315 the attainment status designation table for ozone is amended by revising the following; designated areas to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—OZONE

Designated areas	Designation		Classification	
	Date	Type	Date	Type
*	*	*	*	*
Evansville area:				
Vanderburgh County.	(*)	Attainment	.....	.....
Indianapolis area:				
Marion County.	(*)	Attainment	.....	.....

INDIANA—OZONE—Continued

Designated areas	Designation		Classification	
	Date	Type	Date	Type
*	*	*	*	*
South Bend-Elkhart area:				
Elkhart County.	(*)	Attainment	.....	.....
St. Joseph County.	(*)	Attainment	.....	.....
*	*	*	*	*

*September 6, 1994.

[FR Doc. 94–16506 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7065

[AK–932–4210–06; AA–367]

Partial Revocation of Executive Order No. 1919½, Dated April 21, 1914, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 1.42 acres of public land withdrawn for townsite purposes at Talkeetna, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 1919½, dated April 21, 1914, as amended, which withdrew public land for townsite purposes at Talkeetna, Alaska, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within T. 26 N., R. 5 W., described as U.S. Survey No. 1260, Lots 3 and 4, Block 26.

The area described contains 1.42 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

Dated: June 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–16500 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 91–121, CC Docket No. 92–137, FCC 94–83]

Assignment of Channels, Air-Ground Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends the Table of Assignments for conventional Air-Ground Stations. This was done to reflect new geographic areas where the provision of air-to-ground service is required.

EFFECTIVE DATE: September 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sam Gumbert, Common Carrier Bureau, Mobile Services Division, 202–632–0914.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in CC Dockets 91–121 and 92–137, adopted April 6, 1994 and released April 28, 1994. The Complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M St., NW., Washington, DC, and also may be purchased from the Commission's copy contract, International Transcription Service, (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

This Report and Order reassigned channel 10 from Washington, D.C. to Pittsburgh, PA. and deleted channel 12 from Pittsburgh. Channel 9 was deleted from Seattle, Washington. Channel 12 was deleted from Grand Canyon, Arizona and assigned to Williams, Arizona. Proposed reassignments of channel 9 from Newark, New Jersey to Laurel Run, Pennsylvania and channel 2 from Boston, Massachusetts to Laurel Run were denied. All of these actions were initiated in Docket No. 92–121. Docket No. 92–137 proposed allocating channel 3 to Schaller, Iowa. This was denied.

Ordering Clauses

Authority for the rule changes adopted herein is contained in Sections 1, 4(i), 4(j) and 303(r) of the Communications Act, days from the date of publication the 47 U.S.C. §§ 151, 154(j), 303(r).

It is Ordered that § 22.521(b) of the Commission's Rules is amended to reflect the channel assignments set forth below.

It Is further Ordered that CC Docket No. 91–121 and CC Docket No. 92–137 are concluded.

It is further Ordered that the rule changes made herein will become effective 60 days from the date of publication in the Federal Register.

List of Subjects in 47 CFR Part 22

Communications common carriers, Public land mobile service, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.521(b) is amended by revising the entries for Arizona; District of Columbia; Pittsburgh, Pennsylvania; and Seattle, Washington to read as follows:

§ 22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
* * * * *	
Arizona:	
Phoenix	2, 8.
Williams	12.
* * * * *	
District of Columbia: Washington	1, 7.
* * * * *	
Pennsylvania: Pittsburgh	4, 10.
* * * * *	
Washington: Seattle	1, 2, 5.
* * * * *	

* * * * *

[FR Doc. 94–16343 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–307; RM–8386]

Radio Broadcasting Services; Jensen Beach and Melbourne, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C3 for Channel 272A at Jensen Beach, Florida, and modifies the license for Station WHLG(FM) to specify operation on the higher class channel, and substitutes Channel 236A for Channel 272A at Melbourne, Florida, at the request of HLG, Inc., and City Broadcasting Co. See 59 FR 01365, January 10, 1994. Channel 272C3 can be allotted to Jensen Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed transmitter site. The coordinates for Channel 272C3 at Jensen Beach are 27–12–53 North Latitude and 80–15–24 West Longitude. Channel 236A can be allotted to Melbourne in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.4 kilometers (4 miles) north of the community, in order to avoid a short-spacing to Station WWRM(FM), Channel 235C, Tampa, Florida. The coordinates for Channel 236A at Melbourne are 28–08–08 North Latitude and 80–35–35 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Nanacy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–307, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 272A and adding 272C3 at Jensen Beach, and by removing Channel 272A and adding 236A at Melbourne.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–16551 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–219; RM–7729]

Radio Broadcasting Services; Brillion, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C3 for Channel 298A at Brillion, Wisconsin, and modifies the license for Station WEZR(FM) to specify operation on Channel 298C3 in lieu of Channel 298A, in response to a petition filed by Brillion Radio Company. The coordinates for Channel 298C3 at Brillion are 44–19–10 North Latitude and 87–57–30 West Longitude. With this action, this proceeding is terminated.

DATES: Effective August 19, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–219, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 298A and adding Channel 298C3 at Brillion.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–16552 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 940552–4152; I.D. 051294A]

Northeast Multispecies Fishery; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on May 25, 1994 (59 FR 26972), which is related to Framework Adjustment 4 to the Northeast Multispecies Fishery Management Plan (FMP). This document corrects the specifications of the Massachusetts Bay Closure Area.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, Northeast Regional Office, 508–281–9272.

Correction of Publication

The publication on May 25, 1994, of the final rule (I.D. 051294A), which was the subject of FR Doc. 94–12782, is corrected as follows:

§ 651.32 [Corrected]

On page 26977, in § 651.32(a)(1)(iii), in the table "Massachusetts Bay Closure Area", the entry "MB5" under the heading "Point", is revised and the entries MB6 and MB7 are added to read as follows:

Point	Latitude	Longitude
*	*	* * *
MB5 ..	Cape Cod shoreline.	70°00′ W.
MB6 ..	42°00′ N	Cape Cod shoreline.
MB7 ..	42°00′ N	Massachusetts shoreline.
*	*	* * *

Date: July 1, 1994.

Henry R. Beasley,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–16499 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 070194B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 2, 1994, until 12 noon, A.l.t., October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 61 is 4,827 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv). The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that this third quarterly allowance soon will be reached. The Regional Director has established a directed fishing allowance of 4,200 mt, and has set aside the remaining 627 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.l.t., July 2, 1994, until 12 noon, A.l.t., October 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is exempt from OMB review under E.O. 12866.

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

Dated: July 1, 1994.

David S. Crestin,

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

[FR Doc. 94–16480 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 931100–4043; I.D. 070594B]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the first seasonal apportionment of the Pacific halibut bycatch mortality allowance specified for the trawl yellowfin sole fishery has been reached.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), July 5, 1994, until 12 noon, A.l.t., August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1994 Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery, which is defined at § 675.21(b)(1)(iii)(B)(*1*), is 592 metric tons (mt). The first seasonal apportionment of that allowance is 230 mt for the period January 20, 1994, through August 2, 1994 (59 FR 7656, February 16, 1994).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal apportionment of the Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 5, 1994, until 12 noon, A.l.t., August 3, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from OMB review under E.O. 12866.

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

Dated: July 5, 1994.

David S. Crestin,

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

[FR Doc. 94–16635 Filed 7–5–94; 4:44 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 070594A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the rock sole/≥other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the annual bycatch allowance of Pacific halibut apportioned to the trawl rock sole/≥other flatfish" fishery category in the BSAI.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), July 5, 1994, until 12 noon, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The annual bycatch allowance of Pacific halibut for the BSAI trawl rock sole/≥other flatfish" fishery category, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established as 688 metric tons (mt) by the final 1994 initial specifications (59 FR 7656, February 16, 1994).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the annual bycatch allowance of Pacific halibut apportioned to the trawl rock sole/≥other flatfish" fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for species in the rock sole/≥other flatfish" fishery category by vessels using trawl gear in the BSAI from 12 noon, A.l.t., July 5, 1994, until 12 noon, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from OMB review under E.O. 12866.

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

Dated: July 5, 1994.

David S. Crestin,

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

[FR Doc. 94–16636 Filed 7–5–94; 4:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 130
Friday, July 8, 1994

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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on information currently available to the Commission, it has reason to believe that unreasonable risks of injury and death may be associated with certain containers referred to in this notice as "5-gallon plastic buckets." The Commission is aware of more than 250 instances in the last 10 years in which young children have fallen head first into plastic buckets containing liquids and drowned or were injured. This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Consumer Product Safety Act ("CPSA"). One result of the proceeding could be the promulgation of a rule mandating performance standards and/or labeling requirements for these plastic buckets. If a performance standard is found to be unfeasible, another result of the proceeding could be a ban of plastic buckets having characteristics that create a drowning risk for children. A third option could be an information and education campaign. Further, some combination of these options could be adopted.

The Commission solicits written comments from interested persons concerning the risks of injury and death associated with buckets, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risks of injury and death described in this notice.

DATES: Written comments and submissions in response to this notice must be received by the Commission by September 6, 1994.

ADDRESS: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: John D. Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1315.

SUPPLEMENTARY INFORMATION:

A. Background

By publishing this advance notice of proposed rulemaking, the Consumer Product Safety Commission commences a rulemaking proceeding for products known as 5-gallon plastic buckets.[1] In July 1989, the Commission first learned of a drowning hazard associated with certain large buckets or bucket-like containers. The particular characteristics of these products will be discussed below in section C of this notice, but the products will be referred to generically as "5-gallon plastic buckets."

Drownings have occurred with these products when small children leaned over the buckets and fell in. These drownings can occur in even just a few inches of liquid in the bottom of the buckets. Given the shape and size of the buckets, and their stability when they contain even a small amount of liquid, they may not tip over when a child leans into them and falls in.

Five-gallon containers are used for bulk or commercial-sized quantities of a wide variety of products, including food, paint, and construction materials such as spackling compound. When emptied of their original contents, these containers are sometimes reused as buckets by consumers. Similar 5-gallon containers are also sold new in stores as large-volume household buckets.

Young children's curiosity, combined with their crawling and pulling up while learning to walk, can lead to drowning when buckets are used around the house. The Commission believes that these drownings typically happened when curious children crawled to a bucket containing mop water or other liquids for household chores, pulled themselves up and leaned forward to play in the water or retrieve an object. When they toppled into the bucket, they were unable to free themselves, and drowned.

The Commission issued a Safety Alert in July 1989 warning consumers of the drowning hazard associated with these products. At that time, the Commission knew of at least 67 drowning deaths in buckets during 1985–1987, mostly to young children 8 to 12 months old. In many of these cases, 5-gallon plastic buckets or containers were being used for mopping floors or for other household chores.

Also in 1989, the Commission contacted the major trade associations representing manufacturers and fillers of buckets. As a result, the trade associations formed the Coalition for Container Safety to work with CPSC on the issue of child drownings. The coalition agreed to undertake an information and education effort. A program was developed that included a plan to inform consumers of the availability of free self-adhesive warning labels for placement on buckets already in their homes. Additionally, a video news release produced by the coalition was reported to have reached 13 million viewers, resulting in phone calls from 4,200 consumers and the distribution of 71,000 labels.

The Commission's staff also worked with ASTM subcommittee F15.31 on voluntary standards for 5-gallon buckets. In 1993, ASTM approved an emergency standard for labeling of buckets to address this drowning hazard, and a final ASTM standard for labeling currently is being balloted by the subcommittee.

Concurrent with the development of the emergency labeling standard by ASTM subcommittee F15.31, a subcommittee task group worked to develop a draft performance standard. At a July 8, 1992, task group meeting, CPSC staff proposed a basic format for

[1] The Commission voted 3–0 to approve this notice and commence the rulemaking. Separate statements of Chairman Ann Brown, Commissioner Mary Sheila Gall, and Commissioner Jacqueline Jones-Smith are available from the Commission's Office of the Secretary.

the performance standard. The standard would describe several performance classes or options, and a container that met the requirements of any one of them would comply with the standard. This approach would allow each industry to select the most appropriate performance class for its uses. CPSC staff provided industry with several example performance classes at a December 1, 1992, meeting. These classes included:

a. *Stability.* Buckets would meet performance criteria that would ensure that the buckets were sufficiently unstable that if a child were to fall into one of them, the bucket would tip over. The buckets would have to tip over if subjected separately to specified horizontal and vertical forces.

b. *Restrictor.* Buckets could contain a "restrictor" device that prevents a child from falling into the bucket (*e.g.*, a post projecting upward from the bottom of the bucket).

c. *Liquid retention.* Buckets could be constructed so that they cannot retain liquid. (They still could be used to ship solid materials in a liner.)

In addition to the performance criteria proposed by the CPSC staff, the subcommittee's draft performance standard could be satisfied in any of the following ways:

a. *Photodegradability.* ASTM's draft standard would allow buckets that degraded quickly from ultraviolet radiation from the sun. The draft standard contains exposure time and test requirements for assessing material degradation. However, these test requirements were developed for thin films and not for products such as buckets. Moreover, buckets kept indoors might not degrade quickly enough to prevent substantial consumer use. Furthermore, at a meeting on May 2, 1994, the task group decided that this option was impracticable because, if a degradable bucket were developed, it might degrade before its original contents were used.

b. *Cleanability.* The draft standard would permit buckets with a nonremovable residue. The subcommittee reasoned that a bucket with a nonremovable residue would be unsuitable for consumer applications and therefore would not present a drowning risk. The draft ASTM standard provides a method and criteria for assessing cleanability of the residue that a product would leave in a bucket.

c. *Recycling.* A "recycling class" also was added to ASTM's draft standard. This would allow manufacturers to use 5-gallon buckets if they had a closed system for recycling or retrieving buckets, so that they would not come into consumers' hands.

The draft ASTM standard would cover plastic buckets of 4 to 6 gallon rated capacities. Industry members expressed concerns that any changes in bucket design would have significant economic consequences.

In August 1993, CPSC staff provided the subcommittee with detailed comments on the draft performance standard. These comments were incorporated into a revised draft standard. However, the subcommittee members' response to the first ballot vote on the draft performance standard was overwhelmingly negative.

At a November 30, 1993, meeting, subcommittee members proposed that the performance standard be modified to allow labeling as an alternative to a performance solution. CPSC staff voiced strong objections to this proposal, stating that labeling was meant to be an interim measure. Representatives from Underwriters Laboratories presented a proposal for validating buckets against the draft performance standard. The testing would be run by ASTM's Institute for Standards Research (ISR). The subcommittee members, however, were not interested in funding the proposal.

Subsequently, the subcommittee chairman modified the draft performance standard to address several of the negative ballots. The standard was then redistributed for subcommittee balloting at the end of February 1994. Once again, the ballot failed to receive the necessary two-thirds affirmative vote.

At a March 17, 1994, meeting, subcommittee members stated that they did not think that a performance standard was feasible and that they would continue to vote against it. All the industry representatives present were in agreement that the subcommittee should abandon a performance standard and focus instead on information and education efforts. Nevertheless, the subcommittee formed a new task group to examine the negative ballots and see if some sort of a performance standard could be drafted.

Because of the hazard of drowning associated with 5-gallon plastic buckets, and the absence of any voluntary performance standard that adequately addresses the drowning hazard, the Commission decided to publish this advance notice of proposed rulemaking ("ANPR"). Publication of this document commences a proceeding that ultimately could require certain buckets to meet specified performance requirements and/or bear labeling to warn consumers of the hazard presented by these buckets. Alternatively, certain buckets could be banned if no other option adequately addressed the risk.

B. Statutory Authority

This proceeding is conducted under provisions of the Consumer Product Safety Act ("CPSA"). 15 U.S.C. 2051–2084. A proceeding to promulgate a regulation establishing performance or labeling requirements as a consumer product safety standard is governed by the requirements in sections 7 and 9 of the CPSA. 15 U.S.C. 2056, 2058. Where there is no feasible consumer product safety standard that would adequately protect the public, the Commission may ban a product in accordance with sections 8 and 9 of the CPSA. 15 U.S.C. 2057, 2058.

Before adopting either a standard or a ban, the Commission first must issue an ANPR as provided in section 9(a) of the CPSA. 15 U.S.C. 2058(a). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must then publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 9(c) of the CPSA. 15 U.S.C. 2058(c). If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 9(f)(2) of the CPSA. 15 U.S.C. 2058(f)(2). And before issuing a final regulation, the Commission must make certain statutory findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. CPSC section 9(f)(3), 15 U.S.C. 2058(f)(3).

C. The Product

This ANPR covers only certain plastic buckets, which are described in greater detail below. Open-head plastic buckets having a rated capacity of 4½ to 5½ gallons generally are 14 inches high and 10.25 to 11.25 inches in diameter. They are practically straight sided, with a slight taper to facilitate nesting of empty buckets and release of plastic buckets from the mold. Buckets are manufactured to conform to government and international standards pertaining to performance characteristics such as stability, strength, and impact resistance. Plastic buckets are manufactured of high density polyethylene ("HDPE") using the injection molding process.

Five-gallon buckets are used as containers to package and transport industrial, commercial, and consumer products, such as chemicals, cleaning substances, foods, paints and construction materials. According to a

study by The Freedonia Group, Inc. (the "Freedonia study"),[2] about 50 percent of the plastic buckets produced in 1992 were used to contain cleaning compounds, paints, and adhesives. Food products accounted for approximately 40 percent; gypsum and other industrial and consumer products accounted for the remainder. In addition, empty buckets may be purchased new in retail stores.

Buckets can be plastic or steel and compete directly for market share with other containers, such as multi-walled bags and the bag-in-box. Industry data indicate that plastic bucket sales have outstripped metal bucket sales over the past decade and will continue to do so. Reasons cited for the shift to plastic are that plastic is less expensive than metal, weighs 25–35 percent less, and is noncorrosive in the presence of water-based products.[3]

Consumers obtain 5-gallon plastic buckets through purchases of consumer goods, such as paints and detergents, that are sold packaged in such buckets, and by taking empty buckets from job sites. The percentage of the annual 5-gallon plastic bucket production that enters secondary use in homes as utility buckets is not known.

Some characteristics of buckets that possibly affect the risk of children drowning in buckets are discussed below. Prior to issuing any proposed rule to address the drowning risk with plastic buckets, the Commission will determine how these risk characteristics should be used to define the buckets subject to the rule.

One of these risk characteristics is the size of the bucket. The Commission's Division of Human Factors analyzed data for children ages 8 to 14 months to determine the size ranges for potentially hazardous buckets for this age range. Approximately 86 percent of the drowning incidents with buckets involved children in this age range. Based on anthropometric data and a rigid-body model, the Human Factors Division determined that potentially hazardous buckets include those that are 12–21 inches in height and have a top opening diameter of greater than 7 inches. Other variables, such as the amount of liquid in the bucket, the weight of the bucket, and the orientation of the child in the bucket, can influence whether a bucket is potentially hazardous. (Memorandum from G. Sweet, CPSC Division of Human Factors, "Five-Gallon Buckets," Aug. 2, 1993.)

Another possible risk characteristic of a bucket is the material of which it is made. Of 128 incidents in which the material of the bucket was known, only 1 was made of metal; the others were made of plastic. Representatives of the metal bucket industry contend that metal buckets are less suitable for secondary consumer use because they will rust when exposed to water. Also, metal buckets tend to be used with solvent-based materials that may be more difficult to clean from the bucket so it can be used subsequently by the consumer.

In any event, the one incident that is known to have involved a metal bucket does not indicate that metal buckets present an unreasonable risk, particularly given the large number of these buckets that have been distributed. Accordingly, the scope of this proceeding extends only to plastic buckets. If information becomes available indicating that metal buckets also may present an unreasonable risk, the Commission can consider whether metal buckets should be regulated.

A third characteristic of a bucket that may affect the drowning risk is its capacity. The rated capacities of most of the buckets known to have been involved in drowning incidents range from 3½ to 6½ gallons. The draft ASTM performance standard for buckets, discussed below, would cover buckets of 4–6 gallon capacity. Only three deaths are known to have involved buckets with rated capacities outside the 4–6 gallon range. It is not known how many manufacturers of 4–6 gallon buckets would change to a size outside that range if a performance standard for 4–6 gallon buckets were adopted.

D. The Bucket Industry

According to the Freedonia study, approximately 248 million metal and plastic buckets of all sizes were shipped in 1992. Of these, approximately 70 percent, or 173 million units, were plastic buckets. More than 85 percent (150 million units) of the plastic buckets shipped were open-head buckets, which are generally the 5-gallon capacity. It is estimated that by 1997, 175 million open-head plastic buckets will be produced annually.

The Freedonia study also reports that there are approximately 50 plants producing open-head buckets in the United States. In 1992, 5 companies accounted for approximately 50 percent of shipments of plastic buckets. The estimated value of the 1992 shipments of open-head plastic buckets was $355 million, or approximately $2.37 per unit. Net exports of plastic buckets account for approximately three percent of shipments.

The industry has become somewhat organized through the ASTM subcommittee as a result of voluntary standards activities and the Coalition for Container Safety. Many of the dominant manufacturers are members of the Plastic Shipping Container Institute, representing approximately 30 percent of firms. Another trade association in which open-head bucket producers are members is the Society of the Plastics Industry.

E. Risks of Injury and Death

Between January 1984 and March 15, 1994, the Commission received reports of 228 deaths and 30 nonfatal incidents associated with buckets. These numbers do not represent a complete count of all bucket-related deaths and injuries, since reporting is still in progress for some data sources. For 1990 and 1991 (the latest years for which all data sources are complete), it is estimated that there were approximately 40 drownings per year.

Victims ranged in age from 7 to 24 months, with a median age of 11 months; almost two-thirds (63%) of the children were male.

TABLE 1.—VICTIM AGE FOR INVESTIGATED BUCKET INCIDENTS 1986–1994

Age (months)	Count
7	1
8	6
9	16
10	26
11	33
12	21
13	17
14	7
15	9
16	3
17	3
18	4
>18	5
Total	151

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, In-Depth Investigation File

Race/ethnicity was reported in 136 of the 151 investigated cases. Victims were Black (53), White (41), Hispanic (37), American Indian (4), and Asian (1). Minority groups accounted for a higher proportion (almost 70%) of bucket-related incidents.

[2] *Industrial Bulk Packaging*, The Freedonia Group, Inc., March 1993.

[3] *U.S. Paint Industry Data Base*, SRI International, September 1990.

TABLE 2.—RELATIVE RISK OF BUCKET INCIDENTS BY RACE/ETHNICITY 1986–1994

Race/ethnicity	Incidents (percent)	U.S. live births (percent)	Relative risk
Asian	<1	3.3	.3
Black	39	16.8	2.3
Caucasian	30	65.8	.4
Hispanic	27	13.3	2.0
Native American	3	1.0	3.0

Source: U.S. Consumer Product Safety Commission, Directorate for Epidemiology, In-Depth Investigation File

Spanish was reported to be the household language in 21 incidents, and Navajo was the language in two cases. However, conclusive information was not usually available on whether the caretakers involved in these cases could also read and/or speak English. In one family, the victim's mother, who was caring for him at the time, spoke only Kurdish. Whether the caretaker can read English is relevant to the potential effectiveness of labels and to the content of the label.

CPSC in-depth investigations generally do not collect socioeconomic data, but police reports and other documents collected as part of the investigations suggest that most victims were at the lower end of the socioeconomic scale. Statements taken in the investigations indicate that 5-gallon, industrial-type buckets are used by many low-income families because of the buckets' durability, versatility, availability, and low, if any, cost.

Generally, victims fell into buckets while leaning over them. There were no witnesses to virtually any of the incidents. However, it appears that, in many situations, unattended children were reaching for an object inside the container, or may have leaned over the bucket to look inside or play with the water, and fell in head first. In a few situations, children fell into buckets from higher levels, such as a patio bench or from a bed. The average height of liquid in the bucket was about 6 inches. The smallest amount of water was reported to be 3 inches.

Most buckets were used originally for bulk packaging of industrial and commercial products and were often brought home by neighbors or family members to use for household tasks. In the majority of incidents, the containers were used for cleaning purposes (mop buckets) around homes and held water mixed with various cleaning agents. The buckets were also used to hold drinking water for animals, for laundry purposes, as diaper pails, for gardening projects, as toilet aids, and to hold water for other household purposes. The incidents took place in all rooms of the home, as well as in yards and on porches.

As noted above, there were an estimated 40 bucket drowning deaths per year for 1990 and 1991. Also, there are approximately 8 million children under the age of 2 years in the United States. Based on these figures, the risk of death from drowning in a bucket is 5 per million each year for children in this age group. This risk ratio is most likely an underestimate. For example, the Commission knows of no children under age 7 months involved in the incidents from 1986 to 1994. Also, not all children under the age of 2 years have 5-gallon buckets in their homes.

F. Existing Standards

The Commission is aware of some existing standards that may be relevant to this proceeding. These standards are described below.

1. *ASTM standard ES 26–93 for labeling.* In May 1992, at the request of the Commission, ASTM formed subcommittee F15.31 to address the hazards associated with 5-gallon buckets. The subcommittee's primary goals were to develop a labeling standard and to determine the feasibility of a performance standard. The subcommittee recognized that a labeling standard could be developed and put into place in much less time than a performance standard. Consequently, the subcommittee initially focused its efforts on the development of an emergency labeling standard.[4] In July 1993, ASTM approved ES 26–93, "Emergency Standard Specification for Cautionary Labeling for Plastic Five-Gallon Open-Head Containers (Buckets)." A final ASTM labeling standard is currently undergoing the subcommittee balloting process.

The Commission preliminarily believes that the ASTM labeling standard alone will not adequately reduce the risk of child drownings associated with buckets. Warning labels generally are not as effective in reducing the risks of injury and death as appropriate design changes, particularly where, as here, the population at risk—infants and toddlers—cannot read. In addition, the Commission does not know the degree of compliance with the ASTM standard that is likely to occur in the buckets presenting the risks being addressed in this proceeding. It appears that a performance standard and information and education efforts will also be required to achieve a reasonable reduction in the risk of child drownings associated with this product.

2. *California labeling requirement.* In September 1993, a California law became effective that requires a warning label on 5-gallon buckets that are intended for use, sale, or distribution within the state. As noted above, the Commission believes that a labeling requirement alone will not adequately reduce the risk of child drownings associated with this product.

3. *Handling and shipping standards.* The Commission is aware of a number of standards that establish criteria for packaging to ensure that it will have sufficient strength and impact resistance to withstand conditions encountered in handling and shipping. These standards are not directly relevant to the development of a performance standard for buckets to address the child-drowning hazard. However, any new bucket designs needed to meet a performance standard may also have to meet one or more of the standards listed below:

1. I258. National Motor Freight Classification Rules, National Motor Freight Association, Inc., 2300 Mill Road, Alexandria, VA 22314.

2. ASTM Standard Specification Designation: D4504–85, Standard Specification for Molded Polyethylene Open-Head-Pails for Industrial Shipping.[5]

3. ASTM Standard Specification Designation: D4919–89, Standard Specification for Testing of Hazardous Materials Packaging.

4. Department of Transportation Hazardous Material Regulations, 16 CFR Part 178 (1993), Specifications for Packaging.

5. Uniform Freight Classification 6000–E, Section 7–1/4, Part 2 (Open Head Pails).

6. Environmental Stress Crack Resistance Test Procedure for Plastic Pails, Plastic Shipping Container Institute, 4913 Main Street, Downers Grove, IL 60515.

7. United Nations Transportation of Dangerous Goods, Chapter 9, Section 9.6.19.2–9.8.2.

For the reasons given above, the Commission believes that none of the existing standards would eliminate or adequately reduce the risk of child drownings associated with buckets.

[4] ASTM procedures allow for emergency standards, which will be in effect for only 2 years, to be developed on an expedited basis. During the 2-year life of the emergency standard, a final standard is considered according to the usual ASTM procedures.

[5] Available from the ASTM, 1916 Race St., Philadelphia, PA 19103.

G. Regulatory Alternatives Under Consideration

The Commission is considering alternatives to reduce the number of injuries and deaths related to 5-gallon buckets. Available information suggests that many of the families of the children involved in the reported incidents were unaware of the potential drowning hazard associated with secondary use of these containers and are less likely to be reached by traditional information and education (I&E) programs. Thus, labeling and performance standards, as well as new and aggressive I&E campaigns designed to reach this vulnerable population, continue to be warranted. It is also possible that a voluntary standard could be developed that would adequately reduce the risk of child drownings associated with this product. These alternatives are discussed below.

1. *Performance standard.* Based on the history of the ASTM subcommittee's consideration of a performance standard, it appears unlikely that ASTM will adopt an adequate performance standard for buckets. In addition, it is unclear whether there would be substantial industry compliance with any such standard. Accordingly, it is possible that the Commission will issue a mandatory performance standard for hazardous plastic buckets. A mandatory standard could include provisions similar to some of those developed for the draft ASTM performance standard, or additional or alternate requirements could be developed.

Performance standards to reduce or eliminate the drowning hazard may require product redesign. A redesigned 5-gallon plastic bucket may entail costs to change the bucket molds and filling assembly lines, and also may adversely affect transportation and handling efficiencies. If these costs are prohibitive, fillers are likely to use alternate packaging, such as smaller or larger buckets.

2. *Labeling.* Another alternative is labeling plastic buckets. ASTM subcommittee F15.31 developed two labels to address the drowning hazard with buckets. The present ASTM labels are as follows:

BILLING CODE 6355-01-P



FIG. 1 Example of Label Type A

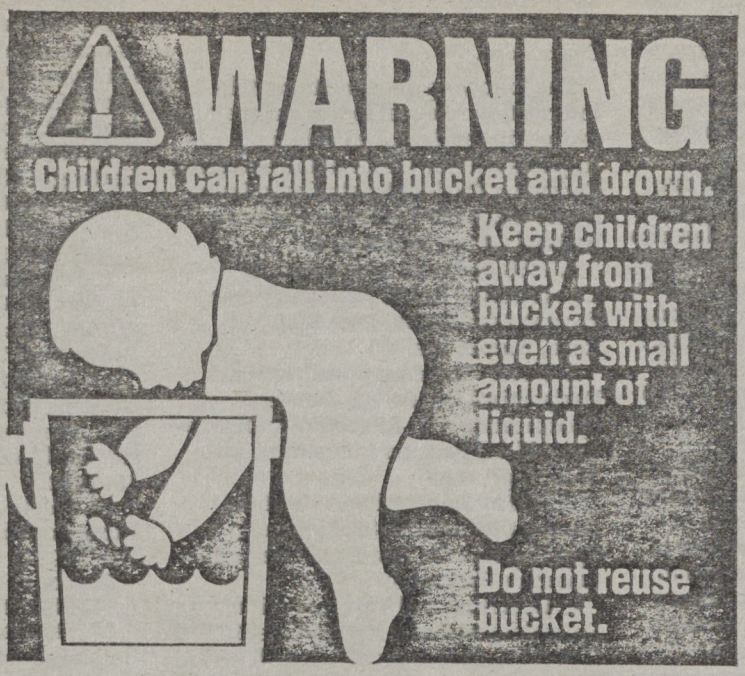


FIGURE 2

BILLING CODE 6355-01-C

The Commission believes that the labels developed by ASTM could be modified to more closely comply with recognized principles of safety labeling. The Commission presently lacks data, however, to demonstrate that such modifications to the ASTM labels would result in further reductions in deaths or injuries. In any event, as described above, the Commission is concerned that labeling alone will not adequately reduce the risk of child drowning.

3. Voluntary standards. As discussed above, ASTM has Emergency Standard ES 26–93 for labeling of 5-gallon buckets, and a permanent ASTM labeling standard is being balloted. There are also other voluntary standards applicable to these buckets, discussed above, but these standards do not address the drowning hazard to children. The Commission is not aware of any other voluntary standards in effect that apply to the risk of children drowning that is associated with this product.

4. A ban. The Commission may determine that a performance standard that would adequately reduce the risk of children drowning in buckets is not feasible. If this occurs and the requisite findings are made, the Commission could declare plastic buckets that present this risk to be banned hazardous products. This alternative would require the use of either smaller or larger buckets, or other types of packaging, that do not present the risk addressed in this proceeding.

G. Solicitation of Information and Comments

This ANPR is the first step of a proceeding which could result in a mandatory performance or labeling standard for plastic buckets that present an unreasonable risk of child drownings

(probably buckets of rated capacities of 3½ to 6½ gallons), or in a ban of these products. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information: (1) How consumers obtain the buckets, (2) the size of the exposed population, (3) a breakdown of production by bucket size and intended use, (4) the costs of bucket injection molds, (5) the degree to which industry and businesses depend upon the existing 5-gallon plastic bucket size and shape (shipping, storage, etc.), (6) the likely effects of elimination of the 5-gallon size, (7) the likelihood of industry substitution of another container, such as another size bucket, and how this would affect risk, (8) any markets with little or no potential of primary or secondary consumer use of plastic buckets, (9) the likelihood and nature of significant economic impact on small entities, and (10) the costs of mandating a labeling requirement.

In addition, the Commission solicits comments on the likely effects on drowning incidents and on the bucket market of possible design changes to plastic buckets. For example, commenters might be able to supply information about the reduction in drownings and the effect on bucket uses that might result if all plastic buckets were over 18 or 21 inches in height or less than 10 or so inches in height. Information on whether buckets with shapes other than round could be used would also be helpful.

Also, in accordance with section 9(a) of the CPSA, the Commission solicits:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.

(2) Any existing standard or portion of a standard which could be issued as a proposed regulation.

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. All comments and submissions should be received no later than September 6, 1994.

Dated: June 30, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. I258. National Motor Freight Classification Rules, National Motor Freight Association, Inc., 2300 Mill Road, Alexandria, VA 22314.

2. ASTM Standard Specification Designation: D4504–85, Standard Specification for Molded Polyethylene Open-Head-Pails for Industrial Shipping.[6]

3. ASTM Standard Specification Designation: D4919–89, Standard Specification for Testing of Hazardous Materials Packaging.

4. Department of Transportation Hazardous Material Regulations, 16 CFR Part 178 (1993), Specifications for Packaging.

5. Uniform Freight Classification 6000–E, Section 7–1/4, Part 2 (Open Head Pails).

6. Environmental Stress Crack Resistance Test Procedure for Plastic Pails, Plastic Shipping Container Institute, 4913 Main Street, Downers Grove, IL 60515.

7. United Nations Transportation of Dangerous Goods, Chapter 9, Section 9.6.19.2–9.8.2.

8. Report: "Polyethylene Shipping Containers: The Marketing of Hazard," Public Interest Scientific Consulting Service, Inc., New York, September 1985.

9. News from CPSC, "Large Buckets Are Drowning Hazards for Young Children," July 12, 1989.

10. COMSIS report on warning labels for 5-gallon buckets, August 22, 1989.

11. Materials from press conference with CPSC and the Coalition for Container Safety, August 22, 1990. Includes: sample label, agenda, remarks of CPSC Chairman Jacqueline Jones-Smith, remarks of Lewis R. Freeman, news release, fact sheet, suburban newspaper news release, and poster.

12. Log of 7/16/91 meeting with the Coalition for Container Safety.

13. Letter from Lewis R. Freeman, Jr., Vice President Government Affairs, The Society of the Plastics Industry, Inc. concerning labels, November 1, 1991. Attached is an undated "white paper" of the Technical Committee of the Plastic Shipping Container Institute, "Plastic 5–Gallon Shipping Containers."

14. Memorandum from Renae Rauchschwalbe, CPSC/CECA, to Eric Peterson, CPSC Executive Director, commenting on SPI's 11/1/91 labeling proposal, November 15, 1991.

15. Memorandum from Robert Hartwig, CPSC/EPHA, to George Rutherford, CPSC/EP, "Updated Analysis of Infant Bucket Drownings," November 25, 1991.

16. Memorandum from George Rutherford, CPSC, to the Commission, "Current Listing of Infant Bucket Drownings," December 5, 1991.

17. Letter from Bert Simson, CPSC, to Drew Azzaro, ASTM, requesting ASTM to call a meeting to discuss a voluntary standard for 5-gallon buckets, February 10, 1992.

18. Safety Alert, "Large Buckets are Drowning Hazards for Young Children," April 1992.

19. Log of organizational meeting of ASTM F15.31, May 5, 1992.

20. Staff memorandum to the Commission, "Injury and Human Factors Analyses of Bucket Drownings," May 14, 1992.

21. Mann, N.C., Weller, S.C., and Rauchschwalbe, R., "Bucket- Related Drownings in the United States, 1984 Through 1990," Pediatrics, Vol. 89 No. 6, June 1992.

22. Staff memorandum to the Commission, "Request for Participation Level Voluntary Standard Project on Certain Buckets," June 19, 1992.

23. Staff memorandum to the Commission, "Request for Participation Level Voluntary Standard Project on Certain Buckets," July 7, 1992, with ballot vote, July 29, 1992.

24. Log of meeting of ASTM F15.31, July 8, 1992.

25. Log of meeting of ASTM F15.31, August 15, 1992.

26. Log of meeting of ASTM F15.31, September 9, 1992.

27. Congressional Record, September 10, 1992, House Section, text of amendment offered by Rep. Bilirakis to H.R. 4706 to require bucket labels.

28. Log of meeting of ASTM 15.31 Performance Task Group, October 27, 1992.

29. "Focus Group Study of Bucket Labels," RIVA Market Research, Inc., November 1992.

30. Log of meeting of ASTM 15.31 Performance Task Group, December 1, 1992.

31. Log of meeting of ASTM F15.31, December 2, 1992.

32. Memorandum from J. Elder to the Commission, re Bucket Labels—Contractor's Report and Human Factors Staff Recommendations, December 28, 1992.

[6] Available from the ASTM, 1916 Race Street, Philadelphia, PA 19103.

33. Memorandum to the Commission from Donna-Bea Tillman, CPSC/HSHE, "Updated listing of infant bucket drownings," January 27, 1993.

34. Log of meeting of ASTM 15.31 Performance Task Group, February 16, 1993.

35. Log of meeting of ASTM F15.31, February 17, 1993.

36. Log of meeting of ASTM 15.31 Performance Task Group, March 30, 1993.

37. Log of meeting of ASTM 15.31 Performance Task Group, May 4, 1993.

38. Log of meeting of ASTM F15.31, May 5, 1993.

39. Scheers, N.J. and Cassidy, S., "Analysis of Investigated Cases of Deaths and Hospitalizations Associated with Five Gallon-Type Buckets: January, 1984 Through June 1, 1993," CPSC/EPHA, June 15, 1993.

40. American Society for Testing and Materials standard ES 26–93, "Emergency Standard Specification for Cautionary Labeling for Plastic Five-Gallon Open-Head Containers (Buckets)," approved July 28, 1993; published August 1993.

41. CPSC Safety Alert, August 1993.

42. Memorandum from G. Sweet, CPSC Division of Human Factors, to Donna-Bea Tillman, CPSC/HSHE, "Five-Gallon Buckets," Aug. 2, 1993.

43. Log of meeting of ASTM 15.31 Performance Task Group, September 8, 1993.

44. Log of meeting of ASTM F15.31, September 9, 1993.

45. Log of meeting of ASTM F15.34 (steel buckets), October 4, 1993.

46. Log of meeting of ASTM F15.31, November 30, 1993.

47. Letter from Eric Peterson, CPSC Executive Director, to John Blair, Chairman ASTM F15.31, regarding labeling should be replaced by performance requirements, December 27, 1993.

48. Letter from Frederick Huber, who is seeking a patent on a bucket with a ring at the base that can be removed to decrease the stability of the bucket, March 2, 1994.

49. Letter from Brock Landry to Donna-Bea Tillman, CPSC, concerning a drowning in a steel industrial cooking vessel, March 14, 1994.

50. Log of meeting of ASTM F15.31, March 17, 1994.

51. Memorandum from Donna-Bea Tillman, CPSC, to John Preston, CPSC, "ASTM activities on five-gallon buckets," March 24, 1994.

52. Interview with CPSC Chairman Ann Brown, Los Angeles Times, D3, March 25, 1994.

53. Memorandum from Mary Donaldson, CPSC/ECSS, to John Preston, CPSC, "Economic Information for Options Briefing Package on Five-Gallon Buckets," March 25, 1994.

54. Letter from John Preston, CPSC to John A. Blair, Chairman ASTM F15.31, urging development of performance standard, March 29, 1994.

55. Memorandum from George Sushinsky, CPSC to John Preston, CPSC, "The ASTM Draft Performance Standard for 5–Gallon Buckets," March 29, 1994.

56. Memorandum from S. Cassidy, CPSC/EPHA, to John Preston, CPSC, "Update of Investigated Cases Associated with Five Gallon Buckets," March 29, 1994.

57. Letter from Wm. Roper, Ropak Corp., to CPSC Chairman Ann Brown, concerning 3/25/94 interview and requesting meeting, March 30, 1994.

58. Letter from Wm. Roper, Ropak Corp., to John Preston, CPSC, asking for cumulative reports of infant drownings by year, March 30, 1994.

59. Memorandum from S. Cassidy, CPSC/EPHA, to John Preston, CPSC, "Risk of Death for Children under 2 Years of Age Associated with 5–Gallon Buckets," April 1, 1994.

60. Memorandum from Kathy Kaplan, CPSC/EXPA, to John Preston, CPSC, "Cost Estimate for Media Events and Consumer Information Program for 5-Gallon Buckets, April 1, 1994.

61. Letter from John Preston, CPSC to Mr. Frederick Huber, responding to his 3/2/94 letter, April 5, 1994.

62. Fax/Letter from CPSC Chairman Ann Brown to Wm. Roper, Ropak Corp., assuring that she is unbiased and inviting him to 4/15 meeting, April 8, 1994.

63. Fax from Harleigh Ewell, CPSC, to John Blair, Chairman ASTM F15.31, inviting interested parties to 4/15 meeting, April 8, 1994.

64. Letter from Wm. Roper, Ropak Corp., to John Preston, CPSC, stating that performance standard is impractical, April 11, 1994.

65. CPSC staff briefing paper from John Preston to the Commission, "Options for Addressing Drownings Associated with 5-Gallon Buckets," with Tabs A–I, April 18, 1994.

66. Letter from Brock R. Landry, attorney for the Coalition for Safe Steel Containers, requesting that steel industrial containers not be included in any rulemaking, April 18, 1994.

67. Log of meeting with bucket industry representatives and CPSC Chairman Ann Brown, April 26, 1994.

68. Log of 5/2/94 meeting of ASTM Subcommittee F15.31 Performance Task Group.

69. Letter from Wm. Roper, Ropak Corp., to CPSC Chairman Ann Brown, concerning labels and the need for an educational program, May 5, 1994.

70. Letter from Brock Landry, attorney for the Safe Steel Container Coalition, to CPSC Chairman Ann Brown concerning persons to attend 5/9 meeting and their position that steel containers should not be included in the proposed ANPR, May 5, 1994.

71. Letter from Wm. Roper, Ropak Corp., to John Preston, CPSC, concerning the "Just a Few Seconds" drowning prevention campaign, May 6, 1994.

72. Letter from Rep. Charles Wilson to CPSC Chairman Ann Brown, May 9, 1994.

73. Letter from CPSC Chairman Ann Brown to Rep. Charles Wilson, May 12, 1994.

74. Memorandum from CPSC Commissioner Mary Sheila Gall to CPSC Chairman Ann Brown, "In Depth Investigation (IDI) Reports—Bucket Drownings," May 13, 1994.

75. Letter from John Blair, Chairman ASTM 15.31, to Wm. Roper, Ropak Corp., "Proposed Educational and Communications Program, F15.31—Five Gallon Buckets," May 13, 1994.

76. Letter from R. J. Gardner to John Preston, CPSC, questioning value of bucket project based on 5/12/94 article in the *Utica Observer Dispatch*, May 15, 1994.

77. Letter from Wm. Roper, Ropak Corp., to CPSC Chairman Ann Brown announcing that the 5 major producers will label products commencing 1/1/95 and initiate an I&E program by 7/1/94, with attachments concerning I&E program, May 16, 1994.

78. Memorandum from John Preston, CPSC, to the Commission, "Response to Commission Questions Regarding 5-Gallon Buckets," May 17, 1994.

79. Tape recording of Commission decision meeting of May 19, 1994.

80. Statement of Chairman Ann Brown on 5-gallon buckets, May 19, 1994.

81. Statement of Commissioner Mary Sheila Gall on options on mandatory Federal regulation of five gallon buckets, May 19, 1994.

82. Statement of Commissioner Jacqueline Jones-Smith on the Issuance of an ANPR for 5-Gallon Plastic Containers, May 19, 1994.

83. News from CPSC, "CPSC Votes to Begin Rulemaking on Plastic, 5-Gallon Buckets," May 19, 1994.

84. Ballot vote sheet, "Revised ANPR for 5-Gallon Buckets," May 24, 1994.

[FR Doc. 94–16481 Filed 7–7–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL–21–91]

RIN 1545–AS24

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the imposition of the accuracy-related penalty under Internal Revenue Code sections 6662 (e) and (h) for net section 482 transfer price adjustments. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests to appear at the public hearing scheduled on September 19, 1994, must be received by August 19, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IL–21–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (IL–21–91), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in this notice of proposed rulemaking is in §§ 1.6662–6T (d)(2)(iii) and (d)(3)(iii). This information is required by the IRS to implement section 6662(e)(3)(B) of the Internal Revenue Code. This information will be used to determine whether the taxpayer reasonably concluded that the transfer prices charged in related party transactions were consistent with the arm's length standard. The likely respondents and recordkeepers are business or other for-profit institutions and small businesses or organizations. Estimated total reporting burden: 125 hours. The estimated average burden per respondent: .25 hour. Estimated number of respondents: 500. Estimated annual frequency of responses: 1. Estimated total annual recordkeeping burden: 20,000. The estimated annual burden per recordkeeper varies from 5 hours to 15 hours, depending on individual circumstances, with an estimated average of 10 hours. Estimated number of recordkeepers: 2,000.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations under sections 6662 (e) and (h) relating to the imposition of accuracy-related penalties. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules relating to the imposition of accuracy-related penalties under those sections for net section 482 transfer price adjustments.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing has been scheduled on September 19, 1994, at 10 a.m. in the IRS auditorium.

Drafting Information

The principal author of these proposed regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6662–6 also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended by adding entries to the table to read as follows:

§ 1.6662–0 Table of contents.

[The text of the proposed amendments to this section is the same as the text of the amendments to § 1.6662–0 published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.6662–6 is added to read as follows:

§ 1.6662–6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

[The text of this proposed section is the same as the text of § 1.6662–6T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–16358 Filed 7–5–94; 12:26 pm]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Chs. XXVI and XL

Renumbering of Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Regulation renumbering with request for comments.

SUMMARY: The Pension Benefit Guaranty Corporation plans to renumber its regulations to track the primary statutory provision to which each relates. The purpose of the regulation renumbering is to give the public easier access to the regulations. Other agencies in the pension field already number their regulations based on pertinent statutory provisions. The planned renumbering would facilitate access to the regulations by practitioners who generally are accustomed to searching for pension regulations under statute-based numbering systems.

DATES: Comments must be submitted by September 6, 1994.

ADDRESSES: Comments should be sent to the Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Suite 340), Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension insurance program established by title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Most of the PBGC's regulations implement one or more of the statutory provisions in title IV of ERISA, which begins with section 4001 and currently ends with section 4402.

The regulations of the PBGC currently are codified at title 29, chapter XXVI of the Code of Federal Regulations ("CFR"), and the regulatory part numbers under that chapter may run from part 2600 through 2699; PBGC's regulations promulgated to date run from part 2601 through 2677, with certain part numbers reserved. At this time, the PBGC's regulations are codified into subchapters of chapter XXVI based on subject matter categories, *i.e.*, internal and administrative rules (subchapter A), rules applicable to both single-employer and multiemployer plans (subchapter B), rules applicable to single-employer plans only (subchapter C), withdrawal liability rules for multiemployer plans (subchapter F), and other rules applicable to multiemployer plans (subchapter H).

The other agencies responsible for the implementation of ERISA, the Department of Labor and the Department of the Treasury, have numbered their pension regulations in accordance with the numbering of provisions in ERISA and the Internal Revenue Code, respectively. Consequently, when a pension practitioner or another member of the public is looking for a regulation by either of the above agencies on a specific statutory provision, he or she may find it under the equivalent statutory number. The PBGC believes that renumbering its regulations in a similar fashion will facilitate the public's access to its regulations, thus making use of the PBGC's regulations easier.

Attached are documents illustrating a possible approach for implementing PBGC's plan to renumber and reorganize its regulations according to the primary ERISA section number that they interpret. The regulations would become new chapter XL of 29 CFR. Parts in the 4000 through 4099 series would cover various rules relating to either single-employer or multiemployer plans (or both); parts in the 4200 through 4299 series would cover other multiemployer rules; parts in the 4500 through 4599 series would cover rules promulgated under other ERISA sections such as section 302(f) (current subpart B of part 2615 would become part 4502); and parts in the 4700 through 4799 series would cover certain internal and administrative rules. Other part numbers through 4999 would be reserved for future use.

The attachments to this document are: (1) A Table of Contents showing subchapter, part, and subpart numbers; (2) an Outline showing, in addition, unnumbered center headings, section numbers, and source in current regulations; (3) a Distribution Table showing where part 2600 provisions would appear in chapter XL; and (4) a Derivation Table showing where the new parts currently are found in 29 CFR chapter XXVI.

Because this renumbering is intended in large part for the benefit of the public, the PBGC invites members of the public to express their views on the PBGC's plan to renumber its regulations and on the approach to renumbering reflected in the attachments. The planned renumbering may be changed in light of comments received.

Issued in Washington, DC this 30th day of June, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

Attachment 1

Table of Contents to Regulation Renumbering Proposal

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Subtitle B—Regulations Relating to Labor

* * * * *

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Subpart B—Trades or businesses under common control; controlled groups

4002 Bylaws of the Pension Benefit Guaranty Corporation

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Outline of Regulation Renumbering Proposal
Title 29—Labor

Subtitle B—Regulations Relating to Labor

* * * * *

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PART 4204—VARIANCES FOR SALE OF ASSETS

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Sec.
4204.1–4204.3 [current subpart A of part 2643 plus definitions from current §2640.5]

Subpart B—Variance of the Statutory Requirement

4204.10–4204.15 [current subpart B of part 2643]

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.
4206.1–4206.9 [current part 2649 plus definitions from current §2640.8]

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4207.1–4207.8 [current part 2647 plus definitions from current §2640.6]

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

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4208.1–4208.8 [current part 2646 plus definitions from current §2640.6]

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4211.1–4211.2 [current subpart A of part 2642 plus definitions from current §2640.4]

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4211.5–4211.7 [current subpart B of part 2642]

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4245.1–4245.6 [current part 2674 plus definitions from current § 2670.4]

PART 4261—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

Sec.
4261.1 [cross-reference § 4281.88, current § 2675.38]

PART 4281—POWERS AND DUTIES OF PLAN SPONSOR OF PLAN TERMINATED BY MASS WITHDRAWAL

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4281.1–4281.3 [current subpart A of part 2675 and § 2676.1 combined and modified as appropriate plus definitions from current § 2670.4]

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4501.1–4501.3 [current subpart B of part 2615]

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4705.1–4705.10 [current part 2604]

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Sec.
4706.101–4706.170 [current part 2608]

PART 4707–PART 4999—[RESERVED]

Attachment 3

Distribution Table

The following distribution table shows where provisions in the original part number will be found in the new parts. Certain definitions in the old parts have been moved to new part 4001, subpart A.

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2602 subpt A	4703.1
Subpt B	4704.1–4704.6
2603	4701.1–4701.55
2604	4705.1–4705.10
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2607	4702.1–4702.10
2608	4706.101–4706.170
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2612	4001.201–4001.203
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Subchapter C—Single-Employer Plans	
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Subpt B	4501.1–4501.3
2616 subpt A	4041 subpt A (modified)
Subpt B	4041.41–4041.49
2617 subpt A	4041 subpt A (modified)
Subpt B	4041.21–4041.28
2618	4044.1–4044.32
2619	4062.21–4062.65
2620	4062.81–4062.85
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Old part (ch. XXVI)	New part/sec. (ch. XL)
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2670.3	4231.1
2670.4	4041A, 4245.1, 4281.1
2672	4231
2673	4041A subpts A, B
2674	4245
2675 subpt A	4281 subpt A
Subpt B	4041A subpt C
Subpt C	4281 subpt C
Subpt D	4281 subpt D
Subpt E	4041A subpt D
2675.38	4261
2676	4281 subpts A, B
2677	4220

Attachment 4

Derivation Table

The following derivation table shows where each part in the renumbered regulations comes from. Certain definitions in the old parts have been collected in new part 4001, subpart A.

New part (Ch. XL)	Old part (Ch. XXVI)
Subchapter A—General	
Part Subpart	Part
4000	None
4001 A	Various def. secs., 2640.2, 2670.2
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4006	2610
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Subchapter C—Coverage and Benefits	
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4704	2602
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[FR Doc. 94–16509 Filed 7–7–94; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: MSHA is extending the period for public comment regarding the Agency's proposed rule for ventilation of underground coal mines in 30 CFR part 75 published in the **Federal Register** on May 19, 1994. This extension is in response to a request from the mining community.

DATES: Written comments must be submitted on or before August 8, 1994. Commenters are encouraged to send comments on a computer disk along with a hard copy.

ADDRESSES: Send written comments and computer disks to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 19, 1994, MSHA published in the **Federal Register** a proposed rule (59 FR 26356) to revise stayed provisions of MSHA's existing safety standards for ventilation of underground coal mines. The proposal also revised, clarified or reproposed certain other provisions in the existing rule; included some new provisions; and addressed concerns raised by the public. In response to a request from the mining community, MSHA is extending the comment period for the proposed rule to August 8, 1994. All interested parties are encouraged to submit comments by that date.

The Agency believes that this extension will provide sufficient time for all interested parties to comment, and does not anticipate any further extensions of the comment period.

Dated: July 1, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–16574 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME13–1–6321; A–1–FRL–5006–7]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Enhanced Inspection and Maintenance in Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to conditionally approve a revision to the Maine Department of Environmental Protection (DEP) State Implementation Plan (SIP) for Inspection and Maintenance (I/M). This SIP revision was submitted to EPA for approval on November 1, 1993. The submittal was supplemented by a May 26, 1994 letter from the Commissioner of the DEP describing the changes and additions Maine is making to the I/M program. The SIP includes Chapter 128 of a State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. EPA proposes to conditionally approve the SIP revision if the changes and additions specified in this proposal are submitted to EPA by July 22, 1994. If a full SIP revision addressing the issues discussed in this notice is not submitted, EPA proposes in the alternative to disapprove Maine's submission. This action is being taken under Section 110 of the Clean Air Act (CAA).

EPA proposes conditional approval, under section 110(k)(4) of the CAA, of certain commitments made by Maine in its May 26, 1994 letter. Maine's commitments pertain to the "low mileage" waiver described in III.F below. Section 110(k)(4) provides that, if a state fails to comply with its commitments by a date certain, but no later than one year of EPA approval, EPA's conditional approval will convert to a disapproval. The content of the State letter is described in detail in this notice.

DATES: Comments must be received on or before August 8, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg. (AAA), Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565–3233.

SUPPLEMENTARY INFORMATION: In this action, EPA is proposing to conditionally approve or, in the alternative, disapprove the Maine I/M SIP revision if the State fails to submit an additional SIP correcting the deficiencies identified in this notice. EPA proposes to conditionally approve the DEP's I/M SIP, which was submitted to EPA for approval on November 1, 1993. The SIP includes Chapter 128 of a State rule entitled "Motor Vehicle Emission Inspection Program," and additional supporting material including authorizing legislation, administrative items, and a description of the program being implemented. However, because many issues were not adequately addressed in the November 1, 1993 submittal, Maine intends to supplement its submittal by July 22, 1994. Upon submission, this revised submittal will be made part of the material on Maine's enhanced I/M program available for public review.

Maine submitted this SIP revision request to the EPA to satisfy the requirements of sections 182(b)(4) and 184(b)(1)(A) of the Clean Air Act, and the federal I/M rule codified at 40 CFR Part 51, Subpart S. This SIP revision will require vehicle owners to comply with the Maine I/M program in the seven Maine moderate ozone nonattainment counties. This revision applies to the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York. In addition, the State is proposing revisions to its regulations and is undergoing rulemaking action to address outstanding deficiencies in the rules submitted as part of this SIP revision. Once those revised adopted rules and a detailed narrative description of the program are submitted by Maine, EPA proposes to take final action approving the program if the content of that submission is consistent with the requirements of the I/M rule. EPA intends to take final action on this rulemaking no later than September 15, 1994.

On May 26, 1994, the State of Maine sent a letter to EPA describing how the state intends to address all outstanding issues, and agreed to make the required changes. These changes include submission of a detailed description of the motorist enforcement program, a description of resources to provide staff and equipment to implement the program, and assurances that the state will prepare reports and program evaluations. These and other changes are described later in this notice, and in even greater detail in the technical support document (TSD) prepared for this revision.

If the State of Maine does not address the issues discussed in this notice and submit revised rules and a narrative as a complete SIP revision to EPA by July 22, 1994, EPA proposes to disapprove the November 1, 1993 I/M SIP revision, since the program will not meet the requirements of EPA's final rule (57 FR 52950).

EPA believes it is appropriate to propose in the alternative for several reasons. The State is presently on an expedited schedule to revise its regulations prior to the July 1, 1994 start-up of the inspection and maintenance program. As such, a public hearing was held on May 25, 1994 on proposed changes to the Maine I/M regulations. These changes will be submitted to EPA no later than July 22, 1994. EPA reviewed the proposed changes and received a guarantee from the State of Maine to address other outstanding issues with their I/M program prior to July 22, 1994. Once these issues are adequately addressed, EPA believes the program will fulfill most of the requirements set forth in EPA's final I/M rule.

The only outstanding issue which cannot be resolved in time for the July 22, 1994 submission (and which therefore necessitates that the final action on this proposal be a conditional approval) is the "low mileage" waiver (LMW). Conditional approval is necessary because the number of vehicles to be granted low mileage exemptions is uncertain and EPA is concerned that the use of LMWs may result in the State's failing to meet the minimum enhanced I/M performance standard in actual practice. By proposing conditional approval on this action, EPA is agreeing to defer final, full approval on the revised SIP until the State has conducted a study of the impact of the LMW on the I/M program's emission reductions. The May 26, 1994 letter commits to completing this evaluation no later than

January 31, 1995. It should be noted that the State's authorizing legislation currently sets a deadline of January 15, 1996 for completion of this evaluation, and the State's commitment to complete the report by January 31, 1995 represents a significantly expedited schedule. In the event that the above evaluation shows that the State's use of LMWs causes it to fall short of the enhanced I/M performance standard in actual practice, the State has further committed to securing the necessary legal and regulatory changes to eliminate LMWs in time to submit a corrected I/M SIP no later than September 1, 1995. Should the State fail to meet the above commitments, the conditional approval will convert to a disapproval.

Based on the State's May 26, 1994 letter, EPA expects that the outstanding issues will be addressed in a manner consistent with EPA's final I/M rule. Therefore, this revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this proposal, EPA will disapprove the revision. If no substantial changes are made other than those areas cited in this proposal, EPA will publish a Final Rulemaking Notice on the revised revision. The final conditional approval by EPA will occur only after the amended regulations, as described below, have been adopted by Maine and submitted formally to EPA for incorporation into the SIP.

I. Clean Air Act Requirements

Background

Maine is part of the Ozone Transport Region (OTR). Section 184(b)(1)(A) of the Act requires areas of the OTR defined in EPA's final I/M rule (57 FR 52950, November 5, 1992) to adopt and implement an inspection and maintenance program meeting EPA's enhanced I/M performance standard. In addition, the I/M rule requires that all moderate ozone nonattainment areas containing urbanized areas with a population greater than 50,000 must implement a program meeting the basic I/M performance standard. Maine is affected by these provisions in areas of the State. Specifically, under EPA's I/M rule, enhanced I/M programs are required in the Portland area, and the Maine portion of the Portsmouth, New Hampshire area. Basic I/M would be required in the Lewiston-Auburn area. This program is being submitted to fulfill Maine's obligations to implement basic and enhanced I/M. Enhanced I/M is a more stringent program and includes all of the required components of basic I/M.

By this action, EPA proposes to conditionally approve Maine's submittal if the necessary regulatory changes are completed in accordance with the I/M rule and submitted by July 22, 1994. If such changes are not made and submitted by July 22, 1994, EPA proposes to disapprove this action. EPA has reviewed the State submittal against the requirements of the Act and EPA's final I/M rule. A summary of EPA's analysis is provided below.

II. I/M Regulation General SIP Submittal Requirements

On November 5, 1992 (57 FR 52950), EPA published a final regulation establishing the I/M requirements, pursuant to section 182 and 187 of the Act. The I/M regulation was codified at 40 CFR Part 51, Subpart S, and requires States to submit, by November 15, 1993, an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373.

III. State Submittal

On November 1, 1993, and on May 26, 1994, the State of Maine submitted an I/M SIP revision for seven ozone nonattainment counties classified as moderate or above. A public hearing for the November 1, 1993 submittal was held on October 26, 1992. As stated in the May 26, 1994 letter from the DEP, a public hearing also was held on May 25, 1994. The DEP has pledged to submit revised regulations based on this most recent hearing no later than July 22, 1994. EPA submitted comments during both of those hearings. In addition, EPA has worked closely with the DEP to ensure that the I/M program meets EPA requirements identified in the I/M rule.

The I/M SIP submittal provides for the implementation of enhanced I/M in the Maine counties of Androscoggin, Cumberland, Kennebec, Knox, Lincoln, Sagadahoc, and York beginning on July 1, 1994. Maine will be implementing a biennial, test-only I/M program. Once the changes the State committed to in its May 26, 1994 letter have been adopted and submitted as an amendment to the November 1, 1993 submission, the program will meet the requirements of EPA's performance standard and other requirements contained in the federal I/M rule, in the above-listed counties. Testing will be overseen by the DEP and implemented by an I/M contractor. Other aspects of the Maine I/M program include: transient testing of 1968 and later light duty vehicles and trucks and heavy duty trucks (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met), evaporative emission testing for specified model year vehicles, a test fee to ensure adequate resources to implement the program, enforcement by registration suspension, a repair effectiveness program, requirements for testing convenience, quality assurance, data collection, minimum expenditures prior to time extensions and hardship waivers, reporting, test equipment and test procedure specifications, public information and consumer protection, inspector training and certification, penalties based on inspector incompetence, an on-road testing program, and emission recall enforcement. A section-by-section analysis of the federal I/M rule, and Maine's demonstration of how the I/M program meets some of the federal SIP requirements, as well as the expected changes to the Maine I/M program described in the May 26, 1994 letter from the DEP so that the remainder of the federal I/M program requirements are met, is provided below.

A. Applicability

The SIP describes in detail the areas subject to the enhanced I/M SIP revision and, consistent with 40 CFR 51.372, includes the legal authority necessary to establish program boundaries.

The Maine I/M regulations and authorizing legislation specify that the enhanced I/M program be implemented in the counties described above. The Maine I/M program is being implemented in areas beyond those required by EPA's rule. Maine is implementing the enhanced I/M program throughout each of its moderate ozone nonattainment areas, in part, to meet requirements of Section 182(b)(1)(A) of the CAA that requires reasonable further progress (RFP). EPA currently is taking separate rulemaking action on the portion of the Maine submittal that expands the geographical scope of the I/M program to counties not otherwise required to adopt I/M. These counties include Kennebec, Knox, Lincoln, and Sagadahoc. Although these areas are not required to implement enhanced or basic I/M, the State of Maine has requested expedited approval for those areas in order to make the resultant emission reductions federally enforceable. Therefore, EPA has moved forward to approve I/M in these areas as strengthening the SIP in Knox, Kennebec, Lincoln, and Sagadahoc Counties. EPA is taking separate action

on the optional I/M program in the event that EPA takes final action disapproving this SIP. However, if the Maine I/M program is conditionally approved, the revised SIP requirements will apply, and once Maine has fulfilled its commitment regarding the "low mileage" waiver, EPA will withdraw the separate rulemaking action approving the optional I/M program since that action would be superseded by final approval of this action.

B. Enhanced I/M Performance Standard

Today's proposal discusses the I/M program designed, in part, to meet the enhanced I/M performance standard for ozone precursors causing air quality problems in Maine. Maine's program was designed to meet the performance standard for volatile organic compounds (VOC) and nitrogen oxides (NOx). EPA's performance standard establishes an emission reduction target that must be met by a program in order for the SIP to be approvable. The program, as documented in the SIP, must meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The State submitted a modeling demonstration using the EPA computer model, MOBILE5a, showing that the enhanced performance standard will be met in the area. The effect of the allowed program exemptions (for example, street rods and stock race cars) have been incorporated into the estimate of the program's effectiveness. In addition, in its May 26, 1994 submittal, the DEP provided a commitment to maintain the level of compliance and waivers assumed in the modeling. The DEP also committed to providing additional detail on this modeling effort, including justification for the modeling inputs assumed, in the revised submittal no later than July 22, 1994. The effect of the "low mileage" waiver was not evaluated in this modeling effort. The reason that this action is a conditional approval is to allow the State to demonstrate that the effect is negligible, or to fulfill its commitment to make necessary legislative and regulatory changes if the "low mileage" waiver affects the ability of the State to meet the performance standard.

C. Network Type and Program Evaluation

Under the Act and EPA's I/M rule the SIP must include a description of the network to be employed, the required legal authority, and, in the case of areas making claims for case-by-case equivalency, the required demonstration. Also, for enhanced I/M areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation and related details of the evaluation program, as well as the legal authority establishing the evaluation program.

Maine has chosen to implement a test-only I/M network program design utilizing contractors to implement the inspection portion of the program. The State has chosen not to make a demonstration for case-by-case equivalency for a different network design, and has provided evidence that precludes conflicts of interest by the contractor, as described in the "test-only" requirements in the I/M rule. In its May 26, 1994 letter, the Maine DEP states, in its SIP revision narrative, that it will institute a continuous ongoing evaluation program consistent with the federal I/M rule. The results of the evaluation program will be reported to EPA on a biennial basis (40 CFR 51.353). In addition, Maine commits to developing and submitting the annual reports described by 40 CFR 51.366 and will describe the reports in more detail in the revised SIP submittal required by July 22, 1994. Legal authority, already contained in Maine state law, authorizes the DEP to implement this contractor operated, test-only program and conduct the program evaluation, as necessary to implement I/M consistent with federal requirements. As mentioned earlier, if a program for evaluation and submission of annual reports is not completed consistent with the I/M rule and submitted to EPA by July 22, 1994, EPA will disapprove Maine's SIP revision.

D. Adequate Tools and Resources

Under the Act and EPA's I/M rule, the SIP must include a description of the resources that will be used for program operation and must discuss how the performance standard will be met, including: (1) A detailed budget plan describing the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and for other requirements discussed throughout the I/M rule, for the period prior to the next biennial self-evaluation required by the federal I/M rule, and (2) a description of personnel resources, the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions, and the training attendant to each function.

The current Maine legislation was effective July 12, 1993. The legislation authorizes the DEP to collect a fee from the I/M contractors to cover the costs of administrating, overseeing, and enforcing the I/M program, and provides for allocation of certain highway funds for implementation. The May 26, 1994 letter states that the DEP will include additional detail on the funding and description of resources to be used for implementation of the enhanced I/M program in the SIP narrative to be submitted no later than July 22, 1994. In order to be conditionally approved, this narrative will describe the budget, staffing support, and equipment needed to implement the program. The revised regulations provide for up to a $4.00 fee per inspection to be used to administer the program. Pursuant to EPA comment, the revised regulations are expected to define that the fee be no less than $2.00 per test.

E. Test Frequency and Convenience

Under EPA's I/M rule, the SIP must include a detailed test schedule, including the test year selection scheme if testing is other than annual. The SIP must also include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, the SIP needs to demonstrate that the network of stations providing testing services is sufficient to ensure consumer convenience by providing short waiting times to get a test, and short driving distances to get to the test center.

The Maine SIP revision requires biennial inspections for all subject motor vehicles that are at least two years old. The inspections will be conducted on odd or even years corresponding to the model year of the vehicle and timed with the registration process committed to be described in more detail in the July 22, 1994 submittal. The authority for enforcing the testing frequency is contained in the revised Maine I/M rule expected to be submitted shortly. Short waiting times and short driving distances relating to network design are addressed in the contract between the State and its contractor, and in the Maine rules. The contract requires an average waiting time of 15 minutes per test and inspection facility locations which ensure that 85% of the vehicle population is within a fifteen mile drive of each facility.

F. Vehicle Coverage

Under EPA's I/M rule, the SIP must include a detailed description of the

number and types of vehicles to be covered by the program, and a plan for identifying subject vehicles, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP must include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of vehicles granted such exemptions. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority necessary to implement and enforce the vehicle coverage requirement.

Maine's I/M program covers all 1968 and newer model year gasoline powered light-duty vehicles and light-duty and heavy-duty trucks, registered, or required to be registered, within the nonattainment areas (only the testing of 1981 and newer vehicles is considered in evaluating whether the enhanced performance standard is met). Vehicles will be identified through the State Department of Transportation vehicle registration database. Special classes, which are exempt from the emission testing program, include vehicles weighing more than 10,000 pounds (GVWR), street rods, stock race cars, and motorcycles. Based on information provided by the State, EPA believes such exemptions will not prevent the program from achieving the performance standard. Additional detail supporting this conclusion will be submitted by the state no later than July 22, 1994. Legal authority for the vehicle coverage requirement is contained in the Maine I/M rule and the July 1993 authorizing legislation. The revised rules committed to be submitted by Maine by July 22, 1994 will include a low-mileage waiver (LMW) which exempts vehicles driven less than 5000 miles per year. The authorizing legislation requires the LMW and also requires that the DEP prepare a report on its effect on Maine's ability to meet the performance standard. The May 26, 1994 letter from the DEP commits to provide the legislature with this information by January 31, 1995, and to secure revised legislation if the data shows that Maine cannot achieve the performance standard required by EPA's I/M rule. If necessary, the DEP also commits to revising its regulation by June 1, 1995, to hold a public hearing on necessary regulatory changes, and to submit to EPA a revised SIP submittal removing the LMW by September 1, 1995. At present, there is inadequate information for EPA to determine how this waiver will affect the performance standard. For this reason, EPA proposes to conditionally approve the submission based on the DEP's commitments. Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the milestone. In no circumstances will the September 1, 1995 date for final submittal be revised.

G. Test Procedures and Standards

Under EPA's I/M rule, the SIP must include a description of each test procedure used. The SIP also must include the rule, ordinance or law describing and establishing the test procedures.

The Maine I/M SIP revision obligates the State to perform transient exhaust emission testing using the IM240 driving cycle. In addition, the State of Maine has stated that it will follow procedures in accordance with EPA's guidance document entitled, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications" (Technical Guidance). The State will be requiring IM240 tests on 1968 and later model year vehicles in the area. This model year coverage complies with EPA's I/M regulation. In addition, the State of Maine will require evaporative emission testing of the fuel system's integrity and functionality for at least 1981 and newer vehicles. The test procedures are set forth with specificity in the I/M Request For Proposal (RFP) which the Maine I/M contractor is required to abide by. Maine committed to amending these procedures to ensure that the latest EPA procedures will be used in the program.

H. Test Equipment

Under EPA's I/M rule, the SIP must include written technical specifications for all test equipment used in the program and address each of the requirements set forth at 40 CFR 51.358. The specifications must describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

By its May 26, 1994 letter, Maine guarantees to supplement its I/M SIP revision by or before July 22, 1994 so that the Maine I/M SIP revision requires the State to use the current written equipment specifications contained in EPA's IM240 Guidance and the appendices of EPA's I/M rule. The Maine SIP, May 26, 1994 letter, and request for proposal address the requirements in 40 CFR 51.358 and include descriptions of performance features and functional characteristics of the computerized test systems. The necessary test equipment, required features, and acceptance testing criteria are mandated by the RFP and contract.

I. Quality Control

Under EPA's I/M rule, the SIP must include a description of quality control and recordkeeping procedures. The SIP also must include the procedures manual, rule, and ordinance or law describing and establishing quality control procedures and requirements.

The Maine I/M SIP narrative and RFP and contract contain descriptions and requirements establishing the quality control procedures in accordance with the federal I/M rule. As stated in the Maine DEP's May 26, 1994 letter, these procedures will be detailed in the revised SIP submittal, and will be consistent with EPA guidance. These requirements will help ensure that equipment calibrations are properly performed and recorded and that the necessary compliance document security is maintained. The Maine SIP will obligate the State to comply with all specifications for quality control set forth in Section 51.359 and Appendix A of the federal I/M rule, and EPA's technical guidance.

J. Waivers and Compliance via Diagnostic Inspection

Under EPA's I/M rule the SIP must include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate is used for estimating emission reduction benefits in the modeling analysis. Corrective action must be taken if the waiver rate exceeds that estimated in the SIP, or the state must revise the SIP and claim emission reductions accordingly. The SIP also must describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP must include the necessary legal authority, ordinance(s), or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

Cost limits for the minimum expenditure waivers must be in accordance with the CAA and federal I/M rule. Expenditures for repairs of at least $450, adjusted annually for the consumer price index (CPI), must be spent in order to qualify for a waiver in the enhanced I/M program. Maine has demonstrated that it can meet the enhanced I/M performance standard testing only 1981 and newer vehicles. In addition, Maine is requiring I/M on vehicles as old as 1968 model year.

These vehicles will not be included as part of the "enhanced I/M" program, despite being subject to the same type of emission testing. The testing of these additional vehicles will achieve additional emission reductions which will be used, in part, as a means of achieving additional emission reductions required for RFP, and anticipated by Maine to be necessary for attainment. Accordingly, these older vehicles will be subject to a lower waiver expenditure of $125, adjusted for CPI, prior to receiving a waiver.

The Maine program includes a waiver rate of 3% of initially failed vehicles in the area. These waiver rates are used in the modeling demonstration. The DEP has stated in the May 26, 1994 letter, and will include in the revised SIP, that if the waiver rates are higher than estimated as determined by its program reports, the State will take corrective action to address the deficiency. The SIP describes the three types of waivers the State will allow including: a minimum expenditure, a time extension, and a one-time hardship waiver provisions. These issues are dealt with in a manner consistent with the federal I/M rule. The proper criteria, procedures, quality assurance and administration regarding the issuance of waivers, consistent with EPA's I/M rule, will be ensured by the DEP and its contractors and are committed to be detailed in the SIP narrative, promised to be submitted by July 22, 1994.

K. Motorist Compliance Enforcement

Under EPA's I/M rule, the SIP must provide information concerning motorist enforcement, including: (1) A description of the existing compliance mechanism if it will continue to be used for this program, and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of, and accounting for, all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other special classes of subject vehicles, such as those operated (but not necessarily registered) in the program area. Also, the SIP must include a determination of the current compliance rate based on a study of the system including an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism must be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP must include a commitment to an enforcement level and minimum compliance level used for modeling purposes and to be maintained, at a minimum, in practice.

The State of Maine has chosen to use a program of registration suspension whereby subsequent registration is denied to anyone who fails to meet emission testing requirements. The motorist compliance enforcement program will be implemented primarily by the Maine Bureau of Motor Vehicles (BMV). The enforcement strategy is described in Maine's May 26, 1994 letter, and more detail will be provided in the revised SIP. The enforcement strategy is designed to ensure a 90 percent compliance rate for all vehicles within 4 months of the compliance deadline. As described in the May 26, 1994 letter, this will be accomplished by a computer matching program that will identify registered vehicles tested prior to registration, as well as those receiving their emission inspection within a specified period after registering. Those not receiving the emissions test will be notified of such failure, and put on notice that their registration will be suspended if they do not comply. Those that still fail to comply will either receive a summons to appear in court, or be subject to confiscation of their license plate by BMV personnel who would physically remove the plate from the vehicle. In addition, the Maine legislation authorizing I/M provides that vehicles operating with a suspended registration must be fined at least $450.

The only classes of vehicles exempt from this program are described above under vehicle coverage. Fleet vehicles, rental car fleets, and leased vehicles will be required to meet the same program requirements as all other vehicles that receive annual registration. Compliance rates with the new program are estimated at 96%. The May 26, 1994 letter, and the anticipated revised SIP, commit to revise the I/M SIP if Maine fails to meet the 96% compliance rate. The legal authority to implement and enforce the program are included in the Maine State law and in DEP and BMV rules to be supplied by July 22, 1994.

L. Motorist Compliance Enforcement Program Oversight

Under EPA's I/M rule, the SIP must include a description of enforcement program oversight and information management activities.

The Maine I/M SIP revision provides for regular auditing of its enforcement program and adherence to effective management practices, including adjustments to improve the program when necessary. According to the May 26, 1994 letter from the DEP, these program oversight and information management activities will be described in the July 22, 1994 SIP narrative, be consistent with the I/M rule, and include: establishing written procedures for personnel engaged in I/M document handling and processing, supporting an on-line telecommunications network for the State's oversight and management requirements, and establishing an I/M database to compare to the registration database for purposes of to determining program effectiveness.

M. Quality Assurance

Under EPA's I/M rule, the SIP must include a description of the quality assurance program, and written procedure manuals covering both overt and covert performance audits, record audits, and equipment audits.

The May 26, 1994 letter from Maine includes a description of the quality assurance program, and a pledge to provide more detail, consistent with EPA's I/M rule, in the revised SIP submittal expected on or before July 22, 1994. According to that letter, the program will include operation and progress reports and overt and covert audits of all emission inspectors and emission inspection facilities to be conducted by the DEP. Written procedures and techniques for overt and covert performance, record, and equipment audits will be provided to auditors and updated as needed. The July 22, 1994 submission will also include a commitment to a minimum level of activity for overt and covert audits, as required by the federal I/M rule.

N. Enforcement Against Contractors, Stations and Inspectors

Under EPA's I/M rule, the SIP must include a penalty schedule and legal authority for establishing and imposing penalties, civil fines; station and inspector, license suspension, and revocations. In the case of state constitutional impediments precluding immediate authority to suspend licenses, the state Attorney General shall furnish an official opinion within the SIP explaining the constitutional impediment as well as relevant case law. The SIP also must describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including the agencies, courts, and jurisdictions involved; personnel to prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be

allocated to the enforcement function, and the source of those funds. In states that are without immediate suspension authority, the SIP must demonstrate that sufficient resources, personnel, and systems are in place to meet the three-day case management requirement for violations that directly affect emission reductions.

The Maine I/M SIP revision includes specific penalties in its enforcement against contractors, stations and inspectors in accordance with the federal I/M rule. Based on its May 26, 1994 letter, Maine intends to revise its SIP submittal by July 22, 1994, to include the State's enforcement procedures that can be pursued through contractual or regulatory action. The DEP also will address the authority to immediately suspend a station inspector for violations that directly affect emission reduction benefits. Authority for establishing and imposing penalties, civil fines, license suspension, and revocations are contained in the awarded contract. The DEP is planning to assign employees to covert and overt auditing and commit additional resources required for enforcement oversight provided by the contractor. These audits and oversight functions will be funded by the inspection fee. Final approval of the SIP will be dependent upon this information being submitted consistent with EPA's I/M rule.

O. Data Analysis and Reporting

Under EPA's I/M rule, the SIP must describe the types of data to be collected.

The Maine I/M SIP provides for collecting test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected. As outlined above and described in the May 26, 1994 letter, the data will be used to generate reports concerning test data, quality assurance, quality control, enforcement, as well as necessary changes and identified weaknesses in the program. The state has also committed to collecting all data necessary for the quality assurance and enforcement reports. These reports will be described in more detail in the revised SIP submittal expected on or before July 22, 1994. Final approval of the SIP will be dependent upon this information being submitted consistent with EPA's I/M rule.

P. Inspector Training and Licensing or Certification

Under EPA's I/M rule, the SIP must include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The May 26, 1994 letter from the DEP provides some detail on the inspector training program. The Maine revised I/M SIP will provide for implementation of training, certification, and refresher programs for emission inspectors. The revised SIP will describe this program and curriculum including written and hands-on testing at least once every two years. All inspectors will be required to be certified to inspect vehicles in the Maine I/M program.

Q. Improving Repair Effectiveness

Under EPA's I/M rule, the SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of this section for enhanced I/M programs, and a description of the repair technician training resources available in the community.

In the May 26, 1994 letter, Maine commits to providing additional detail and a description of the technical assistance, performance monitoring and repair technician training programs to be implemented. The SIP revision provides for regularly informing repair facilities about changes to the inspection program, training course schedules, common problems, and potential solutions for particular engine families, diagnostic tips, repairs, and other assistance issues. As described in the May 26, 1994 letter, the DEP will also ensure that a repair technician hotline will be available for repair technicians, and issued a request for proposals to serve this purpose. Performance monitoring statistics of repair facilities will be provided to motorists whose vehicles fail the I/M tests in enhanced I/M areas. The State has committed to ensure that adequate repair technician training exists by establishing training courses at technical schools in the area, and has secured necessary funding under the Intermodal Surface Transportation Efficiency Act. Further, the May 26, 1994 letter states that the revised SIP will include a detailed public information and consumer protection plan consistent with the requirements of EPA's I/M at section 51.368.

R. Compliance With Recall Notices

Under EPA's I/M rule, the SIP must describe, for enhanced I/M programs, the procedures used to incorporate the vehicle recall lists provided into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Maine I/M SIP will ensure that vehicles subject to enhanced I/M programs, that are included in either a voluntary emission recall or a remedial plan determination pursuant to the CAA, have had the appropriate repairs made prior to the inspection. The contractor will identify vehicles that have not completed recall repairs by electronic means. Motorists with unresolved recall notices will be required to show proof of compliance or will be denied the opportunity for inspection. The rules recently revised by Maine address this issue, and will be submitted on or before July 22, 1994. These rules have undergone public comment at the State level, and are being adopted.

S. On-Road Testing

Under the Act and EPA's I/M rule, the SIP must include a detailed description of the on-road testing program required in enhanced I/M areas, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP must include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs can only be granted for a program designed to obtain significant emission reductions over and above those predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

Maine has stated that in the revised I/M SIP to be submitted by July 22, 1994, it will include a detailed description of its on-road testing program. The testing program will include 0.5% of the subject vehicles. Vehicles with emission readings measured by remote sensing devices exceeding limits defined in the revised rules will be required to obtain an out-of-cycle inspection at a vehicle emission inspection facility. This program will be staffed by a State contractor and overseen by the DEP. Data collection and reporting will be done using the general record-keeping and reporting provisions of the I/M

program. The legal authority for this program is contained in the Maine I/M rule and the authorizing legislation. The State did not include additional modeling credit for this portion of the program in the modeling demonstrating that EPA's performance standard was met.

T. Concluding Statement

A more detailed analysis of the State's submittal and how it meets the federal requirements is contained in the EPA's technical support document prepared for this action. The TSD is available from the EPA New England Regional office listed above. The criteria used to review the submitted SIP revision are based on the requirements set forth in Section 182 of the CAA and in the federal I/M regulations. Based on these requirements, EPA developed a detailed I/M approvability checklist to be used nationally to determine if I/M programs meet the requirements of the CAA and the federal I/M rule. The checklist states the federal requirements, referenced by section of the rule, whether or not the Maine program meets such requirements, and where in the Maine SIP submittal the requirements are met. This checklist, the CAA, and the federal I/M regulation formed the basis for EPA's technical review. EPA has reviewed the Maine I/M SIP revision submitted to the EPA using the criteria stated above. The Maine regulations and accompanying materials contained in the SIP, as well as the May 26, 1994 commitment letter from the State to provide revised rules and a more detailed description of the I/M program fulfilling the outstanding requirements of the federal I/M rule by July 22, 1994, represent an acceptable plan to comply with the I/M requirements and meet all the criteria required for EPA to conditionally approve the SIP.

IV. Maine I/M Committal SIP

On September 27, 1993, (58 FR 50304) EPA proposed conditional approval of the Maine I/M committal SIP which was submitted on December 11, 1992, including a schedule of implementation for the program. At that time, EPA believed that conditional approvals were appropriate for I/M SIPs because the States could not be expected to begin developing an I/M program meeting the requirements of the CAA and the I/M regulations until the I/M regulations were adopted as a final rule which occurred on November 5, 1992. In a letter dated October 21, 1993, the Natural Resource Defense Counsel (NRDC) commented on the proposed approval of the committal SIP arguing that States should have submitted full I/M SIPs by November 15, 1992. In addition, in a Court order dated May 6, 1994, the United States Court of Appeals for the District of Columbia Circuit concluded, as a result of an NRDC lawsuit concerning I/M, that EPA's acceptance of I/M committal SIPs was contrary to law and improperly delayed SIP submissions beyond the statutory deadlines. Further, the Court directed EPA to review and either approve or disapprove by no later than September 15, 1994 all I/M SIPs already received. As a result of that court order, EPA is taking this action to propose conditional approval of the Maine SIP submitted on November 1, 1993 and on May 26, 1994, and will not be taking further action on the "committal" I/M SIP submitted by the State of Maine on December 11, 1992. In the alternative, EPA is proposing disapproval if the July 22, 1994 submittal is deficient or not made.

Proposed Action

EPA is proposing to conditionally approve the Maine I/M program initially submitted by the State, on November 1, 1993, in consideration of Maine's May 26, 1994 letter calling for a revised SIP submittal by July 22, 1994. EPA's proposed conditional approval of the Maine I/M program is subject to Maine's fulfillment of the specific conditions outlined in this notice. This action also proposes, in the alternative, to disapprove the Maine I/M SIP revision if Maine does not adequately address the issues articulated in this notice by July 22, 1994.

Pursuant to section 110(k)(4) of the CAA, EPA proposes conditional approval of Maine's submission based on the commitments of the DEP. Specifically, by January 31, 1995 the DEP will submit a report outlining the effect of the "low mileage" waiver to the legislature; by June 1, 1995, if necessary, to hold a public hearing on revised regulation changes; and by September 1, 1995, if necessary, to submit a revised SIP revision removing the "low mileage" waiver from the regulations. Section 110(k)(4) provides that, if a state fails to comply with its commitment, such conditional approval will become a disapproval.

Failure to meet any of these dates will result in EPA disapproval of this action, unless the EPA Regional Administrator approves a later date in writing no later than the date of the milestone. In no circumstances will the September 1, 1995 date for final submittal be revised.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The EPA requests comments on this proposal including the EPA's proposal to conditionally approve the I/M SIP for Maine as meeting the requirements of the CAA and federal I/M rule and, in the alternative, to disapprove the I/M SIP for Maine. As indicated at the outset of this action, the EPA will consider any comments received by August 8, 1994, and make the TSD available upon request.

This action has been classified as a Table 1 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables.

Conditional approvals of SIP submittal under Sections 110 and 301 subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing or has committed to impose in the future. Therefore, because the federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the state actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 96 S. Ct. 2518 (1976); 42 U.S.C. Section 7410(a)(2).

If EPA issues a final disapproval or if the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that in the event EPA disapproves the state submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor does it substitute a new federal requirement.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order

12866 and is therefore not subject to OMB review.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of Section 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 12, 1994.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 94–16599 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[IN15–2–6326B; FRL–5003–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve requests to redesignate Indiana marginal ozone nonattainment areas to attainment. The USEPA is also proposing to approve accompanying maintenance plans as State Implementation Plan (SIP) revisions. The redesignation requests and maintenance plans were submitted by the Indiana Department of Environmental Management (IDEM) for the following ozone nonattainment areas: St. Joseph and Elkhart, Vanderburgh and Marion Counties. The State has met the requirements for redesignation contained in the Clean Air Act, as amended in 1990. In the final rules section of this **Federal Register**, the USEPA is approving the State's redesignation requests and the supporting maintenance plans without prior proposal because USEPA views these as noncontroversial revisions and anticipates no adverse comments. A detailed rationale for the approvals is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and the public comments received will be addressed in a subsequent final rule based on this proposed rule. A second comment period on this action will not be held. Parties interested in commenting on this notice should do so at this time. Adverse comments received concerning a specific geographic area, St. Joseph and Elkhart, Vanderburgh or Marion Counties, will only affect the final rule as it pertains to that area and only the portion of the final rule concerning the area receiving adverse comments will be withdrawn.

DATES: Comments on this proposed rule must be received on or before August 8, 1994.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR18–J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 21, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–16507 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 615

Testimony and Production of Official Records and Information

AGENCY: National Science Foundation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Science Foundation (NSF) is proposing to establish procedures to be followed when an NSF employee is issued a court demand or is requested to provide testimony or produce records in a legal proceeding. These procedures are designed to promote economy and efficiency in NSF's programs and operations, to minimize the possibility of involving NSF in controversial issues not related to its functions, to maintain the impartiality of NSF among private litigants, and to protect sensitive, confidential information and the deliberative process.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Please address comments to: Miriam Leder, Assistant General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306–1060.

FOR FURTHER INFORMATION CONTACT: Miriam Leder, Assistant General Counsel, National Science Foundation, at the above address.

SUPPLEMENTARY INFORMATION: The Supreme Court has upheld the ability of Federal agencies to establish procedures governing the production of records and testimony by personnel in legal proceedings in which the agencies are not a party. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). This proposed rule would establish policies and procedures to be followed when, in a legal proceeding, a current or former NSF employee is issued a demand or is requested to testify or to produce NSF records or other information or material acquired by that employee as part of the performance of his or her official duties or because of his or her official status.

This proposed rule would cover testimony and the production of records only in connection with legal proceedings. As a result, it would not apply to Congressional requests for records or testimony, or to requests under the Freedom of Information Act, 5 U.S.C. 552. It also would not affect the requirements of applicable confidentiality laws, such as the Privacy Act, 5 U.S.C. 552a.

I have determined that this proposed rule is not an economically significant rule as that term is defined in Executive Order 12866. I have also determined that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, because it would affect only the conduct of NSF activities and actions of NSF personnel. Pursuant to 5 U.S.C. 605(b), the rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 45 CFR Part 615

Administrative practice and procedure, Courts, and Government employees.

For the reasons set forth in the preamble, NSF proposes to amend 45 CFR by adding a new part 615 as follows:

PART 615—TESTIMONY AND PRODUCTION OF RECORDS

Sec.

615.1 Purpose.
615.2 Applicability.
615.3 Definitions.
615.4 Legal proceedings before NSF or in which the United States is a party.
615.5 Legal proceedings between private litigants: Testimony and production of documents.
615.6 Legal proceedings between private litigants: Procedure when demand is made.
615.8 Legal proceedings between private litigants: Office of Inspector General employees.

Authority: 42 U.S.C. 1870(a)

§ 615.1 Purpose.

(a) This part sets forth policies and procedures to be followed when, in connection with a legal proceeding, an NSF employee is issued a demand to provide testimony or produce official records and information.

(b) The provisions of this part are intended to promote economy and efficiency in NSF's programs and operations; minimize the possibility of involving NSF in controversial issues not related to its functions; maintain the impartiality of NSF among private litigants; and protect sensitive, confidential information and the deliberative process.

(c) This part is not intended to and does not waive the sovereign immunity of the United States.

(d) This part is intended only to provide guidance for the internal operations of NSF, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.

§ 615.2 Applicability.

This part applies to demands and requests for factual or expert testimony or for official records or information in legal proceedings, whether or not the United States is a party, except that it does not apply to (a) demands upon or requests for an NSF employee to testify, while in leave status, as to factors or events that are in no way related to his or her official duties or to the functions of NSF, (b) demands upon or requests for a former NSF employee to testify as to matters in which the former employee was not directly or materially involved while at NSF, and (c) Congressional demands and requests for testimony or records.

§ 615.3 Definitions.

(a) *Demand.* A subpoena, order, or other demand of a court or other competent authority for the production of records or for the appearance and testimony of an NSF employee, issued in a legal proceeding between private litigants.

(b) *Foundation or NSF* means the National Science Foundation.

(c) *General Counsel* means the General Counsel of the Foundation, or any person to whom the General Counsel has delegated authority under this part.

(d) *Legal proceeding* means any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(e) *Official records and information* means all documents and material which are records of the Foundation under the Freedom of Information Act, 5 U.S.C. 552; all other records contained in NSF's files; and all other information or material acquired by an NSF employee in the performance of his or her official duties or because of his or her official status.

(f) *NSF employee or employee* means any present or former officer or employee of NSF; any other individual hired through contractual agreement by or on behalf of NSF, or who has performed or is performing services under such an agreement for NSF; and any individual who served or is serving on any advisory committee or in any advisory capacity, whether formal or informal.

(g) *Request* means any informal request, by whatever method, for the production of official records and information or for testimony which has not been ordered by a court or other competent authority.

(h) *Testimony* means any written or oral statement by a witness, including depositions, answers to interrogatories, affidavits, declarations, and statements at a hearing or trial.

§ 615.4 Legal proceedings before NSF or in which the United States is a party.

In any legal proceeding before NSF or to which the United States is a party, the General Counsel shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it. The employee may testify for the United States both as to facts within the employee's personal knowledge and as an expert or opinion witness. For any party other than the United States, the employee may testify only as to facts within his or her personal knowledge.

§ 615.5 Legal proceedings between private litigants: Testimony and production of documents.

(a) No employee may produce official records and information or provide any testimony in response to a demand or request unless authorized to do so by the General Counsel in accordance with this part or by other applicable law.

(b) The General Counsel, in his or her discretion, may grant an employee permission to testify or produce official records and information in response to a demand or request. In making this decision, the General Counsel shall consider whether (1) the purposes of this part are met; (2) allowing such testimony or production of records would be necessary to prevent a miscarriage of justice; (3) NSF has an interest in the decision that may be rendered in the legal proceeding; and (4) allowing such testimony or production of records would be in the best interest of NSF or the United States.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but shall not (1) disclose confidential or privileged information; (2) testify as to facts when the General Counsel determines such testimony would not be in the best interest of the Foundation or the United States; or (3) testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Foundation.

§ 615.6 Legal proceedings between private litigants: Procedure when demand is made.

(a) Whenever an employee is served with a demand to testify in his or her official capacity, or to produce official records and information, the employee shall immediately notify the General Counsel.

(b) The General Counsel shall review the demand and, in accordance with the provisions of § 615.5, determine whether, or on what conditions, to authorize the employee to testify and/or produce official records and information.

(c) If a response to a demand is required before the General Counsel has made the determination referred to in § 615.6(b), the General Counsel shall provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the demand is being

reviewed, and seek a stay of the demand pending a final determination. If the court fails to stay the demand, the employee must appear at the stated time and place, produce a copy of this part, and respectfully decline to comply with the demand. "*United States ex rel Touhy* v. *Ragen,*" 340 US 462 (1951).

(d) If a court or other competent authority orders that a demand be complied with notwithstanding a final decision by the General Counsel to the contrary, or at any other stage in the process, the General Counsel may take steps to arrange for legal representation for the employee, and shall advise the employee on how to respond to the demand.

§ 615.7 Legal proceedings between private litigants: Office of Inspector General employees.

Notwithstanding the requirements set forth in §§ 615.1 through 615.6, when an employee of the Office of Inspector General is issued a demand to provide testimony or produce official records and information, the Inspector General or his or her designee shall be responsible for performing the functions assigned to the General Counsel with respect to such demand pursuant to the provisions of this part.

Dated: June 29, 1994.

Lawrence Rudolph,

Acting General Counsel.

[FR Doc. 94–16576 Filed 7–7–94; 8:45 am]

BILLING CODE 7555–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–55, RM–8454]

Radio Broadcasting Services; Vail, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Ryan B. Smith and Jennifer Tufty, requesting the allotment of Channel 237A to Vail, Colorado, as that community's second local FM service. Coordinates used for this proposal are 39–39–01 and 106–22–45.

DATES: Comments must be filed on or before August 26, 1994, and reply comments on or before September 12, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Ryan B. Smith and Jennifer Tufty, c/o Ryan B. Smith, 4026 Helen Court, Rapid City, SD 57702.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed RuleMaking, MM Docket No. 94–55, adopted June 7, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–16554 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–61, RM–8464]

Radio Broadcasting Services; Garberville and Hydesville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brett E. Miller, permittee of Station KWEO(FM), Channel 279C1, Garberville, California, requesting the reallotment of Channel 279C1 from Garberville to Hydesville, California, and modification of the authorization for Station KWEO(FM) to specify Hydesville as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates for Channel 279C1 at Hydesville are 40–23–00 and 124–11–00.

DATES: Comments must be filed on or before August 26, 1994, and reply comments on or before September 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brett E. Miller, 11608 Blossomwood Ct., Moorpark, CA 93021.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–61, adopted June 9, 1994 and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–16553 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–70; RM–8474]

Radio Broadcasting Services; Moncks Corner and Kiawah Island, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ceder Carolina Limited Partnership proposing the substitution of Channel 288C2 for Channel 287C3 and the reallotment of Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, and the modification of Station WJYQ(FM)'s construction permit accordingly. Channel 288C2 can be allotted to Kiawah Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) north at petitioner's requested site. The coordinates for Channel 288C2 at Kiawah Island are North Latitude 32–43–38 and West Longitude 80–00–05.

DATES: Comments must be filed on or before August 26, 1994 and reply comments on or before September 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nancy A. Ory, Leventhal, Senter & Lerman, 2000 K Street NW., Suite 600, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. _____, adopted June 21, 1994, and released July 5, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–16555 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. 93–50; Notice 2]

RIN: 2127–AE85

Federal Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Anti Car Theft Act (ACTA) of 1992, which amended Title VI, "Theft Prevention," of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), requires certain lines of multipurpose passenger vehicles (MPVs) and light-duty trucks (LDTs) to be designated as high theft lines. Manufacturers of high theft lines of those types of vehicles will have to mark the major parts of each vehicle in the line. This notice seeks comments on a definition of LDT for Title VI purposes and on which MPV and LDT parts should be considered major parts, and therefore subject to parts marking. In accordance with ACTA, NHTSA also proposes to require the marking of major parts of certain other lines because, although they have below median theft rates, their parts bear a significant degree of similarity to lines with above median theft rates.

DATES: Comments on this notice of proposed rulemaking must be received by this agency not later than September 6, 1994.

ADDRESSES: Comments should refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA) is a comprehensive attack on automotive theft and fraud. ACTA strengthens Federal penalties for motor vehicle theft, armed robbery of motor vehicles, and motor vehicle titling fraud. In addition, ACTA amended title VI "Theft Prevention" of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) (15 U.S.C. 2021 *et seq.*).

As amended by ACTA, title VI defines "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Since title VI had formerly defined "passenger motor vehicle" to include passenger cars only, the effect of the new definition is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be likely high theft vehicles, and may thus be subject to the parts marking requirements of the Theft Prevention Standard.

In this notice, NHTSA proposes revisions to the Motor Vehicle Theft Prevention Standard (49 CFR part 541) to reflect the amendments to title VI. The purpose of the standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major motor vehicle parts. Each vehicle in a high theft line must have its major parts and major replacement parts marked unless the line is exempted from parts marking pursuant to 49 CFR part 543.

Advance Notice of Proposed Rulemaking

In a July 7, 1993 advance notice of proposed rulemaking (ANPRM) (58 FR 36376), public comment was sought to aid the agency in implementing ACTA. NHTSA sought comments on definitions of multipurpose passenger vehicles (MPVs) and light-duty trucks (LDTs) for the Theft Prevention Standard, and on which parts of these vehicles should be

considered major parts and therefore subject to parts marking.

1. Definitions of MPV and LDT

The agency noted that since the title VI requirements for "multipurpose passenger vehicles" differ in some respects from those for "light-duty trucks," these two terms must be defined so that it can be readily determined whether a particular vehicle is an MPV or an LDT. A distinction must be made between MPVs and LDTs in order to implement section 602(f) of the Theft Act. Section 602(f) requires NHTSA, by October 25, 1994, to promulgate a parts marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light-duty trucks) in not to exceed one-half of the lines not designated under section 603 as high theft lines." Since LDTs are excepted from coverage under section 602(f), but MPVs are subject to section 602(f), NHTSA must ensure that distinctions between LDTs and MPVs are made.

In the ANPRM, NHTSA noted that its proposed definition of "MPV" followed the statutory definition of MPV in section 2(2) of the Cost Savings Act, except for being limited to vehicles at or less than 6,000 pounds gross vehicle weight rating. NHTSA's proposed definition of "multipurpose passenger vehicle" was:

> A passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

Defining "light-duty truck" was more complex. No definition of "light-duty truck" is provided in the Cost Savings Act (including Title VI), or in ACTA itself. The legislative history of ACTA provides no express guidance as to what types of vehicles ACTA's drafters intended to include in "light-duty truck" for theft prevention purposes.

After reviewing existing NHTSA definitions of "light truck" (for purposes of the Corporate Average Fuel Economy Program) and "truck" (for purposes of the Federal Motor Vehicle Safety Standards), NHTSA proposed to base its definition of "light duty truck" for Theft Prevention Standard purposes on NHTSA's definition of "truck" at 49 CFR 571.3: "a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment." NHTSA modified the definition to take account of the 6,000 pound gross vehicle weight rating limitation. As modified, NHTSA's proposed definition of "light-duty truck" for the purposes of Title VI was:

> A motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

NHTSA selected this definition because it focuses on the primary distinction between multipurpose passenger vehicles and light-duty trucks: Multipurpose passenger vehicles are designed to carry passengers, while light-duty trucks are designed to carry property. This distinction is important for Theft Prevention Standard purposes because it facilitates the separation of MPVs from LDTs. Since multipurpose passenger vehicles are not designed primarily to transport property or equipment, multipurpose passenger vehicles are not included in the 49 CFR § 571.3 definition of "truck."

2. Specifying "Major Parts"

NHTSA also sought public comments on major parts for MPVs and LDTs. Section 601(7) of Title VI "Theft Prevention" of the Motor Vehicle Information and Cost Savings Act, defines "major part" for passenger motor vehicles as:

The engine;
The transmission;
Each door allowing entrance or egress to the passenger compartment;
The hood;
The grille;
Each bumper;
Each front fender;
The deck lid, tailgate or hatchback (whichever is present);
Rear quarter panels;
The trunk floor pan;
The frame, or in the case of a unitized body, the supporting structure which serves as a frame; and
Any other part of a passenger motor vehicle which the agency, by rule, determines is comparable in design or function to any of the parts listed above.

At 49 CFR § 541.5, NHTSA has specified the major parts on high theft passenger car lines that must be marked. Section 541.5 lists all the parts identified in section 601(7) except for the grille, the trunk floor pan, and the frame or supporting structure which serves as a frame. The agency did not use its authority under section 601(7) to add additional parts to the list.

Before its amendment by ACTA, title VI of the Cost Savings Act specified that manufacturers could not be required to mark more than 14 major parts on a high theft passenger automobile. As amended, there is no statutory limit on the number of major parts that may be required to be marked. However, the scope of the parts marking requirement is still limited by a $15 (in 1984 dollars) maximum marking cost per vehicle. (See section 604.) Hence, although there is no longer a statutory limit on the number of parts that must be marked, the limit on costs involved in marking parts would still indirectly restrict the number of parts that can be required to be marked.

In the ANPRM, NHTSA solicited comments on what parts of MPVs and of LDTs should be considered "major parts." Comments were also solicited whether any other major parts on passenger cars should be added to the list of passenger car parts subject to the Theft Prevention Standard.

Comments on the ANPRM and NHTSA's Response

In response to the ANPRM, NHTSA received comments from 13 commenters: Advocates for Highway and Auto Safety; AM General; American Automobile Manufacturers Association; Chrysler Corporation; Ford Motor Company; General Motors Corporation; the Maryland State Police; National Insurance Crime Bureau; the National Truck Equipment Association; Nissan Motor Company; Prospective Technologies; State Farm Insurance Companies; and Volkswagen of America. The commenters addressed the issues raised in the ANPRM as discussed below. NHTSA carefully considered their comments in developing this notice of proposed rulemaking.

1. Definitions of LDT and MPV

All but two commenters, Advocates for Highway and Auto Safety (Advocates), and State Farm, either concurred with NHTSA's proposed definition of light-duty truck (LDT) or had no comment. Advocates (whose comments were referenced by State Farm) urged that in defining LDT, the "real-world use of the vehicle" not the design, should be taken into account and that NHTSA exclude from the LDT definition, vehicles built to accommodate more than the driver and one passenger or vehicles designed to be convertible to passenger use.

Regarding Advocates' recommendation that the "LDT" definition excludes vehicles built to accommodate more than a driver and one passenger, NHTSA sees no indication of any Congressional intent to exclude such vehicles from the definition of LDT. Since section 601(1) of the Theft Act defines "passenger motor vehicle" to include any "light-duty truck that is rated at 6,000 pounds gross vehicle weight or less," Congress

must have intended LDTs to have some (unspecified) passenger carrying capacity. Advocates' definition of LDT would exclude many light trucks with jump seats in the passenger compartment, such as the S–10 Chevy pickup, the Ranger Ford pickup, the Toyota pickup, the Nissan pickup, and the Dodge Dakota.

Further, NHTSA believes that its ANPRM definition of "LDT" makes clear that vehicles designed to be convertible to carry either property or passengers would be considered MPVs. In vehicles such as the E 150 Ford Club Wagon and Ford Dodge B150 Wagon, passenger seats behind the driver and front passengers' seats are removable, creating a flat surface, with storage space inside the vehicle. When the seats are removed, cargo or other property may be carried in the vehicle, in lieu of passengers.

Vehicles such as the Ford E 150 Club Wagon or Dodge B–150 Wagon, that may be converted to carry either passengers or property, are considered MPVs because they do not meet the proposed definition of "LDT." In the ANPRM, NHTSA discussed defining "LDTs" as those 6,000 pound or under GVWR vehicles "designed primarily for the transportation of property or special purpose equipment." Vehicles such as the Ford E 150 Club Wagon or Dodge B–150 Wagon were not designed primarily to carry property. However, vehicles such as the Ford E 150 Club Wagon and Dodge B–150 Wagon meet the proposed definition of "MPV"—i.e., those 6,000 pound or under GVWR vehicles "constructed either on a truck chassis or with special features for occasional off-road operation." Thus, for purposes of the Theft Prevention Standard, a vehicle designed to be convertible to carry either passengers or property would be considered an MPV.

Since there were no other comments addressing the definition of LDT, this notice of proposed rulemaking proposes to define "light-duty truck" as discussed in the ANPRM.

2. Multipurpose Passenger Vehicle

All comments on the definition of "multipurpose passenger vehicle" concurred with the definition discussed in the ANPRM. Since there were no objections to that definition, NHTSA is proposing to define "multipurpose passenger vehicle" as set forth in the ANPRM.

3. Specifying "Major Parts"

a. Major Parts for LDTs and MPV

In discussing the proposal it would develop regarding major parts for LDTs and/or MPVs, NHTSA applied the same criteria used to select the current 14 major parts specified in the Theft Prevention Standard at § 541.5(a). The selection criteria are whether the parts are among those most frequently repaired or most costly to replace. (See 50 FR 19728, at 19732; May 10, 1985.)

In response to the ANPRM, commenters recommended that parts already listed in the Theft Prevention Standard at § 541.5(a) (1) through (11) (i.e., engine, transmission, right and left front fenders, hood, right and left front doors, right and left rear doors, front and rear bumpers) should, if present on a vehicle, be treated as major parts for MPVs and LDTs also. Since the 11 parts listed are among the most frequently repaired and costly to replace, NHTSA tentatively concurs that the parts, if present on MPVs and LDTs, should be major parts. NHTSA is proposing to treat these MPV and LDT parts as major parts.

As to the designation of additional parts as major parts for MPVs and LDTs, commenters had similar recommendations. Right and left rear quarter panels (designated as major parts in § 541.5(a) (12) and (13)), are not necessarily present on MPVs or LDTs. Therefore, GM and Ford recommended that for MPVs, in lieu of quarter panels, side-panels should be designated as major parts, and for LDTs, pickup boxes or cargo boxes should be designated as major parts. Volkswagen offered similar recommendations. It stated that side panels and pickup or cargo boxes are, respectively, the MPV and LDT counterparts to right and left quarter panels, designated major parts for passenger cars. In addition, the side panels and pickup or cargo boxes are among those most frequently repaired on, respectively, MPVs and LDTs.

NHTSA tentatively agrees with the recommendations. Thus, it is proposing to include side panels as major parts for MPVs, and pickup boxes and/or cargo boxes as major parts for LDTs. Some commenters recommended the truck bed as a major part. NHTSA believes, however that "pickup box and/or cargo box" includes "truck bed", and is not proposing to list truck bed separately.

Other commenters recommended cargo doors as major parts for MPVs and LDTs. NHTSA concurs that cargo doors should be proposed as major parts, since cargo doors are the LDT counterpart to passenger car doors, and are among the parts most frequently replaced. Thus, NHTSA is proposing to treat cargo doors, if present on an LDT, as major parts.

b. Specifying Pieces of Motor Vehicle Glazing as Major Parts for MPVs, LTDs and Passenger Cars

Advocates, Prospective Technologies, and State Farm, recommended that windows and pieces of other motor vehicle glazing be treated as major parts for all high theft vehicles. Prospective Technologies cited the relative ease with which vehicle glazing could be marked, the low cost of marking, and provided instances where motor vehicles with glazing that was voluntarily marked with the vehicle identification number resulted in lower theft rates. As an example, Prospective Technologies cited Nissan's experience in etching the windows of the Nissan 300ZX line with the vehicle identification number. As background information about the 300ZX line, since model year 1987, the Nissan 300ZX, a high theft line, has been exempted from the parts marking requirements of part 541 because every vehicle in the 300ZX line has an antitheft device that NHTSA has determined is likely to be as effective as parts marking. (See 51 FR 42577, November 25, 1986.)

Prospective reported that, beginning with model year 1992, Nissan initiated window etching for 100 percent of the vehicles in its 300ZX line. As a basis for comparison, no vehicle in the model year 1990 or 1991 300ZX line had its windows etched. Prospective stated that State Farm Insurance Companies reported no theft claims on the etched 300ZXs for the first 12 months that the etching was available. Prospective further stated that the National Insurance Crime Bureau (NICB) reported the theft rate of window-etched Nissan 300ZXs to be 26 percent below that of the unmarked 300ZXs. Based on the NICB report, Prospective multiplied the average theft loss cost expected over the life of the 300ZX ($1,012.50) by 26 percent to arrive at the theft loss reduction expected over the life of the 300ZX, or $263.25. Subtracting Prospective's estimate of the per vehicle cost of etching windows—$5.00 (assuming economies of scale), Prospective estimates a net savings per vehicle as a result of window etching of $258.25.

NHTSA tentatively agrees that specifying pieces of glazing as major parts to be marked pursuant to the Theft Prevention Standard would further the purpose of title IV, i.e., to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. (See section 2(1).) Since the markings on glazing would be in plain view, all types of motor vehicle theft, not just theft for

the purposes of chop shop operations or other trafficking in stolen motor vehicle parts, might be deterred.

The possible furthering of legislative purpose and the public commenters' evidence of window-marking efficacy (based, in part, on a showing of lower theft losses for window marked Nissan 300ZXs compared with non window marked Nissan 300ZXs) leads NHTSA to propose to specify motor vehicle glazing as major parts. NHTSA further notes that motor vehicle glazing, especially windshields, are among those parts most frequently replaced. More specifically, NHTSA proposes to specify parts marking for the following glazing parts, if present on a high theft motor vehicle: Windshield; right front side window; left front side window; right rear side window; left rear side window; rear window; and right and left T-top inserts. NHTSA does not propose that glazing in the interior of the vehicle, such as partitions, or small outside-facing glazing, such as side vents or opera windows, be designated as major parts. NHTSA seeks comment whether all the above listed glazing parts should be specified for parts marking, and if not, which parts should be excluded. NHTSA also seeks comment on the following three issues that arise from marking windows and other glazing parts.

First, since all the glazing parts that NHTSA proposes for marking are made of glass, they are more fragile than major parts that are made mainly out of metal or hard rubber composites. Although glazing has a greater tendency to break, NHTSA does not propose to specify any particular method of parts marking for glazing, so that each manufacturer may decide for itself the best marking method. NHTSA, however, proposes that for parts that are labeled, glazing parts be excluded from the specification in § 541.5(d)(1)(ii)(B) that the label be on a portion of the part not likely to be damaged in a collision, and seeks comment on whether the exclusion is necessary.

Second, when marking major parts, manufacturers of original and replacement parts must designate target areas for the identifying number to be marked on each part. (See §§ 541.5(e) and 541.6(e).) Pursuant to Federal Motor Vehicle Safety Standard No. 205, *Glazing materials* (49 CFR 571.205), a glazing manufacturer must place markings on glazing certifying that the glazing complies with Standard No. 205. Standard No. 205 does not specify areas on the glazing where the certification markings must be placed. (See S6. *Certification and marking* of Standard No. 205.) NHTSA seeks public comment on how the theft program target areas for glazing parts can be specified so that theft program markings and Standard No. 205 markings are not placed in the same areas.

The third issue concerns passenger car lines that were subject to the marking requirements of the Theft Prevention Standard before ACTA was enacted. NHTSA is proposing to specify pieces of glazing as major parts with the intention that manufacturers of such passenger car lines mark glazing parts, in addition to all of the other passenger car parts already specified in the Theft Prevention Standard. In this connection, NHTSA notes that ACTA removed the statutory limit on the number of major parts that may be required to be marked.

c. Decision Not To Propose Other Parts as Major Parts for MPVs, LTDs or Passenger Cars

Commenters recommended several other motor vehicle parts for consideration as major parts for MPVs, LDTs and passenger cars. The NICB recommended that floor pans be considered as major parts for MPVs. The Maryland State Police recommended that frames and grilles be added as major parts for MPVs and LDTs. Advocates for Highway and Auto Safety recommended including the rear axle housing, radiator core supports, and seats for MPVs and LTDs. Advocates further recommended designating airbag modules and vehicle computer modules as major parts for all high theft vehicles, including passenger cars. The commenters provided no evidence that marking the additional parts would be cost effective or result in fewer motor vehicle thefts.

In contrast to the above recommendations, Nissan recommended that the "rear trunk floor pan" not be included as a major part. GM recommended that the grille, trunk floor pan, and frame (or comparable structure) not be added as major parts for passenger cars.

NHTSA has decided not to propose the additional parts recommended above as major parts on high theft lines. NHTSA does not believe the recommended parts are as frequently replaced as those that are already listed as major parts in the Theft Prevention Standard. Marking the recommended parts would also mean additional costs for manufacturers, with no evidence that the additional marking would help deter or reduce motor vehicle thefts. Without a showing of possible reduction in motor vehicle thefts as a result of marking these additional parts, NHTSA sees no need to require manufacturers to incur the additional costs of marking.

Other Proposed Changes to the Theft Prevention Standard; Proposed Effective Date

In addition to the foregoing, NHTSA proposes to include a definition of "1990/91 median theft rate." NHTSA believes this definition is necessary to minimize confusion between the median theft rate specified in the Motor Vehicle Theft Law Enforcement Act of 1984, based on 1983/84 data, and the updated median theft rate specified in ACTA, based on 1990/1991 data. As mandated in ACTA, NHTSA calculated the theft rates of all "passenger motor vehicles" for sale in the U.S. in 1990 and 1991. NHTSA published the final results of its calculations (final theft data) in a **Federal Register** document of January 6, 1994. (See 59 FR 796) These data were subsequently corrected in a **Federal Register** document of March 16, 1994. (See 59 FR 12400) The corrected theft data showed that, based on 231 vehicle lines, the median theft rate was 3.5826 thefts per thousand vehicles produced.

As discussed in the January 1994 document, in determining high or low theft lines, pursuant to 49 CFR part 542, *Procedure for Selecting Lines to be Covered by the Theft Prevention Standard*, NHTSA will apply the 1990/91 median theft rate to passenger motor vehicle lines to be introduced for model year (MY) 1996 and thereafter. NHTSA will continue to apply the 1983/84 median theft rate to passenger car lines introduced before MY 1996. In order to maintain consistency, NHTSA also proposes that the amendments proposed in this NPRM, if made final, be applied to all high theft passenger vehicle lines beginning with MY 1996.

Section 602(f) of the Theft Act requires NHTSA, by October 25, 1994, to promulgate a parts marking standard applicable to major parts installed by manufacturers of "passenger motor vehicles (other than light-duty trucks) in not to exceed one-half of the lines not designated under section 603 as high theft lines." In carrying out section 602(f), NHTSA began by reviewing theft rates of the 231 vehicle lines that were listed in the 1990/91 theft data. A total of 116 vehicle lines (any line rated at number 116 and lower) was potentially subject to parts marking pursuant to section 602(f).

Out of the 116 lines, NHTSA removed from consideration any line that was already subject to parts marking because NHTSA had previously determined the line to be high theft, and also removed all light-duty truck lines. NHTSA tentatively determined whether a line is a light-duty truck line by applying the

definition of "light-duty truck" proposed in this notice. If a different definition of "light-duty truck" is adopted in the final rule, NHTSA will, in the final rule, make appropriate adjustments to the list of subject lines. After removing the ineligible lines, NHTSA determined that there were 57 below median lines still eligible for selection under section 602(f). Out of the 57 below median lines left, NHTSA designated the 28 lines with the highest theft rates, for selection to be parts marked pursuant to section 602(f).

Therefore, in this NPRM, NHTSA proposes to implement section 602(f) by selecting for parts marking the highest ranked 28 (out of 57) eligible vehicle lines ranked below the 1990/91 median, in the January 1994 final theft data. Since the selected lines must be marked pursuant to part 541, the Theft Prevention Standard, NHTSA proposes to list each of the 28 below-median lines to be marked, in appendix B to part 541. Pursuant to section 602(f) of the Theft Act, NHTSA proposes that parts marking for these below-median lines begin with MY 1996, the first model year that begins at least six months after October 1994. Since section 602(f) does not specify marking of replacement parts for below-median lines, NHTSA is not proposing to require marking for replacement parts.

Finally, since appendix B—*Criteria for Limiting the Selection of Prestandard Lines Having or Likely to Have High Theft Rates to 14*, contains outdated references to lines introduced before April 24, 1986, NHTSA proposes to revise Appendix B by removing all references to pre-1986 lines, and, as described above, listing below median lines that must be parts marked.

Regulatory Impacts

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this rulemaking action and has determined the action not to be "significant" under the Department of Transportation's regulatory policies and procedures. This action solicits comments on the definition of "light-duty truck" (LDT) and on what parts of multipurpose passenger vehicles (MPVs) and LDTs should be considered "major parts." If made final, the definition of LDT may affect low theft lines that are selected for parts marking, pursuant to section 602(f) of the Theft Act. Since section 602(f) excludes LDTs from its coverage, any passenger motor vehicle with a low theft rate (other than an LDT) would be subject to parts marking. The definition clarifies which vehicles Congress intended to be subject, as LDTs, to the marking of high theft passenger motor vehicle lines, but excluded from the potential rules for marking of low theft passenger motor vehicle lines.

Similarly, the selection of the MPV and LDT parts to be marked is already, in large part, decided by Congress in title VI, since the term "major parts" is defined at section 601(7) of the Theft Act. However, the agency has authority under section 601(7) to make modifications to the statutory list. The specific nature of the modifications that might be made, as well as their impact, is unknown at this point. The overall cost of marking the MPVs and LDTs would, in any event, be limited to the $15 (in 1984 dollars), or $20.86 (in 1993 dollars, based on the U.S. Department of Labor's United States City Average All Items Consumer Price Index for All Urban Consumers (See 59 FR 8021, February 17, 1994)) per vehicle maximum specified in section 604(c).

Based on 1993 motor vehicle production estimates calculated by the agency, NHTSA estimates the cost impact of this NPRM as follows. If this NPRM is made final, current high theft passenger cars will need to add window etching, at an estimated $5.00 per car. There were almost 3 million high theft passenger cars sold in calendar year 1993, making this total cost of marking windows $15 million. Of these 3 million cars, about 2.5 million passenger cars were required to mark all 14 parts, and about 0.5 million had to mark only the engine and transmission. Another 0.4 million were exempt from parts marking by having NHTSA-approved antitheft devices. If this NPRM is made final, vehicles with the NHTSA-approved antitheft devices would not need to have marked windows.

If this NPRM is made final, high theft MPVs and LDTs, and lines listed in Appendix B must add both window etching ($5.00 and parts marking ($5.06) per vehicle for a total of $10.06 per vehicle. Based on 1991 production figures, an additional 7.4 million would need to be marked, making the approximate cost of marking high theft MPVs, LTDs, and lines listed in appendix B, $74 million dollars. However, NHTSA believes the $74 million estimate is high because many manufacturers will petition for approval to use an antitheft device, in lieu of parts marking.

Adding the $15 million estimated for the additional cost of window marking for existing high theft lines to $74 million to the cost of marking high theft MPVs, LDTs, and lines in appendix B, NHTSA estimates that if made final, the total cost of this NPRM would be approximately $89 million.

NHTSA cannot estimate the benefits of the proposal. The average value of a stolen vehicle is approximately $6,100. Thus, the rule would have to result in the prevention of about 14,590 vehicle thefts ($89 million divided by $6,100) to break even with the costs imposed, if this NPRM is made final.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this proposed rule, if made final, will not have a significant economic impact on a substantial number of small entities. As already noted, this proposed rule seeks comments on a definition of "light duty truck" and on parts for MPVs and LDTs that should be designated as "major parts." If made final, the proposed rule itself will have minimal effects on small manufacturers of passenger motor vehicles, as almost none of the manufacturers of passenger motor vehicles that may be subject to this rule is considered a small business. If made final, this proposed rule will have no effect on small organizations or governmental units that purchase passenger motor vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that if made final, it will not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The procedures in this rule for manufacturers to mark vehicle identification numbers on specified parts of high theft passenger motor vehicle lines, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 541 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0510, (Consolidated Vehicle Identification Number Requirements) and has been approved for use through June 30, 1996.

5. Federalism

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

6. Civil Justice Reform

This proposed rule would not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

NHTSA solicits public comments on the issues presented in this notice. It is requested, but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this notice will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 541 would be revised to read as follows:

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

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. Section 541.3 would be revised to read as follows:

§ 541.3. Application.

This standard applies to the following:

(a) Passenger motor vehicle parts identified in § 541.5(a) that are present:

(1) In the vehicle lines listed in appendix A of this part;

(2) Beginning with model year 1996, in passenger motor vehicle lines which NHTSA has finally determined, pursuant to 49 CFR part 542, to be high theft based on the 1990/91 median theft rate; and

(3) Beginning with model year 1996, in passenger motor vehicle lines listed in appendix B of this part.

(b) Replacement parts for the passenger motor vehicle lines described in § 541.3(a) (1) and (2), if the part is identified in § 541.5(a).

3. Section 541.4 would be revised to read as follows:

§ 541.4. Definitions.

(a) *Statutory terms.* All terms defined in sections 2 and 601 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 and 2021) are used in accordance with their statutory meanings unless otherwise defined in paragraph (b) of this section.

(b) *Other definitions.*—(1) *Interior surface* means, with respect to a vehicle part, a surface that is not directly exposed to sun and precipitation.

(2) *Light-duty truck (LDT)* means a motor vehicle, with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment, that is rated at 6,000 pounds gross vehicle weight or less.

(3) *Line* means a name which a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A "line" may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

(4) *1990/91 median theft rate* means 3.5826 thefts per thousand vehicles produced.

(5) *Multipurpose passenger vehicle (MPV)* means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation and which is rated at 6,000 pounds gross vehicle weight or less.

(6) *Passenger car* is used as defined in § 571.3 of this chapter.

(7) VIN means the vehicle identification number required by part 565 and § 571.115 of this chapter.

4. Section 541.5 would be revised to read as follows:

§ 541.5 Requirements for passenger motor vehicles.

(a) Each passenger motor vehicle subject to this standard must have an identifying number affixed or inscribed on each of the parts specified in paragraphs (a)(1) through (a)(26) inclusive of this section, if the part is present on the passenger motor vehicle. In the case of passenger motor vehicles not originally manufactured to comply with applicable U.S. vehicle safety and bumper standards, each such motor vehicle subject to this standard must have an identifying number inscribed in a manner which conforms to paragraph (d)(2) of this section, on each of the parts specified in paragraphs (a)(1) through (a)(26), inclusive of this section, if the part is present on the motor vehicle.

(1) Engine.
(2) Transmission.
(3) Right Front Fender.
(4) Left Front Fender.
(5) Hood.
(6) Right Front Door.
(7) Left Front Door.
(8) Right Rear Door.
(9) Left Rear Door.
(10) Sliding or Cargo Door(s).
(11) Front Bumper.
(12) Rear Bumper.
(13) Right Rear Quarter Panel (passenger cars).
(14) Left Rear Quarter Panel (passenger cars).
(15) Right-Side Assembly (MPVs).

(16) Left-Side Assembly (MPVs).
(17) Pickup box, and/or cargo box (LDTs).
(18) Rear door(s) (both doors in case of double doors), decklid, tailgate, or hatchback (whichever is present).
(19) Windshield.
(20) Window of the Right Front Door.
(21) Window of the Left Front Door.
(22) Window of the Right Rear Door.
(23) Window of the Left Rear Door.
(24) Rear Window.
(25) Right T-top Glazing.
(26) Left T-top Glazing.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the number required to be inscribed or affixed by paragraph (a) of this section shall be the VIN of the passenger motor vehicle.

(2) In place of the VIN, manufacturers who were marking engines and/or transmissions with a VIN derivative consisting of at least the last eight characters of the VIN on October 24, 1984, may continue to mark engines and/or transmissions with such VIN derivative.

(3) In the case of passenger motor vehicles not originally manufactured to comply with U.S. vehicle safety and bumper standards, the number required to be inscribed by paragraph (a) of this section shall be the original vehicle identification number assigned to the motor vehicle by its original manufacturer in the country where the motor vehicle was originally produced or assembled.

(c) The characteristics of the number required to be affixed or inscribed by paragraph (a) of this section shall satisfy the size and style requirements set forth for vehicle certification labels in § 567.4(g) of this chapter.

(d) The number required by paragraph (a) of this section must be affixed by means that comply with paragraph (d)(1) of this section or inscribed by means that comply with paragraph (d)(2) of this section.

(1) *Labels.* (i) The number must be printed indelibly on a label, and the label must be permanently affixed to the passenger motor vehicle's part.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location such that the number is, if practicable, on an interior surface of the part as installed on the vehicle and in a location where it:

(A) Will not be damaged by the use of any tools necessary to install, adjust, or remove the part and any adjoining parts, or any portions thereof;

(B) Except for labels on windows or other glazing, is on a portion of the part not likely to be damaged in a collision; and

(C) Will not be damaged or obscured during normal dealer preparation operations (including rustproofing and undercoating).

(iii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iv) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(v) Removal of the label must—

(A) Cause the label to self-destruct by tearing or rendering the number on the label illegible, and

(B) Discernibly alter the appearance of that area of the part where the label was affixed by leaving residual parts of the label or adhesive in that area, so that investigators will have evidence that a label was originally present.

(vi) Alteration of the number on the label must leave traces of the original number or otherwise visibly alter the appearance of the label material.

(vii) The label and the number shall be resistant to counterfeiting.

(viii) The logo or some other unique identifier of the vehicle manufacturer must be placed in the material of the label in a manner such that alteration or removal of the logo visibly alters the appearance of the label.

(2) *Other means of identification.* (i) Removal or alteration of any portion of the number must visibly alter the appearance of the section of the vehicle part on which the identification is marked.

(ii) The number must be placed on each part specified in paragraph (a) of this section in a location that is visible without further disassembly once the part has been removed from the vehicle.

(iii) The number must be placed entirely within the target area specified by the original manufacturer for that part, pursuant to paragraph (e) of this section, on each part specified in paragraph (a) of this section.

(e) *Target areas.* (1) Each manufacturer that is the original producer who installs or assembles the covered major parts on a line shall designate a target area for the identifying numbers to be marked on each part specified in paragraph (a) of this section for each of its lines subject to this standard. The target area shall not exceed 50 percent of the surface area on the surface of the part on which the target area is located.

(2) Each manufacturer subject to paragraph (e)(1) of this section shall, not later than 30 days before the line is introduced into commerce, inform NHTSA in writing of the target areas designated for each line listed in appendix A to this part. The information should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(3) The target areas designated by the original vehicle manufacturer for a part on a line shall be maintained for the duration of the production of such line, unless a restyling of the part makes it no longer practicable to mark the part within the original target area. If there is such a restyling, the original vehicle manufacturer shall inform NHTSA of that fact and the new target area, in accordance with the requirements of paragraph (e)(2) of this section.

5. Appendix B would be revised to read as follows:

Appendix B—Passenger Motor Vehicle Lines (Except Light-Duty Trucks) with Theft Rates Below the 1990/91 Median Theft Rate, Subject to the Requirements of This Standard

Manufacturer	Subject lines
Chrysler	Dodge Ramcharger.
	Dodge Ram Wagon/Van B150.
Daihatsu	Rocky.
Ferrari	Testarossa.
Ford	Aerostar.
	Crown Victoria.
	Explorer.
	Festiva.
	Mercury Grand Marquis.
	Mercury Sable.
	Taurus.
General Motors.	Chevrolet Astro.
	Chevrolet Celebrity.
	Chevrolet Sprint.
	GMC Safari.
	Oldsmobile Custom Cruiser.
	Oldsmobile Cutlass Cruiser.
Honda	Civic.
Mazda	Navajo.
Nissan	Axxess
Porsche	944
Volvo	240.
	740.
	760.
	940.
Volkswagen	Audi 80/90.
	Fox.
	Passat.

Issued on: July 1, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16493 Filed 7–7–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Endangered Status for the Barton Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice on the proposed determination of endangered status for the Barton Springs salamander (*Eurycea sosorum*) and that the comment period on the proposal is reopened. This salamander is found only in Barton Springs, Travis County, Texas. All interested parties are invited to submit comments on this proposal.

DATES: The comment period, which originally closed on April 18, 1994, has been reopened and now closes on July 29, 1994. The Service will accept comments received between April 18, 1994, and July 29, 1994..

ADDRESSES: Both sessions of the public hearing will be held at the Lyndon Baines Johnson Auditorium, Lyndon Baines Johnson Library Complex, 2315 Red River Street, University of Texas campus, Austin, Texas. Written comments and materials should be sent to the Supervisor, Fish and Wildlife Service, Ecological Services, 611 East 6th Street, Room 407, Austin, Texas 78701. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, Biologist, Fish and Wildlife Service, Ecological Services in Austin at the above address (telephone 512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

The Barton Springs salamander is completely aquatic and currently known only from Barton Springs in Travis County, Texas. The salamander is threatened by contamination of the waters that feed Barton Springs, reduced groundwater supplies, and disturbances to its surface habitat in the pools where it is found (such as use of chemicals and high pressure hoses for pool cleaning).

On February 17, 1994, the Service published a proposed rule in the **Federal Register** (59 FR 7968) to list the Barton Springs salamander as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Section 4(b)(5)(E) of the Act requires that a public hearing be held if requested within 45 days of the proposal's publication in the **Federal Register**. The first public hearing request received within the allotted time period came from Mr. Jon Beall, President of the Save Barton Creek Association, Austin, Texas. Several other hearing requests were subsequently received.

The comment period on the proposed rule originally closed on April 18, 1994. The Service finds that good cause exists to reopen the comment period. Written comments may now be submitted until July 29, 1994, to the Service office in the **ADDRESSES** section. The Service will also accept comments received between April 18, 1994, and the publication date of this notice.

Author

The primary author of this notice is Lisa O'Donnell (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 1, 1994.

James A. Young,

Assistant Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 94–16533 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 940685–4185; I.D. 040694C]

RIN 0648–AG74

Endangered and Threatened Species; Proposed Endangered Status for North and South Umpqua River Cutthroat Trout in Oregon

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is issuing a proposed rule to list the Umpqua River cutthroat trout (*Oncorhynchus clarki*) as endangered under the Endangered Species Act of 1973 (ESA). NMFS has determined that the Umpqua River cutthroat trout is a "species" as interpreted under the ESA. The number of adult cutthroat trout counted at Winchester Dam on the North Umpqua River has declined to extremely low numbers. Habitat degradation and recreational fishing are believed to be the major factors contributing to the decline; they continue to represent a potential threat to the Umpqua River cutthroat trout's existence. Should the proposed listing be made final, a recovery program would be implemented.

DATES: Comments must be received by September 6, 1994. Requests for a public hearing must be received by August 8, 1994.

ADDRESSES: Comments on this proposed rule should be sent to the Environmental and Technical Services Division, NMFS, Northwest Region, 911 NE. 11th Avenue, Suite 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR (503/230–5430) or Marta Nammack, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2322).

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1993, the Secretary of Commerce received a petition from the Oregon Natural Resources Council, Umpqua Valley Audubon Society, and the Wilderness Society to list North and South Umpqua River sea-run cutthroat trout (*Oncorhynchus clarki clarki*) as threatened or endangered and to designate critical habitat under the ESA. On July 19, 1993, NMFS published (58 FR 38554) its intent to conduct a status review of North and South Umpqua River sea-run cutthroat trout. To ensure a comprehensive review, NMFS solicited information and data regarding the present and historic status of North and South Umpqua River sea-run cutthroat trout and whether this stock qualifies as a "species" under the ESA. NMFS also requested information on areas that may qualify as critical habitat for North and South Umpqua River sea-run cutthroat trout.

On August 19, 1993, NMFS received a petition from the Oregon Natural Resources Council and the Steamboaters for an emergency listing of North and South Umpqua River sea-run cutthroat trout. On December 17, 1993, NMFS published a notice of finding (58 FR 65961) that an emergency listing was not warranted at that time.

Status Review for Umpqua River Sea-run Cutthroat Trout

The NMFS Northwest Region Biological Review Team has prepared a "Status Review for Umpqua River Sea-run Cutthroat Trout" (Johnson et al. 1994), providing detailed information, discussion and references. This status review is available upon request (see **ADDRESSES**), and is summarized below.

Biological Background

The Umpqua River watershed covers approximately 4,560 square miles (11,810 km²) in southwestern Oregon, and enters the Pacific Ocean 60 miles (97 km) north of Cape Blanco. The river is approximately 210 miles (338 km) long and, above river mile 112, consists of two principal forks: The North Umpqua and the South Umpqua rivers.

In general, cutthroat trout are considered to be either migratory and anadromous, or non-migratory and resident. In some large river systems, however, cutthroat trout may make extensive in-river migrations but never enter the ocean. There is some evidence that this "potamodromous" life history form occurs in the Umpqua River. Potamodromous forms migrate to mainstem rivers or lakes, but otherwise their life history characteristics are similar to the anadromous form. Resident forms of cutthroat trout inhabit headwater areas throughout their lives, and seldom live beyond the age of 4 or 5 years.

Throughout their range, anadromous cutthroat trout usually spawn in small tributary streams. In Oregon, anadromous cutthroat trout re-enter fresh water between July and March; few, if any, overwinter in salt water. Spawning generally occurs during late winter and spring, but timing varies by geographic location. Anadromous adults may survive spawning and reproduce in one or more subsequent years.

Anadromous cutthroat trout first migrate to the ocean as smolts between the ages of 2 and 4 years. In Oregon, the downstream migration of smolts occurs between March and June. Because they spend a variable amount of time in the ocean, the growth rate of these fish varies.

Adult cutthroat trout (presumed to be anadromous) passing Winchester Dam (river mile 118 on the North Umpqua River) have been monitored since 1946. During this monitoring period, a maximum annual count of 2,364 (1966–67) and a minimum annual count of zero (1992–93) adult cutthroat trout have been recorded. The numbers of anadromous cutthroat trout returning to the South Umpqua River is unknown.

Consideration as a "Species" Under the ESA

To qualify for listing as a threatened or endangered species, Umpqua River sea-run cutthroat trout must be a "species" under the ESA. The ESA defines a "species" to include any "distinct population segment of any species of vertebrate . . . which interbreeds when mature." NMFS published a policy document (56 FR 58612, November 20, 1991) describing how the agency will apply the ESA definition of "species" to anadromous salmonid species, including sea-run cutthroat trout and steelhead. This policy provides that a salmonid population will be considered distinct, and hence a species under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. The population must satisfy two criteria to be considered an ESU: (1) It must be reproductively isolated from other conspecific population units, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. Further guidance on the application of this policy is contained in "Pacific salmon (*Oncorhynchus* spp.) and the Definition of Species under the Endangered Species Act," which is available upon request (see **ADDRESSES**).

For the first criterion, NMFS considered available information regarding geographic and physical factors that may isolate Umpqua River sea-run cutthroat trout from other conspecific populations of cutthroat trout. The scarcity of available information about the different life history forms of cutthroat trout in the Umpqua River makes it difficult to assess accurately the reproductive isolation of the sea-run cutthroat trout within the Umpqua River basin. In general, the potamodromous life history form provides a possible link between anadromous and resident fish and may retard divergence of these two life history forms. Sea-run cutthroat trout generally do not overwinter at sea and may, after spawning, spend an entire year in fresh water prior to returning to the ocean. Incidence of repeat spawning in cutthroat trout is higher than in steelhead, and this distinctive life history trait may reflect a greater affinity with resident life history forms. These traits suggest that opportunities for reproductive isolation between life history forms are not as great as with other *Oncorhynchus* species (e.g., *O. mykiss* and *O. nerka*). According to NMFS policy on application of the ESA species definition, anadromous and nonanadromous life history forms can be considered separately under the ESA if they are reproductively isolated, but they should be considered together if they are not. Because there is no clear basis for considering sea-run cutthroat trout in the Umpqua River as a separate entity from resident and potamodromous fish, NMFS has determined that, at least until more information is available, all life history forms of *O. clarki* in the Umpqua River should be considered part of the same ESU.

Unlike most other coastal rivers, the Umpqua River drainage originates in the Cascade Mountains and passes through the Coast Range. Anadromous cutthroat trout in the Umpqua River are believed to spawn farther from the ocean (125 miles (201 km or more) than most other sea-run cutthroat trout populations. The homing ability of sea-run cutthroat trout is generally considered to be highly precise and there is reason to suspect that populations in different drainages could become reproductively isolated. In addition, warm water temperatures in the lower mainstem of the Umpqua River may also act as an isolating mechanism. Although a scarcity of direct evidence (e.g., genetic information) highlights the scientific uncertainty regarding the degree of reproductive isolation of Umpqua River cutthroat trout, available circumstantial evidence suggests that all life history forms (i.e., anadromous, resident, and potamodromous) of cutthroat trout within the Umpqua River basin are substantially reproductively isolated from populations in adjacent basins.

Regarding the second ESU criterion, evolutionary significance, the lengthy migration of the anadromous form of Umpqua River cutthroat trout, possible adaptations for dealing with warm water temperatures, and distinctive hydrographic features of the Umpqua River drainage all suggest that there is an ESU at the Umpqua River level. The effects of the extensive releases of Alsea River Hatchery fish between 1961 and 1976 were also considered. During the period when the Umpqua River was stocked with Alsea River hatchery fish, counts of adult cutthroat trout (presumably sea-run fish) at Winchester Dam increased dramatically. This trend was not sustained after stocking was discontinued, and counts have declined

to precariously low levels. This may be evidence of the inability of Alsea River cutthroat trout to sustain a population in the Umpqua River. Further, during the stocking program, the sea-run cutthroat trout passing over Winchester Dam exhibited a later run timing than the indigenous population. After stocking was discontinued, this later run timing shifted back toward the original run timing. Although there are no data that directly address the effects of Alsea River fish on Umpqua River native fish (e.g., genetic information), available evidence suggests that the current population of cutthroat trout represented by the dam counts is a remnant of the indigenous cutthroat trout and may be genetically distinct from Alsea River hatchery fish.

Status of Umpqua River Cutthroat Trout

The precarious status of the remaining sea-run cutthroat trout in the Umpqua River is not in question. However, the existence of potamodromous fish is still largely speculative. Resident cutthroat trout numbers are not known, but there are a few lakes within the Umpqua River Basin believed to contain cutthroat trout. Although there is no direct information (e.g., abundance estimates) on the current status of the species, it is likely that there have been significant reductions in the numbers of resident and potamodromous fish due to widespread habitat degradation in the Umpqua River Basin.

A key factor influencing NMFS' determination of the status of the Umpqua River cutthroat trout concerns the evolutionary significance of the anadromous life history form to *O. clarki* as a whole. On the issue of anadromy/nonanadromy, Waples (1991) states:

> If substantial gene flow occurs or has recently occurred between the two forms, they represent polymorphisms within a single population and should be considered as a unit for purposes of the Act. In determining whether such a population unit is an ESU, the anadromous and non-anadromous traits should be considered in the same manner as other population characteristics. . . . The important questions are whether the traits have a genetic basis and whether they help to make the population unit "distinct" from other populations. For example, an anadromous/nonanadromous unit might be considered an ESU if other ecologically comparable populations of the species harbored only the nonanadromous form. In this case, if the population unit is considered to be an ESU solely or primarily on the basis of the anadromous trait, then the potential loss of anadromy should be a legitimate ESA concern. A key question would be whether the nonanadromous form was likely to give rise to the anadromous form after the latter had gone locally extinct. Therefore, an anadromous/nonanadromous population unit could be listed based on a threat to one of the life-history traits, if the trait were genetically based and loss of the trait would compromise the "distinctness" of the population. (p. 16)

Thus, even if the resident form were determined to be healthy, the risk of losing the anadromous form would still be an ESA concern if the trait has a genetic basis and it contributes substantially to the species' ecological and genetic diversity. Although there are no data that directly address the genetic relationship between the different life history forms of Umpqua River cutthroat trout, circumstantial evidence regarding population abundance and run-timing suggests that a component of the native run persists, and the possibility of losing this life history form must be considered in determining whether to list the entire population.

NMFS concludes that the best available information indicates that this stock meets both of the criteria necessary to be considered an ESU. Therefore, NMFS determines that the Umpqua River cutthroat trout is a "species" under the ESA.

Summary of Factors Affecting the Species

Section 2(a) of the ESA states that various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation. Section 4(a)(1) of the ESA and the NMFS listing regulations (50 CFR Part 424) set forth procedures for listing species. The Secretary of Commerce must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or education purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat degradation and impacts associated with logging and related land management activities in particular have likely contributed to the Umpqua River cutthroat trout population's decline. Removal of forest canopy can cause an increase in both the maximum and the diurnal fluctuation of water temperatures, leading to disease outbreaks, altered timing of migration, and accelerated maturation. The removal of streamside vegetation can deplete the bank area of potential new woody debris that provides cover for cutthroat trout. Siltation is another result of some logging practices; it is known to hinder fry emergence from the gravel and may limit production of benthic invertebrates. Dissolved oxygen content of both surface and intragravel water can decrease as a result of logging operations. Logging can also cause changes in stream flow regimes, resulting in potentially adverse water velocity and depth characteristics.

B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

Cutthroat trout are not harvested commercially, and scientific and educational programs have probably had little or no impact on Umpqua River cutthroat trout populations. However, the cutthroat trout is a popular gamefish throughout the Pacific Northwest and available information indicates that recreational fishing has likely contributed to the general decline in Umpqua River cutthroat trout populations. Also, poaching may pose a major threat to depressed populations of salmonids in the Umpqua River.

C. Disease or Predation

Disease is not believed to be a factor contributing to the decline of cutthroat trout populations in the Umpqua River. Several non-native fish species introduced to the Umpqua River are known to prey on or compete with salmonids; however, there is no specific information regarding predation impacts by these or native fishes on Umpqua River cutthroat trout.

D. Inadequacy of Existing Regulatory Mechanisms

Because recreational fishing is believed to have been a factor contributing to the general decline in cutthroat trout populations in the Umpqua River basin, Oregon sportfishing regulations now require anglers to release naturally produced cutthroat trout (i.e. fish without clipped adipose fins) that are greater than 12 inches in length. However, anglers are still allowed to catch and keep up to five fish per day between 8–12 inches in length in the Umpqua River and estuary Therefore, existing harvest regulations may not be adequate to protect a substantial portion of the Umpqua

River's juvenile and adult cutthroat trout population from overutilization by recreational anglers.

The significant decline in numbers of cutthroat trout passing Winchester Dam suggests that management plans and practices followed by the U.S. Forest Service (FS), Bureau of Land Management (BLM), and Oregon Department of Fish and Wildlife have not provided adequate protection for this species. Although the State of Oregon listed the Umpqua River sea-run cutthroat trout as a sensitive species in 1990, the designation has not reversed the decline of this species. Furthermore, the designation has not protected the species from adverse effects resulting from Federal actions.

A Federal interagency cooperative program, the Record of Decision for Amendments to FS and BLM Planning Documents Within the Range of the Spotted Owl (the Forest Plan, April 1994), has recently been implemented to provide a coordinated management direction for the lands administered by the FS and the BLM. Region-wide management direction will amend existing management plans, including Forest Plans, Regional Guides, Timber Sales Plans, and Resource Management Plans for lands within the range of the northern spotted owl (including the Umpqua River Basin). As part of the Forest Plan, implementation of the Aquatic Conservation Strategy (ACS) should help reverse the trend of aquatic ecosystem degradation and contribute toward recovery of fish habitat. Coordination between the Federal land management agencies and NMFS, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service should ensure that the ACS objectives are achieved. Although the restoration measures should benefit the species in the future, they have just been implemented, and the effectiveness of these measures is not known and cannot be assessed with certainty until future runs return.

NMFS is aware of timber sales that were awarded prior to implementation of the Forest Plan. Although the Forest Plan does not address previous actions, the FS and BLM have screened previously sold or awarded timber sales in the Umpqua River Basin to avoid potential direct, indirect, or cumulative adverse impacts to salmonids. During the screening process, several concerns regarding individual sales were identified. Although the direct adverse effects of these individual timber sales were addressed and mitigated, there may be remaining cumulative effects concerns (i.e., amount of canopy removal).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The Alsea River Hatchery fish stocking program (1960–75) may have been a factor in the decline of Umpqua River cutthroat trout, although there is considerable uncertainty regarding the ability of these hatchery fish to sustain a population in the river. The stocked fish may have affected the native fish through behavioral and genetic interactions, competition, predation, and the spread of disease. However, circumstantial evidence regarding population abundance and run timing suggests that a component of the native run persists.

Proposed Determination

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made to protect such species.

Regarding the Umpqua River cutthroat trout ESU determination and associated threatened or endangered classification, the NMFS status review identified three issues that cannot currently be resolved strictly on the basis of available scientific evidence: (1) The geographic extent of the ESU; (2) the effects of the Alsea River hatchery fish; and, (3) the status (threatened or endangered) of the ESU. Although there is uncertainty regarding assumptions about the above issues, the precarious status of the remaining sea-run fish suggests that the anadromous component of the Umpqua River cutthroat trout population (which may have a genetic basis) is in danger of extinction. Any evaluation of a proposal to list Umpqua River cutthroat trout must include full consideration of the potential consequences of the loss of the anadromous life history form.

Based on its assessment of the best scientific and commercial information available, NMFS determines that the Umpqua River cutthroat trout (i.e., all life forms) is a "species" under the ESA. The collective evidence suggests that an important component of the ESU is in danger of extinction throughout a significant portion of its range. Therefore, NMFS proposes to list all life forms of Umpqua River cutthroat trout as endangered. With the proposal to list Umpqua River cutthroat trout, NMFS is assuming that: (1) All life history forms of cutthroat trout in the Umpqua Basin constitute one ESU, (2) the ESU represents the evolutionary legacy of the historical cutthroat trout population, and (3) either all life history forms of cutthroat trout in the Umpqua Basin have experienced extensive declines in abundance such that they are presently threatened with extinction, or the depressed sea-run component of the population is a substantial and important component of the ESU, and its loss would compromise the distinctness and viability of the inclusive ESU. NMFS will reconsider this proposed listing determination if it obtains relevant information regarding the extent of the ESU that contains Umpqua River cutthroat trout, the effects of previous stocking of Alsea River hatchery fish on current populations, or the relationship between anadromous, potamodromous, and resident life-history forms in the Umpqua River.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. While NMFS has completed its analysis of the biological status of Umpqua River cutthroat trout, it has not completed the analysis necessary for designating critical habitat. NMFS has determined that a critical habitat designation will require a more detailed assessment of the relationship between the various cutthroat trout life forms. Therefore, to avoid delaying this listing proposal, NMFS will propose critical habitat in a separate rulemaking.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and as effective as possible, NMFS is soliciting comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, and any other interested parties (see **DATES** and **ADDRESSES**). The final decision on this proposal will take into consideration the comments and any additional information received by NMFS, and may differ from this proposed rule.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing

decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

Similarly, this proposed rule is exempt from review under E.O. 12866.

References

Johnson et al. 1994. Status review for Umpqua River sea-run cutthroat trout. U.S. Dep. Commer., NOAA Tech. Memo. NMFS F/NWC–xxx, 112 p.

Waples, R.S. 1991. Pacific salmon, *Oncorhynchus* spp., and the definition of "species" under the Endangered Species Act. Mar. Fish. Rev. 53(3):11–22.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 1, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 222 is proposed to be amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), the second sentence, is amended by adding the phrase "Umpqua River cutthroat trout (*Oncorhynchus clarki*);" immediately after the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*);".

[FR Doc. 94–16577 Filed 7–5–94; 2:47 pm]

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Notices

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

July 1, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Farmers Home Administration
7 CFR 1924–B, Management Advice to Individual Borrowers and Applicants
FmHA 431–1, 2, 4; 432–1, 10; 1924–22, 23, 24, and 27
Recordkeeping; On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 234,935 responses; 2,148,799 hours
Jack Holston (202) 720–9736
• Rural Electrification Administration
Electric and Telephone Standards/ Specifications Acceptance Telephone Field Trials, and Telephone Contract Forms
Numerous forms
Businesses or other for-profit; Small businesses or organizations; 7,019 responses; 8,837 hours
George J. Bagnell (202) 720–0698
• Forest Service
Special-Use Application, Permitting, and Administration Program—Addendum
FS–2700–3b
Quarterly; Annually
Individuals or households; Non-profit institutions; Small businesses or organizations; 56,738 responses; 68,488 hours
Mark Scheibel (202) 205–1371
• Rural Electrification Administration
REA Specifications for Quality Control and Inspection of Timber Products
Recordkeeping; Annually
Businesses or other for-profit; Non-profit institutions; 21,000 responses; 39,166 hours
Bob Lash (202) 720–9098

Extension

• Agricultural Marketing Service
Papayas Grown in Hawaii, Marketing Order No. 928
FV–86; FV–86–1; FV–87; and FV–88
Recordkeeping; On occasion; Annually; Every six years
Farms; Businesses or other for-profit; Small businesses or organizations; 1,217 responses; 1,039 hours
Charles L. Bush (202) 690–3670
• Agricultural Marketing Service
Tokay Grapes Grown in San Joaquin County, California; Marketing Order No. 926
FV–106; FV–107; FV–108
Recordkeeping; On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 311 responses; 13 hours
Mark J. Kreaggor (202) 720–2431
• Rural Electrification Administration
Financial Requirement and Expenditure Statement—Electric
REA Form 595
On occasion
Small businesses or organizations; 2,700 responses; 29,700 hours
Daphne L. Brown (202) 205–3660
• Rural Electrification Administration
Accounting Requirements for Electric Borrowers
Recordkeeping
Small businesses or organizations; 950 recordkeepers; 247,000 hours
Roberta Detwiler (202) 720–5227
• Rural Electrification Administration
Manual for Preservation of Borrowers' Records (Electric)
Recordkeeping
Small businesses or organizations; 950 recordkeepers; 19,000 hours
Roberta Detwiler (202) 720–5227

New Collection

• Rural Development Administration
7 CFR 4284–F, Rural Technology Development Grants
Recordkeeping; On occasion; Monthly; Quarterly
Individuals or households; State or local governments; Non-profit institutions; Small businesses or organizations; 2,935 responses; 6,105 hours
Jack Holston (202) 720–9736

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–16511 Filed 7–7–94; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

The Meat Import Act of 1979, as amended (19 U.S.C. 2253 note) (the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep (except lamb), and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), other than products of Canada and Mexico, which may be imported into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada and Mexico, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed

110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1994 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1994 (59 FR 727), the estimated aggregate quantity of meat articles other than products of Canada and Mexico prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1994 is 1,108.1 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada and Mexico which would, in the absence of limitations under the Act, be imported during calendar year 1994 is 1,218.8 million pounds.

Done at Washington, DC, this 30th day of June, 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–16512 Filed 7–7–94; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee will be convened at 1:00 p.m. and adjourn at 4:00 p.m. on Thursday, August 18, 1994, in the Executive Dining Room (Room E–226 of the Low Rise Building) of the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, MA 02203. The purpose of the meeting is to: (1) induct 11 new members; (2) discuss civil rights issues around the State; and (3) select a 1995 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dorothy S. Jones, 617–623–5610, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 1, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–16586 Filed 7–7–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–94]

Foreign-Trade Zone 99—Wilmington, DE; Application for Subzone Zeneca Inc., Pharmaceuticals Plant Newark, DE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Delaware Development Office, on behalf of the State of Delaware, grantee of FTZ 99, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Zeneca Inc. (Zeneca), in Newark, Delaware, adjacent to the Wilmington Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 22, 1994.

Zeneca Inc. is a wholly-owned subsidiary of Zeneca Group PLC (U.K.), a bioscience company comprising three global businesses—pharmaceuticals, agrochemicals and seeds, and specialty products. Zeneca Group was created as part of the 1993 worldwide reorganization of Imperial Chemical Industries PLC (U.K.) along industry lines.

Zeneca's plant (2 bldgs. on 156 acres/520,700 sq. ft.) is located at 587 Old Baltimore Pike, Newark, Delaware, some 10 miles west of Wilmington. The facility (530 employees) is used to produce and/or distribute a wide range of pharmaceuticals, including CEFOTAN® (antibiotic), HIBICLENS® (antiseptic), DIPRIVAN® (anesthetic), TENORETIC® and TENORMIN® (hypertension treatment); and NOLVADEX® and ZOLADEX® (anti-cancer). The application also requests approval for the production of MERREM® (antibiotic), for which a plant expansion is currently underway. In addition, the company is requesting to use zone procedures for drugs currently in development that may also be produced at the Newark facility; including ARIMIDEX®, CASODEX® and TOMUDEX® (anti- cancer); PALUDRINE® (anti-malarial); and SEROQUEL® (schizophrenia treatment). The active ingredients for a number of these products are or would be sourced abroad. For those products currently produced in the U.S., foreign-sourced materials account for some 30 percent of finished product value.

Zone procedures would exempt Zeneca from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (3.7%-6.9%). The duty rates on foreign-sourced items range from 3.7% to 8.7%. At the outset, zone savings would primarily involve choosing the finished product duty rate for NOLVADEX® (6.3%) rather than the rate for the foreign active ingredient, tamoxifen (6.6%). The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 21, 1994.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Suite 201, 660 American Avenue, King of Prussia, PA 19406,

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 28, 1994.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 94–16603 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 24–94]

Foreign-Trade Zone 9B—Honolulu, HI; Kerr Pacific Corp., HFM Division (Bakery Mixes and Animal Feed); Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Department of Business, Economic Development & Tourism of the State of Hawaii, grantee of FTZ

Subzone 9B, requesting authority on behalf of Kerr Pacific Corp., HFM Division (HFM) (formerly known as Hawaiian Flour Mills, Inc.) to expand the scope of subzone manufacturing authority and to expand the boundary of the subzone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 8, 1994.

Subzone 9B was approved by the FTZ Board in 1984, with authorized activity involving the production of bakery mixes (flour, sugar, milk blends) for export (Board Order 274, 49 FR 42969, 10/17/84). The subzone consists of one site (72,000 sq. ft., 14 employees), adjacent to Pier 23 at Honolulu Harbor.

HFM is now seeking authority to expand the scope of activities conducted under zone procedures to include the processing of animal feeds. Some of the ingredients would be sourced abroad, including corn, soybean meal, alfalfa meal and barley. The finished animal feed would be sold to the livestock industry in Hawaii and abroad.

Zone procedures would exempt HFM from Customs duty payments on foreign items that are used in production for export. On sales to the Hawaiian market, the company would be able to choose the duty rate that applies to the blended animal feeds (duty free) instead of the rate that applies to foreign ingredients (duty free to 3%). The application indicates that the savings from zone procedures would help improve the company's international competitiveness.

To accommodate the proposed activity, the applicant is also requesting authority to expand the boundary of the subzone to include HFM's grain silos and a parcel for a proposed animal feed mill (approx. 20,000 sq. ft.), adjacent to the existing subzone.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 6, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 21, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office 300 Ala Moana, Suite 4106, Honolulu, Hawaii 96813

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Constitution Avenue NW., Washington, DC 20230.

Dated: June 20, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–16606 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket A(32b1)–3–93]

Foreign-Trade Zone 54—Clinton County, New York Withdrawal of Request for Export Manufacturing Authority (Bicycles)

Notice is hereby given of the withdrawal of the request submitted by the Clinton County Area Economic Development Corporation, grantee of FTZ 54, for authority for the manufacture of bicycles for export within FTZ 54. The application was filed on June 24, 1993 (58 FR 36390, 7/7/93).

The withdrawal was requested by the applicant because of a policy issue that arose regarding the proposed operation, and the case has been closed without prejudice.

Dated: June 24, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–16604 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 697]

Grant of Authority for Subzone Status; BMW Manufacturing Corporation (Automobiles), Spartanburg County, SC, Greenville-Spartanburg Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, for authorization of special-purpose subzone status at the automobile manufacturing plant of BMW Manufacturing Corporation in Spartanburg County, South Carolina, was filed by the Board on July 19, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 32–93, 58 FR 40623, 7–29–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 38A) at the BMW Manufacturing Corporation in Spartanburg County, South Carolina, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of June 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–16605 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–806]

Electrolytic Manganese Dioxide From Japan: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Dorothy Tomaszewski, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0922 and (202) 482–0631, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1992 (57 FR 11935), the Department of Commerce (the Department) published in the Federal Register notices of "Opportunity to Request Administrative Review." In response to the request made by Petitioners, Chemetals Inc. and Kerr-McGee Chemical Corporation, the Department initiated the administrative review on May 22, 1992 (57 FR 21769) of the antidumping duty order on Electrolytic Manganese Dioxide (EMD) from Japan on April 17, 1989 (54 FR 15244). The review covers one manufacturer/exporter of the subject merchandise to the United States, Tosoh Corporation (TOSOH) during the period, April 1, 1991, through March 31, 1992. The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On August 26, 1992, the Department issued a questionnaire to TOSOH for the 1991–1992 administrative review. The questionnaire had three sections: section A, requesting general information; section B, requesting information on U.S. sales; and section C, requesting information on home market sales. TOSOH submitted its questionnaire response on November 13, 1992. Petitioners submitted comments on TOSOH's questionnaire response on December 2, 1992.

On December 18, 1992, petitioners alleged to the Department that TOSOH was selling the subject merchandise to the United States at prices below cost of production. On March 29, 1994, pursuant to section 773(b) of the Act, the Department issued section D of the questionnaire, which requested information on TOSOH's cost of production. On April 29, 1994, TOSOH informed the Department that it would not respond to section D of the questionnaire. TOSOH explained that its small role in the U.S. market does not justify the high cost of completing the questionnaire.

Since TOSOH did not respond to section D of the Department's questionnaire, we consider it to be an uncooperative respondent. Therefore, pursuant to section 776(c) of the Act, the Department has preliminarily determined to assess antidumping duties of 77.43 percent *ad valorem* based on best information available (BIA) for this period of review.

Interested parties are invited to comment on these preliminary results.

Scope of Review

Imports covered by the review are shipments of electrolytic manganese dioxide. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. During the review period, such merchandise was classifiable under subheading 2820.10.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

On January 6, 1992, the Department published a final scope ruling, *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling* (57 FR 395; January 6, 1992), in which it affirmed that high-grade chemical manganese dioxide (CMD–U) is a "later-developed product" and is included within the scope of the order on EMD from Japan. For a detailed discussion of that ruling, *see Electrolytic Manganese Dioxide from Japan; Preliminary Scope Ruling* (56 FR 56977; November 7, 1991).

Preliminary Results of the Review

This review covers EMD entries into the United States by one manufacturer/exporter, TOSOH. Given that TOSOH declined to respond to section D of the Department's questionnaire, we consider it to be an uncooperative respondent, and have assigned to it a margin based on BIA under section 776(c) of the Act (*see Final Determination of Sales at Less than Fair Value: Steel Wire Rod from Brazil* (59 FR 5984, February 9, 1994); *Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, etc. from Brazil* (58 FR 37091, July 9, 1993)). Our practice, for uncooperative respondents, is to apply as BIA the higher of (1) the highest of the rates found for any firm in the less-than-fair-value (LTFV) investigation or prior administrative reviews, or (2) the highest rate found in this review for any firm (*see Final Results of Administrative Review: Antifriction Bearings (other than Tapered Roller Bearings) from France* (58 FR 39729, 39739, July 26, 1993)). Therefore, we used, as BIA, the highest of the rates found for any firm in the *Final Determination of Sales at Less than Fair Value: EMD from Japan* (54 FR 8778, March 2, 1989), which is 77.43 percent.

As a result of this review, we preliminarily determine that the following margin exists for the review period:

Manufacturer/exporter	Time period	Margin (percent)
TOSOH	04/1/92–03/31/93	77.43

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries for the period of review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act. A cash deposit of estimated antidumping duties based on margins for the period of April 1, 1991, through March 31, 1992, shall be required on all shipments of subject merchandise from Japan, as follows:

(1) the cash deposit rate for the reviewed company will be that established in the final results of this administrative review;

(2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all other" rate established in the LTFV investigation (54 FR 8778) of 73.30 percent, as discussed below.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, 822 F. Supp. 782 (1993), and *Federal Mogul Corporation* v. *United States*, 822 F. Supp. 782 (1993), decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

In proceedings governed by antidumping findings (*i.e.*, proceedings originally investigated by the Treasury Department), unless we are able to

ascertain the "all others" rate from the Treasury LTVF investigation, the Department adopts the "new shipper" rate established in the first final results of administrative review published by the Department of Commerce (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding was investigated by the Department of Commerce, it is governed by an antidumping duty order. Therefore, the "all others" rate for the purposes of this review will be 73.30 percent, the "all others" rate established in the LTFV investigation (54 FR 8778).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least seven copies must be submitted to the Assistant Secretary for Import Administration no later than July 20, 1994, and rebuttal briefs, no later than July 27, 1994. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief. We will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 1, 1994, at 1:30 p.m. at the U.S. Department of Commerce, Room 3606, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 29, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16607 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from three respondents, three U.S. producers, and one interested party, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from the Republic of Korea. The review covers four manufacturers/ exporters of the subject merchandise to the United States generally for the period November 30, 1990 through May 31, 1992.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Roy F. Unger, Jr., or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0651/ 3814.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1991, the Department of Commerce published in the **Federal Register** (56 FR 25660) the antidumping duty order on polyethylene terephthalate (PET) film from the Republic of Korea. On June 8, 1992, the Department published (57 FR 24244) a notice of "Opportunity to Request an Administrative Review" of this antidumping duty order for the period November 30, 1990, through May 31, 1992 (56 FR 25660). We received timely requests for review from Cheil Synthetics, Inc. (Cheil), SKC Limited (SKC), Kolon Industries, Inc. (Kolon), and STC Corporation (STC). The petitioners, E.I. DuPont Nemours & Co., Inc., Hoechst Celanese Corporation and ICI Americas, Inc., requested an administrative review for the same four Korean manufacturers/exporters of PET film.

For most of the respondents the review period covers November 30, 1990 through May 31, 1992, on July 22, 1992 (57 FR 32521). Because Cheil was determined to have a *de minimis* margin in the *Preliminary Determination of Sales at Less-Than-Fair-Value* (LTFV) (56 FR 16305), Cheil's period of review (POR) begins on April 22, 1991, when suspension of its merchandise was first ordered, and runs through May 31, 1992. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The POR was November 30, 1990, through May 31, 1992, for SKC, Kolon, and STC. Cheil's

POR was April 22, 1991, through May 31, 1992.

United States Price

In calculating USP, the Department treated respondents' sales as purchase price (PP), as defined in section 772 of the Act, when the merchandise was sold to unrelated U.S. purchasers prior to importation. The Department treated respondents' sales as exporter's sale price (ESP), as defined in section 772 of the Act, when the merchandise was sold to unrelated U.S. purchasers after importation.

PP was based on ex-factory, f.o.b. Korean port, f.o.b. customer's specific delivery point, c.i.f. U.S. port, or packed and delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage and handling, terminal handling charges, Korean and U.S. inland freight, ocean freight, marine insurance, containerization expenses and taxes, sample movement charges, return movement charges, discounts, wharfage expense, consolidated freight charges, and U.S. duties in accordance with section 772(d)(2) of the Act.

ESP was based on ex-warehouse, f.o.b. customer's specific delivery point, or packed and delivered prices to unrelated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage and handling, Korean and U.S. inland freight, ocean freight, marine insurance, consolidated freight charges, miscellaneous handling charges, containerization expenses and taxes, wharfage expenses, warranty expenses, rebates, discounts, U.S. duties, U.S. commissions, U.S. credit expense and indirect selling expenses (which include inventory carrying costs and pre-sale warehousing expenses), in accordance with section 772(d)(2) of the Act.

For ESP sales, we deducted indirect selling expenses which included U.S. inventory carrying expenses and U.S. pre-sale warehousing expenses. We allowed an ESP offset to FMV, where appropriate, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or the total U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2).

For both PP and ESP, we added duty drawback, where applicable, pursuant to section 772(d)(1)(B) of the Act.

Kolon paid an unrelated insurance company a percentage of sales value on all of its sales to U.S. customers. During verification, we discovered that Kolon reported the incorrect rate for this insurance. We corrected Kolon's reported U.S. inland insurance expense to reflect the correct rate.

We adjusted USP for taxes in accordance with our practice as outlined in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204, June 17, 1994.

With respect to subject merchandise to which value was added in the United States by SKC and STC prior to sale to unrelated U.S. customers, we deducted any increased value in accordance with section 772(e)(3) of the Act. The value added consists of the cost associated with the production and sale of the further-processed merchandise, other than the cost associated with the imported PET film, and a proportional amount of profit or loss related to the value added. Profit or loss was calculated by deducting from the sales price of the further-processed merchandise all production and selling costs incurred by SKC and STC in the value-added process. The profit or loss was then allocated proportionally to all components of cost.

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of PET film in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of PET film to the volume of third country sales of PET film, in accordance with section 773(a)(1) of the Act. All four respondents had viable home markets with respect to sales of PET film made during the POR.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. However, in accordance with the test described in the following paragraph, we determined that the annual weighted-average FMVs did not vary significantly from the monthly weighted-average FMVs. Therefore, in accordance with section 353.44 of the Department's regulations, we calculated FMVs for each model based on annual weighted-average prices.

To determine whether a POR weighted-average price was representative of the transactions under consideration, we performed a three-step test. *See Antifriction Bearings from Japan, et al.; Final Results of Review*, 58 FR 42289 (1993). First, we compared the monthly weighted-average home market price for each model with the weighted-average POR price of that model. We calculated the proportion of each model's sales whose POR weighted-average price did not vary more than plus or minus ten percent from the monthly weighted-average prices. We did this test for each model of PET film. Second, we compared the volume of sales of all models of PET film whose POR weighted-average price did not vary more than plus or minus ten percent from the monthly weighted-average price with the total volume of sales of PET film. If the POR weighted-average price of at least 90 percent of sales of PET film did not vary more than plus or minus ten percent from the monthly weighted-average price, we considered the POR weighted-average price to be representative of the transactions under consideration. Third, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 indicates a direct relation between price and time), we concluded that there was no significant relation between price and time.

Based on this analysis, we determined that the POR weighted-average price of sales of PET film by respondents did not vary more than plus or minus ten percent from the monthly weighted-average price, indicating that the POR weighted-average price was representative of the transactions under consideration. Additionally, we determined that there was no significant relation between price and time during the POR. Therefore, we used the POR weighted-average price for purposes of our calculation.

Because SKC and STC made some home market sales to related parties during the POR we tested these sales to ensure that, on average, the related party sales were at "arms-length." *See Antifriction Bearings from France et al.; Final Results of Review*, 57 FR 28388 (1992). We determined that SKC's home market sales of PET film to related parties were on average at "arms-length", while STC's home market sales of PET film to related parties on average were not at "arms-length." Accordingly, we did not use STC's related party home market sales for comparison to U.S. sales.

Because many of Cheil's and SKC's sales were determined to have been made below cost of production (COP) during the original LTFV investigation, the Department, pursuant to section 773(b) of the Act, initiated COP investigations of Cheil and SKC for purposes of this administrative review. Furthermore, based on an allegation by petitioners, we also determined that reasonable grounds existed to believe or suspect that sales below cost had been

made by Kolon and STC of PET film. Thus, we initiated a COP investigation with respect to Kolon and STC.

We performed a model-specific cost of production test, in which we examined whether each home market sale was priced below the merchandise's cost of production. The Department defines the cost of production as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packaging. For each model, we compared this sum to the reported home market unit price, net of price adjustments and movement expenses. In accordance with Section 773(b) of the Tariff Act, we also examined whether the home market sales of each model were made at prices below their cost of production in substantial quantities over an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade.

For each model where less than ten percent, by quantity, of the home market sales during the period of review were made at prices below the cost of production, we included all sales of that model in the computation of FMV. For each model where ten percent or more, but less than ninety percent, of the home market sales during the period of review were priced below the merchandise's cost of production, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's cost of production, provided that these below-cost sales were made over an extended period of time. For each model where ninety percent or more of the home market sales during the period of review were priced below the cost of production, we disregarded all sales of that model from our analysis.

In order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months during the period of review in which each model was sold. If a product was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a product was sold in three or more months, we did not exclude the below-cost sales unless there were below-cost sales in at least three months during the period of review.

We calculated the COP for the merchandise using Cheil's, SKC's, Kolon's and STC's cost of manufacturing (COM) and general expenses, in accordance with section 353.51(c) of the Department's regulations (19 CFR 353.51(c)(1993)). Respondents' COM consisted of materials, labor, and overhead costs incurred during film manufacturing. General expenses consisted of general and administrative expenses as well as net interest expenses normally included in general expenses for COP. In our analysis, we discovered that Cheil did not include home market packing costs in its calculation of COP. Accordingly, we added Cheil's reported home market packing costs to each model's COP.

Based upon data collected during verification of Kolon and STC, we made the following cost adjustments: We reallocated STC's technical revenues offset against STC's reported general expenses instead of against STC's materials cost, as reported. We readjusted the reported labor costs to include all those labor costs actually reported in the general ledger. We reallocated STC's reported variable overhead cost on the basis of actual PET film output rather than relying on the reported basis of production capacity. We disallowed STC's claim for a start-up costs adjustment because the costs were not actually reflected in STC's financial records. We readjusted STC's materials costs to reflect arms-length prices paid to unrelated parties for raw PET chips. For Kolon, we corrected errors in reported interest rate ratios contained in Kolon's net interest expense reported for CV purposes.

When all home market sales of a such or similar product in the contemporaneous month (as identified in the model match) were excluded from our analysis because the home market sales were priced below the cost of production, or when no home market sales of such or similar merchandise were found, then we used the constructed value of the merchandise sold in the United States as the basis for FMV. We calculated the constructed value, in accordance with Section 773(e) of the Tariff Act, as the sum of the cost of manufacture of the product sold in the United States, home market selling, general and administrative (SG&A) expenses, and home market profit. The cost of manufacture of the product sold in the United States is the sum of direct material, direct labor, and variable and fixed factory overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or ten percent of the cost of manufacture, the statutory minimum for foreign SG&A expenses. For home market profit, we used the larger of the actual profit reported by the respondents or the statutory minimum of eight percent of the sum of cost of manufacture and SG&A expenses.

We calculated FMV based on delivered prices to unrelated customers and, where appropriate, to related customers in the home market. In calculating FMV, we made adjustments, where appropriate, for rebates, Korean inland freight and insurance, Korean brokerage and loading charges, home market credit expenses. We adjusted for Korean consumption tax in accordance with our decision in *Siliconmanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 31204, June 17, 1994. We deducted home market packing costs from the home market price and added U.S. packing costs to the FMV. We also made, where applicable, difference-in-merchandise adjustments. For SKC, we added a duty adjustment where the price SKC reported did not include import duties.

Due to a clerical error, Kolon incorrectly reported its home market freight expense in its questionnaire response. During verification, we determined the actual home market freight expense charge and adjusted Kolon's home market sales data accordingly.

For comparison to PP sales, pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments to FMV, where appropriate, for post-sale warehousing expenses, Korean and U.S. bank charges, U.S. credit expenses, and U.S. warranty expenses. We made further adjustments, where appropriate, for U.S. commissions in accordance with 19 CFR 353.56(a)(2). Where commissions were paid on U.S. sales and not paid on home market sales, we allowed an offset to FMV amounting to the lesser of the weighted-average home market indirect selling expenses, or the U.S. commissions in accordance with 19 CFR 353.56(b) of the regulations.

For comparison to ESP sales, we allowed an ESP offset to FMV, amounting to the lesser of the weighted-average total of home market indirect selling expenses, or the total U.S. indirect selling expenses in accordance with 19 CFR 353.56(b)(2).

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the periods indicated:

Manufacturer exporter	Percent margin
November 30, 1990 through May 31, 1992:	
SKC Limited	1.03.
Kolon Industries	0.44 (de minimis).
STC Corporation ...	5.86.
April 22, 1991 through May 31, 1992:	
Cheil Synthetics	0.05 (de minimis).

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

Individual differences between United States price and foreign market value may vary from the percentages stated above. Upon completion of the review the Department will issue appraisement instructions on each exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of polyethylene terephthalate film, sheet, and strip, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act.

(1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review. Since the rates for Cheil and Kolon were *de minimis*, there will be no cash deposits on shipments from these firms of subject merchandise;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 4.82%, the all other rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within ten days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 29, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–16608 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–601]

Certain Fresh Cut Flowers From Peru; Determination Not To Revoke Countervailing Duty Order

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

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain fresh cut flowers from Peru.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mercedes Fitchett or Sarah Givens, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 16615) its intent to revoke the countervailing duty order on certain fresh cut flowers from Peru (52 FR 13491; April 23, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On April 29, 1994, the Floral Trade Council, petitioner in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: June 29, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–16609 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–P

University of Georgia Research Foundation; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–023. *Applicant:* University of Georgia Research Foundation, Athens, GA 30602-7411. *Instrument:* Autosampler and Gas Sampling Kit, Model A200S. *Manufacturer:* CTC for Finnigan MAT, Switzerland/Germany. *Intended Use:* See notice at 59 FR 12894, March 18, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The National Institutes of Health advises in its memorandum dated May 31, 1994 that the accessory is pertinent to the intended uses and it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the previously imported instrument.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–16610 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–F

University of Utah, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 94–010. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Reasons:* The foreign instrument provides: (1) unattended analysis of 50 samples, (2) precision of 0.1% and (3) sensitivity of 1000 molecules of CO_2 per mass 44 ion. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–013. *Applicant:* South Dakota State University, Brookings, SD 57007. *Instrument:* GC - Dumas Ratio Mass Spectrometer, Model Europa 20-20. *Manufacturer:* Europa, United Kingdom. *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Reasons:* The foreign instrument provides continuous flow GC/MS with: (1) analysis error of less than 0.1% for nitrogen and carbon and (2) an automatic combustion sample preparation system with 130 positions. *Advice Received From:* National Institutes of Health, May 31, 1994.

Docket Number: 94–057. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Optical Floating Zone System. *Manufacturer:* Vacuum Metallurgical Co., Ltd., Japan. *Intended Use:* See notice at 59 FR 24691, May 12, 1994. *Reasons:* The foreign instrument provides growth of single crystals using high intensity lamps in a parabolic reflector to translate a molten zone along a rod of test material. *Advice Received From:* The National Aeronautics and Space Administration, June 8, 1994.

Docket Number: 93–146. *Applicant:* Hunter College, New York, NY 10021. *Instrument:* Northern Light Illuminator. *Manufacturer:* Imaging Research, Inc., Canada. *Intended Use:* See notice at 58 FR 68875, December 29, 1993. *Reasons:* The foreign instrument provides flicker free illumination with ± 0.5% stability over a 12 hour period. *Advice Received From:* National Institutes of Health, April 21, 1994.

The National Institutes of Health and The National Aeronautics and Space Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–16611 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[Docket No.940560–4160; I.D. 042194C]

RIN: 0648-ZA07

Financial Assistance for Information on the Antarctic Marine Ecosystem

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

ACTION: Notice of availability of financial assistance.

SUMMARY: Subject to the availability of funds, NMFS issues this notice describing funding for directed scientific research conducted under the Antarctic Living Marine Resources program and the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATES: Applications for funding under this program will be accepted between July 8, 1994, and 4:30 p.m. Pacific standard time on August 5, 1994. Applications received after that time will not be considered for funding. No facsimile applications will be accepted. Awards are expected to be made by November 1, 1994.

ADDRESSES: Send applications to: Dr. Roger P. Hewitt, Krill Studies and Field Operations Director, Antarctic Ecosystem Research Group, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

Requests for application packages should be sent to: Jean West, Chief, Grants Operation Branch, NOAA SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0926.

FOR FURTHER INFORMATION CONTACT: Dr. Roger P. Hewitt, 619–546–5602.

SUPPLEMENTARY INFORMATION:

I. Authority

The Antarctic Marine Living Resources Convention Act of 1984 (Act) (Title III of Pub.L. 98–623, 16 U.S.C. 2431 *et seq.*) provides the legislative authority necessary to implement, with respect to the United States, the Antarctic Living Marine Resources (AMLR) program. One of the principal tenets of the Act is that the harvest of Antarctic marine living resources shall be managed with the goal of preserving species diversity and stability of the entire Antarctic marine ecosystem. The AMLR program was created to provide information needed to advise the U.S. delegation to the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), part of the Antarctic treaty system.

II. Catalog of Federal Domestic Assistance (CFDA).

This program is described in the Catalog of Federal Domestic Assistance under program number 11.446 Antarctic Marine Living Resources.

III. Program Description

The Act provides for Federal agency cooperation in carrying out the policies and objectives of the Convention or to implement any decision of CCAMLR. It further provides that the Secretary of Commerce, in conjunction with the Director of the National Science Foundation, the Secretary of State, and the heads of other appropriate Federal agencies, shall design and conduct a program of directed scientific research pursuant to a plan entered in accordance with the Act. The plan is to describe priority directed research and identify needs to be fulfilled by the United States. The research to be funded is pursuant to 16 U.S.C. 2441 in support of the U.S. AMLR program, which provides information needed to

formulate U.S. policy on the conservation and international management of resources living in the oceans surrounding Antarctica.

The AMLR program monitors finfish and krill fisheries, projects sustainable yields where possible, and formulates management advice and options. In addition, the program conducts field research designed to describe the functional relationships between krill, their predators, and key environmental variables.

The field work to be funded will be accomplished during a research cruise conducted in the vicinity of Elephant Island, Antarctica, during the months of January, February, and March, 1995. A large-area survey grid of approximately 90 stations and covering the area around Elephant, Clarence, and the eastern end of King George Islands will be occupied twice. In addition, station transects across hydrographic features, directed net sampling, fine-scale acoustic surveys, and other specialized studies will be conducted. Additional research details will be provided to principal investigators prior to the cruise.

Sampling gear and supplies may be loaded aboard the NOAA Ship *Surveyor* in Seattle in mid-November, 1994, and during a port call in San Diego in late November, 1994. The scientific party will fly to Punta Arenas, Chile, to meet the ship in late December, 1994. Proposals should include cost of travel to and from Punta Arenas, Chile. Airline tickets bought with cooperative agreement funds must be fully refundable and reservations alterable due to last minute changes in ship scheduling. There will be two mid-cruise port calls in Punta Arenas, and a final Punta Arenas port call in late March, 1995, prior to the ship's departure to return to Seattle.

Depending on funding availability, a post-cruise data workshop for principal investigators may be held in San Diego at the end of May, 1995. The Government will provide travel reimbursement for this meeting if it should occur; the cost of travel for this meeting should not be included in proposals.

A report of accomplishments and tentative conclusions will be due from each principal investigator by April 1, 1995. Copies of all data sets on magnetic media will be due to the Southwest Fisheries Science Center no later than June 1, 1995. At least one article summarizing the field work will be prepared by each principal investigator for the annual review issue of the U.S. Antarctic Journal and will be due to the Southwest Fisheries Science Center by June 15, 1995. In addition, it is expected that results will be published in peer-reviewed journals. Proposals should include provisions for the preparation of collaborative manuscripts, publishing costs, and presentation of significant results at scientific meetings.

It is highly desirable that the principal investigators participate in the field work. Minimum requirements for each of the three research components are listed in this notice (see Funding Priorities). Applicants are encouraged to propose research elements to be conducted in addition to the minimum requirements; however, funding will not be increased for these additional elements.

IV. Funding Availability

Under this solicitation, NMFS estimates that up to $185,000 will be available to fund three cooperative agreements for research on the Antarctic marine ecosystem for 1 year: (1) Physical oceanography, for $65,000; (2) phytoplankton and primary productivity, $65,000; and (3) krill (*Euphausia superba*) demographics, $55,000. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any part of the available funds.

V. Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations by the applicant or third parties. Cost sharing is not required for the AMLR program. However, cost sharing is encouraged and may be considered in the final selection of proposals.

The appropriateness of cost sharing will be determined on the basis of guidance provided in applicable Office of Management and Budget (OMB) Circulars and Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost share reflected in the cooperative agreement award.

The non-Federal share may include the applicant's cash and/or in-kind contributions or amounts received from private sources or from state or local governments including the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and use of real or personal property owned by others (for which consideration is not required) in carrying out the project.

VI. Type of Funding Instrument

Cooperative agreements will be used to fund this program since NMFS is substantially involved in developing program research and priorities and will work closely with the recipient to carry out the contemplated activity throughout the project period. Three cooperative agreements will be awarded to conduct research on the Antarctic marine ecosystem in a 15,000 square mile (38,850 km^2) area around Elephant Island, South Shetland Islands, Antarctica.

VII. Eligibility Criteria

A. Applications for cooperative agreements under the AMLR research program may be made, in accordance with the procedures set forth in this notice, by any individual, state agency, university or college, institution, or laboratory, or any public or private nonprofit institution or organization qualified to perform the research described in this notice.

B. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application.

VIII. Award Period

Awards under this program are normally for 1 year. Project dates should be scheduled to begin November 1, 1994, and end October 31, 1995.

IX. Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. A copy of the current, approved or negotiated indirect cost rate/agreement with the Federal Government should be included with the application, if available. Otherwise, the applicant will be required to submit documentation to its cognizant agency to establish an indirect cost rate within 90 days of the award date or be precluded from drawing down further indirect costs until the documentation is provided.

X. Application Forms

Applications for project funding must be complete. Applicants are advised that failure to include all required information outlined in this notice, or to complete required forms, may have a

detrimental effect on the evaluation of the application.

Applicants are encouraged to obtain application packages and forms from the NOAA Grants Management Division (see **ADDRESSES**).

A. An original and two signed copies of all of the following items are required from the applicant:

1. SF–424, "Application for Federal Assistance;"

2. SF–424A, "Budget Information-Non-Construction Programs;"

3. SF–424B, "Assurances-Non-Construction Program;"

4. Budget with necessary supporting detail, i.e., budget narrative/breakdown;

5. Copy of current approved Negotiated Indirect Cost Rate Agreement, if available;

6. Financial Audit Information, signed and dated, including date of organization's last financial audit and period covered by audit; any negative findings indicated and if so, how they were resolved; date of next scheduled audit and period to be covered by scheduled audit (copy of financial statement should not be included);

7. CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying;"

8. CD–512, "Certifications Regarding Debarment, Suspension and Eligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying;"

9. SF-LLL, "Disclosure of Lobbying Activities" (if applicable); and SF-LLL-A Continuation Sheet (if applicable);

10. Statement of Work (narrative description of proposed activity, objectives, and milestones"; and

11. Proof of status for First Time Eligible Non-Profit Applicants (any of the following is acceptable evidence of status):

a. A reference to the applicant organization in the IRS' most recent list of tax-exempt organizations under Section 501(c) of the IRS code;

b. A copy of a currently valid IRS tax-exemption certificate;

c. A statement from a State taxing body or State Attorney General certifying that the applicant organization has nonprofit status and that none of the net earnings accrue to any private shareholders;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or,

e. Any of the above proof regarding a parent organization if one exists, and a statement signed by the parent organization that the applicant is a local nonprofit affiliate.

Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described by the application. Applications are not to be bound in any manner and should be one-sided. All proposals will be considered by NMFS. All incomplete proposals will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application.

B. *Project Description.* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

1. *Identification of Research Discipline.* State which of the three research components (see Funding Priorities XI) is being applied for. If the application is not in response to a funding priority, it should be so stated.

2. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will contribute to the description of the Antarctic marine ecosystem. Describe the time frame in which tasks would be conducted.

3. *Need for Government Financial Assistance.* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

4. *Benefits or Results Expected.* Identify and document the results or benefits to be derived from the proposed activities.

5. *Participation by Persons or Groups Other Than the Applicant.* Describe the level of participation required in the project by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the proposal.

6. *Federal, State, and Local Government Activities.* List any programs (Federal, state, or local government or activities) this project would affect and describe the relationship between the project and those plans or activities.

7. *Project Statement of Work.* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant. Identify specific milestones that can be used to track project progress. The following activities must be included as milestones: Submission of a report of accomplishments and tentative conclusions by April 1, 1995; submission of data sets on magnetic media by June 1, 1995; and submission of article summarizing field work for annual review issue of the U.S. Antarctic Journal by June 15, 1995. Each Statement of Work must include the following information:

a. The applicant's name.

b. The inclusive dates of the budget period covered under the Statement of Work.

c. The title of the proposal.

d. The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

e. Location of the work.

f. A list of all project personnel and their responsibilities.

g. A milestone table that summarizes the procedures that are to be attained in each month covered by the Statement of Work.

8. *Project Management.* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

9. *Monitoring of Project Performance.* Identify who will participate in monitoring the project.

10. *Project Impacts.* Describe the impact of the project in terms of anticipated improved management, social value enhancement, or any other values that will be improved by this project. Describe how these products or services will be made available to the fisheries and management communities.

11. *Evaluation of Project.* The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must

describe the methodology to be followed to determine technical feasibility.

12. *Total Project Costs.* Total project costs is the amount of funds required to accomplish the proposed statement of work (SOW), and includes contributions and donations. All costs must be shown in a detailed budget. Cost sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (SF–424A) is included in the applications package (see ADDRESSES). NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability or reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must also be provided. Costs for the following categories must be detailed in the budget as follows:

a. *Personnel.* Names and titles must be included for all project personnel. Abbreviated curricula vitae are to be submitted with each proposal as part of the supporting documentation (see below). Publication lists must be limited to all those documents prepared within the last 3 years. Up to five other relevant documents which fall outside this time frame will be accepted.

b. *Salaries.* Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

c. *Fringe Benefits.* Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent on the project. For example, if an employee spends 20 percent of his/her time on the project, 20 percent of his/her fringe benefits should be charged to this project.

d. *Consultants and Contract Services.* Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliveries expected, and time frame. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB circulars.

e. *Travel and Transportation.* Identify the number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs, including the approximate cost of transportation (airfare at coach rates), per diem rates, and any additional fees associated with the trip.

f. *Equipment, Space or Rental Costs.* Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

g. *Other Costs.*

(1) *Supplies.* Identify specific supplies necessary for the accomplishment of the project. Only consumable office supplies purchased and used on this project may be treated as a direct cost to the project.

(2) *Postage and Shipping.* Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(3) *Printing Costs.* Include costs associated with producing materials in connection with the project.

(4) *Long Distance Telephone and Telegraph.* Identify estimated monthly bills.

(5) *Utilities.* These costs should be included under indirect costs unless identified as direct costs to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(6) *Additional Costs.* Indicate any additional costs associated with the project that are allowable under OMB circulars A–21, A–87, or A–122, as applicable.

13. *Geographic location.* Field, laboratory, and office locations must be identified for all project activities.

C. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project (e.g., curricula vitae, results from prior funding). The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the discipline addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question the assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

XI. Project Funding Priorities

A. Physical Oceanography

The objectives for this component are to: (1) Describe the hydrography of the upper ocean waters in the vicinity of Elephant Island throughout the 1995 austral summer; (2) describe the physical setting in relation to the observed vertical and horizontal distribution of phytoplankton and zooplankton; and (3) provide a continuous record of sea surface and atmospheric conditions annotated by date, time, and ship's position.

Minimum observations should include: (1) Salinity, temperature, and oxygen profiles at each station; and (2) continuous measurements of solar irradiance, air temperature, wind speed and direction, relative humidity, barometric pressure, sea surface temperature, and sea surface salinity.

The Government will supply a Seabird thermosalinograph, a General Oceanics rosette with 10-liter Niskin bottles equipped with teflon springs, a Guideline salinometer, and a Seabird SBE–9 CTD (to be used as a backup unit). All other equipment, supplies, and necessary personnel must be provided by the recipient.

B. Phytoplankton and Primary Productivity

The objectives for this component are to: (1) Determine available food sources for zooplankton, including particulate organic carbon, phytoplankton organic carbon, cell size distribution, and dominant species composition; (2) determine rates of primary production and associated levels of incident radiation and light attenuation; (3) describe the seasonal change of phytoplankton growth and standing stock; and (4) estimate the relative importance of grazing, vertical mixing, nutrient depletion, and settling on the distribution of phytoplankton biomass.

Minimum observations should include: (1) Vertical profiles of chlorophyll-a and inorganic nutrient content from discreet bottle samples and solar irradiance, beam attenuation and fluorescence from continuous measurements at each station; (2)

primary production rates from shipboard incubations and associated irradiance levels; (3) continuous measurements between stations of sea surface fluorescence and beam attenuation; (4) cell size distribution and floristics composition of the phytoplankton; (5) organic carbon and nitrogen content of the particulate material; and (6) total microbial biomass.

The Government will supply a General Oceanics rosette with 10-liter Niskin bottles equipped with teflon springs. All other equipment, supplies, and necessary personnel must be provided by the recipient. Laboratory space is very limited; however, fresh water, salt water, and electrical supplies can be provided to portable laboratory vans and incubation arrays.

C. Krill Demographics

The objectives of this component are to: (1) Describe the population structure and biological characteristics of krill collected throughout the study area and over the duration of the cruise; and (2) correlate and interpret the krill data with information on phytoplankton biomass, primary production, circulation pattern, and water mass boundaries.

Minimum observations should include distributions of animal length, maturity stages, sex ratios, reproductive condition, moult stages, and feeding condition. Specimen processing should be done at sea.

The Government will provide personnel and equipment necessary for sample collection, as well as a small interior lab with fresh water, salt water, and electrical supplies. All other equipment, supplies, and necessary personnel must be provided by the recipient.

XII. Evaluation Criteria

Unless otherwise specified by statute, in reviewing applications for cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

A. Is the involvement of the consultant or contractor necessary to the conduct of the project and the accomplishment of its goals and objectives?

B. Is the proposed allocation of the consultant or contractors time reasonable and commensurate with the his/her involvement in the project?

C. Are the proposed costs for the consultant or contractors involvement in the project reasonable and commensurate with the benefits to be derived from his/her participation?

In accordance with OMB Circulars and NOAA Administrative Special Award Conditions, grantees must request prior approval for all proposed sole-source contracts or where only one bid or proposals is received in which the aggregate expenditure is expected to exceed $25,000. Proposals involving a consultant or contractor will be reviewed for compliance with pertinent procurement standards, and this information will be used in the proposal selection process.

XIII. Selection Procedures

Consideration for financial assistance will be given to those applications which meet the requirements of this solicitation and the following evaluation criteria: (1) Experience and qualifications of personnel. Organization and management of the project (34 points); (2) relevancé to the objectives outlined in this notice (see Introduction and Funding Priorities XI) (33 points); and (3) soundness of project design and technical approach, especially whether the applicant provided sufficient information to technically evaluate the project, and, if so, the strengths and weaknesses of the technical design (33 points).

For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each proposal. The review will be conducted by experts from non-NOAA, as well as NOAA, organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will assign point scores on proposals based on the evaluation criteria stated above. Applications will be ranked into two groups (a) Recommended, and (b) Not Recommended. Proposals ranked as Not Recommended will not be given further consideration for selection and funding.

The ranked applications will be evaluated by a panel of experts convened by NMFS. The panel will individually consider each proposal, along with the technical evaluation and the need for funding. The panel will provide individual recommendations to NMFS on each proposal ranked as Recommended.

After the proposals have been evaluated by the panel, the Director of the NMFS Southwest Fisheries Science Center, in consultation with the NOAA Assistant Administrator for Fisheries, will ascertain which projects do not substantially duplicate other projects that are funded by NOAA or are approved for funding by other Federal offices, recommend the projects to be funded, and the amounts available for the program. Awards may not necessarily be made to applicants with the highest-scored proposals. The exact amount of funds awarded to each project will be determined in pre-award negotiations between the applicant, the NOAA Grants Office, and the NMFS program staff.

NMFS will make project descriptions available for review as follows:

A. *Consultation with Management Agencies, Environmental Organizations, and Academic Institutions.* NMFS shall, at its discretion, request comments from groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

B. *Consultation with Government Agencies.* Applications will be reviewed in consultation with the Director, NMFS Southwest Fisheries Science Center, and appropriate laboratory personnel, NOAA Grants Officer and, as appropriate, Department of Commerce bureaus and other Federal agencies, for elimination of duplicate funding.

XIV. Other Requirements

A. Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. Women and minority individuals and groups are encouraged to submit applications under this program.

B. Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. Any first-time applicant for Federal cooperative agreement funds may be subject to a pre-award accounting survey prior to execution of the award. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

C. Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

D. No Obligation for Future Funding

If an application for an award is selected for funding, the Department has

no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

E. Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has any outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department are made.

F. Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicants management honesty or financial integrity.

G. Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single-family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

H. Lower Tier Certifications

Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. An SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

I. False Statements

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

J. Intergovernmental Review

Applications under this program are not subject to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs."

K. Requirement to Buy American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program, in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, sections 606 (a) and (b).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice involves information collection requirements subject to the Paperwork Reduction Act, which have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0348–0043.

Dated: July 1, 1994.

C. Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16479 Filed 7–5–94; 8:45 am]

BILLING CODE 3510–22–P

[Docket No. 940579–4179; I.D. 060394C]

Financial Assistance for the Northeast Fisheries Assistance Program

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

ACTION: Notice of availability of federal assistance.

SUMMARY: NMFS issues this notice describing the conditions under which applications will be accepted for Northeast fishing industry grants (NFIG) under the Northeast Fisheries Assistance Program (NFAP) and how NMFS will determine which applications it will fund. A total of $9.0 million for NFIG will be available in two parts. This notice implements the first part, for which up to $4.5 million is available to meet the most pressing needs of fishermen who are affected by the decline of the traditional fisheries in the Northeast and recent Federal regulatory actions, and who require assistance in developing alternative employment or new business opportunities.

DATES: Applications must be received by August 22, 1994. Applicants must submit one signed original and two copies of the complete application. No facsimile applications will be accepted. Generally, the time required to process applications is 120 days from the closing date of the solicitation.

ADDRESSES: Applications should be sent to the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, Telephone: (508) 281–9256 or (508) 281–9267. Application kits, with

instructions for completion, may be obtained from that office.

FOR FURTHER INFORMATION CONTACT: Kenneth Beal or Joyce Lacerda, at (508) 281–9267.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Under the provisions of Public Law 103–211, the Emergency Supplemental Appropriations Act of 1994, $30 million has been provided to the U.S. Department of Commerce (Department) for NFAP to address the needs of those directly affected by the decline of the traditional fisheries in the Northeast. Of the total package, $18 million will be used by the Economic Development Administration (EDA) to provide economic adjustment assistance to communities; $12 million will be used by NOAA for direct industry assistance in the form of (1) loan guarantees under the Fisheries Obligation Guarantee Program to help restructure existing debt, (2) grants to assist the fishing industry which has been affected by the decline of the traditional groundfish and scallop fisheries, and (3) Fishing Family Assistance Centers in the Northeast to serve as clearinghouses for all possible assistance available from Federal and state sources.

Of the $12.0 million NOAA will administer under NFAP, $9.0 million for NFIG will be provided directly to the private sector through grants that are authorized under 15 U.S.C. 713c–3(d). These grants will be administered in two parts. This **Federal Register** notice implements the first part, for which up to $4.5 million is available. NMFS will provide financial assistance to meet the most pressing needs of fishermen who require assistance in developing alternative employment or new business opportunities. This part will require no cost-sharing by applicants. The second part, for which $4.5 million will be available, will be implemented through a separate **Federal Register** notice, which will invite innovative proposals to assist the Northeast fishing industry to expand the harvesting, processing, and marketing of underexploited species; increase the value of species currently harvested; address bycatch reduction; and create new business and employment opportunities through aquaculture. The second part will require cost-sharing by the applicants.

B. Funding

NMFS issues this notice to solicit applications for federal assistance, describing the conditions under which applications will be accepted for part-one fishing industry grants under NFAP and how NMFS will select the applications it will fund.

II. Funding Priorities

NMFS' emphasis in part one of the fishing industry grant portion of NFAP will be to meet the most pressing needs of fishermen who are affected by the decline of the traditional fisheries in the Northeast, and who require assistance in developing alternative employment or new business opportunities.

Greatest consideration will be given to applications that involve, or are expected to benefit, a broad range of fishermen, rather than individual fishermen. Applications may be for demonstration or pilot projects, technology development and/or transfer, experimental fishing, or other activities to develop alternative long-term employment or new business opportunities to fishermen. Funding will not be provided for projects primarily involving construction or operational costs for individual businesses. Fishermen seeking financial assistance for proprietary business activities, e.g., business loans, may contact the Family Assistance Centers listed in section III.A. of this document for information regarding other types of financial assistance and eligibility.

The following areas, listed in no particular order, have been identified as priorities for part one of the NFIG Program.

A. Develop commercial fisheries and markets for finfish and shellfish species of the Northwest Atlantic Ocean for which there are harvestable surpluses. These include Atlantic mackerel, Atlantic herring, butterfish, spiny dogfish, skates, short-finned and long-finned squid, and red hake. NOTE: If applicable, recipients must have the appropriate Federal fishing permits in their possession. Also, if applicable, obtaining an experimental fishing permit may be required prior to approval of project activities.

B. Help restore overfished New England groundfish stocks through aquaculture or hatchery programs. This may include, but is not limited to, establishing small-scale aquaculture pilot and demonstration projects in commercial fishing communities.

C. Develop projects/conduct activities to provide alternate employment or new business opportunities for fishermen who have been affected by the decline of the traditional Northeast fisheries.

III. How to Apply

A. Eligible Applicants

Applications for assistance may be made, in accordance with the procedures set forth in this notice, by any individual who is a citizen or national of the United States, or any corporation, partnership, association, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. App. 802). Although a broad range of applicants is eligible, all applications submitted must respond to the funding priorities as noted in the above sections.

Federal Government employees, including full-time, part-time, and intermittent personnel (or their spouses or blood relatives who are members of their immediate households), are not eligible to submit an application under this solicitation.

Assistance from NOAA employees is available to eligible applicants, by telephone or through pre-proposal meetings, and will be limited to such issues as the program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring competitive proposals. Pre-proposal meetings will be held at Fishing Family Assistance Centers located in Portland and Rockland, ME; Gloucester, New Bedford, and Provincetown, MA; and Narragansett, RI. Details on specific times and location of pre-proposal meetings may be obtained by calling the NMFS Northeast Regional Office in Gloucester (508–281–9256 or 508–281–9267), or the Fishing Family Assistance Center locations in Portland, New Bedford, or Provincetown. The addresses and telephone numbers of all Fishing Family Assistance Centers are as follows:

Fishing Family Assistance Center, National Marine Fisheries Service, Marine Trades Center, Suite 311, 2 Portland Fish Pier, Portland, ME 04101, Tel: 207–780–3423.

Fishing Family Assistance Center, National Marine Fisheries Service, Greater New Bedford Reemployment Career Services, 693 Purchase Street, New Bedford, MA 02740, Tel: 508–979–1750.

Fishing Family Assistance Center, National Marine Fisheries Service, City Hall, 260 Commercial Street, Provincetown, MA 02657, Tel: 508–487–7261.

Fishing Family Assistance Center, National Marine Fisheries Service, Department of Employment and Training, 11–15 Parker Street, Gloucester, MA 01930, Tel: 508–283–4750.

Fishing Family Assistance Center, National Marine Fisheries Service, Federal Building, Room 200, 21 Limerock Street, Rockland, ME 02841, Tel: 207–594–2267.

Fishing Family Assistance Center, National Marine Fisheries Service, Narragansett Laboratory, 28 Tarzwell Drive, Narragansett, RI 02882, Tel: 401–782–3200.

B. Duration and Terms of Funding

Generally, grants are awarded for a period of 1 year, but no more than 18 months at a time.

If an application for an award is selected for funding, the Department has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available.

C. Cost-sharing

Cost-sharing is not required for applications submitted in response to this solicitation to implement part one of NFIG. It will not be a factor in the evaluation and selection of the application. If cost-sharing is proposed, the applicant will be obligated to account for the amount contained in the award document.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must respond to priority(ies) contained in section II of this document. Project applications must be clearly and completely submitted in the format that follows. The forms described are available, with instructions for completion, from the Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930, telephone: 508–281–9256 or 508–281–9267.

1. *Cover Sheet:* An applicant must use OMB Standard Form 424 (revised 4–92) as the cover sheet for each project. (Do not complete item 16 of Standard Form 424 (REV 4–92). NMFS will obtain for the applicant any necessary clearances by the State Point of Contact (SPOC) established as a result of E.O. 12372, Intergovernmental Review of Federal Programs to which this program is subject.)

2. *Project Summary:* An applicant must complete NOAA Form 88–204 (10–92), Project Summary, for each project.

3. *Project Budget:* A budget must be submitted for each project, using NOAA Form 88–205 (10–92), Project Budget. The applicants must submit cost estimates showing total project costs. Estimates of the direct costs must be specified in the categories listed on the Project Budget form. The budget may also include an amount for indirect costs, if the applicant has an established indirect cost rate with the Federal Government. However, this program limits the indirect cost rate that may be charged to 25 percent of the federal share of total direct costs or the institution's negotiated indirect cost rate, whichever is less. A copy of the current, approved, negotiated indirect Cost Agreement with the Federal Government must be included with the application.

NOAA will not consider fees or profits as allowable costs for applicants.

The total costs of a project consist of all costs incurred in the performance of project tasks to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of an award between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are not reimbursable.

4. *Project Narrative Description:* The project must be completely and accurately described, as follows:

a. *Identification of Problem(s):* As appropriate, in this description include: (1) The fisheries involved, (2) the specific problem(s) being addressed, and (3) the sectors of the fishing industry that are affected.

b. *Project Goals and Objectives:* State what the proposed project is expected to accomplish, and describe how this will eliminate or reduce the problem(s) described in 4.a. above.

c. *Need for Government Financial Assistance:* Explain why Government financial assistance is needed for the proposed work. List all other sources of funding that are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant:* Describe: (1) The participation by Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation.

e. *Federal, State, and Local Government Activities:* List any existing Federal, state, or local government programs or activities that this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with the Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities, and list names and addresses of persons providing this information.

f. *Project Statement of Work:* The statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated goals and objectives. A milestone chart that outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included. The narrative should include information that responds to the following questions:

(1) How will the project be designed?

(2) What major products (e.g., research, services, or reports) will result and what is their specific purpose?

(3) What work, activities, or procedures (be as specific as possible) will be undertaken to produce major products?

(4) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting).

(5) How will the final products or services be evaluated? What evaluation methods will be used?

The milestone chart should graphically illustrate:

(1) Steps to accomplish the major products, research, services and/or activities;

(2) Supporting activities and associated timelines, e.g., month 1, month 2; and

(3) The individual(s) responsible for the various activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide sufficient detail. Applications lacking sufficient detail may be eliminated from further consideration.

g. *Project Management:* Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their

qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, applicants, as appropriate, must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. Commercial organizations and individuals that apply should use OMB Circular A–110. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

h. *Project Impacts:* Describe the anticipated impacts of the project in terms of landings, production, sales, improvement in product quality or safety, or other measurable factors. Describe how the results of the project will be made available to the public.

i. *Evaluation of Project:* The procedures for evaluating the relative success or failure of a project in achieving its goals and objectives should be clearly described within each application.

5. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed.

IV. Evaluation Criteria and Selection Procedures

A. Evaluation of Proposed Projects

1. *Consultation with Interested Parties:* NMFS will evaluate applications in consultation with NMFS Offices, NOAA Grants Office, and, as appropriate, Department and other Federal agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and others outside NMFS who have knowledge in the subject matter of a project or who would be affected by a project. The Regional Fishery Management Councils will be asked to review applications that could impact a managed fishery, the bycatch of a managed fishery, or a fishery management issue.

2. *Technical Evaluation:* NMFS will solicit technical evaluations of each project application from appropriate private and public sector experts. Point scores will be given to project applications, based on the following evaluation criteria:

a. *Problem Description and Conceptual Approach for Resolution.* Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (25 points)

b. *Soundness of Project Design/ Technical Approach.* Applications will be evaluated to determine whether or not the applicant provided sufficient information to evaluate the project technically and, if so, the strengths and/ or weaknesses of the technical design proposed for problem resolution. (25 points)

c. *Project Management and Experience and Qualifications of Personnel.* The organization and management of the project, and the project's Principal Investigator and other key personnel in terms of related experience and qualifications will be evaluated. Those projects that do not identify the Principal Investigator with his or her qualifications will receive a lower point score. (20 points)

d. *Project Evaluation.* The effectiveness of the applicant's proposed methods to evaluate the project in terms of meeting its original goals and objectives will be evaluated. (10 points)

e. *Project Costs.* The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high project costs will be taken into account. (20 points)

f. In addition to the above criteria, in reviewing applications that include consultants and contracts, NMFS will make a determination regarding the following:

(1) Is the involvement of the primary applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

(2) Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

(3) Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

3. *Panel Review:* After the technical evaluation, comments will be solicited from a panel of representatives selected by the Assistant Administrator for Fisheries, NOAA, from the fishing industry, state government, and others, as appropriate, to rank the projects. Considered in the rankings, along with the technical evaluation, will be the significance of the problem addressed in the project. Each panelist will rank each project in terms of importance or need for funding and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Selection Procedures and Project FundingU.S.C.

After projects have been evaluated and ranked, the Director, Northeast Region, NMFS, will develop recommendations for project funding. These recommendations will be submitted to the Assistant Administrator for Fisheries, NOAA, who will determine the number of projects to be funded, ensuring that there is no duplication with other projects funded by NOAA or other Federal organizations.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The funding instrument will be determined by the NOAA Grants Management Division. Projects should not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligation of the Applicant

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. *Primary Applicant Certification.* Applicants whose applications are recommended for funding will be required to submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of

appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs which ever is greater; and

d. *Anti-Lobbying Disclosure.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

4. *Lower Tier Certifications.* Successful applicants shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

B. Other Requirements

1. *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Name check review.* All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

3. *Past Performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

4. *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full,

b. A negotiated repayment schedule is established and at least one payment is received, or

c. Other arrangements satisfactory to DOC are made.

5. *Buy American-Made Equipment or Products.* Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, sections 606 (a) and (b).

6. *Preaward Activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, OMB Control Number 0648–0135. Public reporting burden for preparation of the grant application is estimated to be 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd., Rm. 722, WSC–5, Rockville, MD 20852; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Project No. 0648–0135.

A notice of availability of financial assistance for the NFIG Program will also appear in the Commerce Business Daily.

(Authority: 15 U.S.C. 713c–3(d))

Dated: July 1, 1994.

Charles Karnella,

Acting Program Management Officer for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–16498 Filed 7–7–94; 8:45 am]

BILLING CODE 3510–22–W

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity, military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 8, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity, military resale commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity, military resale commodities and service.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity, military resale commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity, military resale commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Box, Wood, Fiberboard
8115–00–L01–0683
(Requirements for the Defense Distribution Region East, New Cumberland, Pennsylvania)
NPA: Sabine Association for Retarded Citizens, Inc., Many, Louisiana

Military Resale Commodities

Bag, Tote, Canvas
M.R. 511
M.R. 512
M.R. 513
M.R. 595
NPA: New Mexico Industries for the Blind, Albuquerque, New Mexico

Sponge, Cloth
M.R. 580
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Scrubber, Sponge
M.R. 548
NPA: Mississippi Industries for the Blind, Jackson, Mississippi, The Lighthouse, Inc., Long Island City, New York

Sweatsuit, Recruit, Marine Corps
M.R. 650
M.R. 651
M.R. 652
M.R. 653
M.R. 654
M.R. 655
M.R. 656
M.R. 657
M.R. 658
M.R. 659
NPA: Lions Club Industries f/t Blind, Inc., Durham, North Carolina

Cloth, Dish
M.R. 942
NPA: Lions Services, Inc., Charlotte, North Carolina
Cleveland Skilled Industries
Cleveland, Ohio

Service

Grounds Maintenance
Naval Ordnance Center, Pacific Division
Detachment Port Hadlock
Port Hadlock, Washington
NPA: Skookum Educational Programs, Port Townsend, Washington

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–16597 Filed 7–7–94; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes from the Procurement List commodities, a military resale commodity and services previously furnished by such agencies.

EFFECTIVE DATE: August 8, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 18, 25, April 1, 15, May 6, 13 and 20, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 12895, 14155, 15385, 18105, 23700, 25038 and 26482) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Folder, File
7530–01–356–4295
7530–01–356–4296
7530–01–347–5227
Snowshoes, Assault
8430–00–NSH–0002
(Requirements for the U.S. Marine Corps, Quantico, Virginia)

Services

Janitorial/Custodial
Eldorado National Forest
Supervisors Office
Placerville, California

Janitorial/Custodial
Philadelphia International Airport
Air Mobility Command Terminal D/Concourse D
Philadelphia, Pennsylvania

Janitorial/Custodial
Schuylkill Haven USARC
101 Route 61 South
Schuylkill Haven, Pennsylvania

Toner Cartridge Remanufacturing
Department of Energy
Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities, military resale commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities, military resale commodity and services are hereby deleted from the Procurement List:

Commodities

Bracket, Angle
5340–01–180–5984
5340–00–435–6451

Bracket, Duct
2840–00–798–0897

Retainer
5340–00–409–8491

Cloth, Abrasive
5350–00–229–3085
5350–00–229–3088

Clamp Strap Fastener Assembly
5820–00–937–9844

Gown, Hospital, Patient's Bedshirt
6532–01–005–8411
6532–01–005–8412

Medical Packet, Individual Survival Kit, Airman's
6545–00–231–9421

Table, Office, Steel
7110–00–113–0507
7110–00–113–0509

Binder, Looseleaf
7510–00–582–5488
7510–00–286–7791
7510–00–286–7792

Paper, Teletypewriter, Roll
7530–00–223–7966
7530–01–056–2900

Marker, Traffic Control Device
9905–01–009–7826

Military Resale Commodity

Kitchen, Scrubber
M.R. 542

Services

Food Service Attendant
Seneca Army Depot
Romulus, New York

Janitorial/Custodial
Buildings 713, 734, 2004, 2108 and 2600 (Chapel)
Bergstrom Air Force Base, Texas

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–16598 Filed 7–7–94; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary; Availability of a Draft Environmental Impact Statement (DEIS) for Proposed Deep-Draft Dredging at Military Ocean Terminal, Sunny Point, NC

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: The Military Ocean Terminal, Sunny Point, located along the west bank of the Cape Fear River in southeastern North Carolina, is 25 miles south of Wilmington and 5 miles north of Southport. The proposed improvements consist of dredging to deepen the south and center basins and their entrance channels from 34 feet mean low water (m.l.w.) to 38 feet m.l.w., plus 2 feet of overdepth, and to widen these entrance channels from 300 feet to 400 feet. Also, a portion of the center basin will be widened from 800–1,000 feet wide to 1,500 feet wide. Existing permanent navigation facilities require improvements to provide sufficient depth and width to allow the safe passage and maneuvering of modern deep-draft vessels and to permit loading them to their designed capacity and draft. Dredged material disposal will likely be at the Wilmington Ocean Dredged Material Disposal Site, although other reasonable alternatives will be considered. Any modification of this proposed plan will be addressed, as appropriate, during preparation of the Final Environmental Impact Statement (FEIS).

Significant resources which may occur in the area and be impacted by the proposed plan include endangered species; estuarine, marine, and terrestrial habitat; estuarine, marine, and terrestrial life; historic properties; water quality; recreational and aesthetic resources; and wetlands.

Alternatives:

a. No action/maintaining status quo.

b. Improvement of existing navigation facilities.

Federal, State, and local officials; conservation groups; and interested businesses, groups, and individuals are invited to comment on the DEIS. Comments will be addressed in the FEIS. In order to be considered, comments should be received no later than 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

ADDRESSES: Written comments may be forwarded to: District Engineer, U.S. Army Corps of Engineers, Wilmington District, (Attention: Mr. Philip Payonk), P.O. Box 1890, Wilmington, North Carolina 28402–1890.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Payonk, (919) 251–4589.

Dated: June 29, 1994.

Lewis D. Walker,
Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 94–16487 Filed 7–7–94; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Financial Assistance Award: DCS Corporation

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to DCS Corporation under Grant Number DE–FG01–94CE15605. The proposed grant will provide funding in the estimated amount of $99,960 by the Department of Energy for the purpose of saving energy through development of the grantee's, Mr. W. Paul Blase's, "Surface Profiling System Optimized for Inspection of Turbine Blades".

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by DCS Corporation is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique device offering the potential for high speed and high accuracy in turbine inspection which should translate to faster inspection time, larger sample sizes, and lower production time with commensurately reduced costs and energy savings. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program was never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., S.W., Washington, DC 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, DC on June 29, 1994.

David Leotta,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–16582 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Ramex Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on the acceptance of an unsolicited proposal meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–94CE15561 to Ramex Systems, Inc. The proposed grant will provide funding in the estimated amount of $90,759 by the Department of Energy for the purpose of saving energy through development of the grantee's, Mr. Howard Handewith's, patented device "RAMEX Tunneler", that can deliver low-velocity high-energy impacts to fracture rock in a more controlled and focused manner than explosives.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by Ramex Systems, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the invention conserves energy by creating tunnels with greater energy, efficiency, control and safety than explosives. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

The anticipated term of the proposed grant is 14 months from the date of award.

Issued in Washington, DC on June 29, 1994.

David Leotta,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–16584 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Synfuels Engineering and Development, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) under Grant Number DE–FG01–94CE15612 to Synfuels Engineering and Development, Inc. The proposed grant will provide funding in the estimated amount of $95,839 by the Department of Energy for the purpose of making more efficient and cost effective use of both oil shale and municipal solid waste (MSW) through development of the grantee's, Mr. Reed L. Clayson's, invention of a "Combustion of Municipal Solid Waste with Oil Shale in Circulation Fluidized Bed".

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the unsolicited application for financial assistance submitted by Synfuels Engineering and Development, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and the proposed project represents a unique technology that would utilize the calcium salts in oil shale as a pollutant absorber, thereby making more efficient and cost effective use of both oil shale and municipal solid waste (MSW) as energy sources. The ash waste products resulting from this process will be used to make material similar to Portland cement. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy Related Invention Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, HR–531.23, 1000 Independence Ave., SW., Washington, DC 20585.

The anticipated term of the proposed grant is 18 months from the date of award.

Issued in Washington, DC on June 29, 1994.

David Leotta,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 94–16583 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Co.; Notice of Availability of Environmental Assessment

June 24, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River, and has prepared a Final Environmental Assessment (FEA). The proposed water intake and pipeline would be located in Brunswick, Greenville, Sussex, Southampton and Isle of Wight Counties, Virginia.

Copies of the FEA 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.

Based on the conclusions reached in the FEA, the Commission will prepare an environmental impact statement (EIS) for the proposed action. Notice of the intent to prepare an EIS will soon be published in the **Federal Register**.

As you review the FEA, please note additional information that should be included in the EIS and provide that information with your scoping comments for the EIS. All parties will be notified of the time and location for scoping meetings that will be conducted related to the preparation of the EIS, and the procedures for providing written scoping comments. This notification will also be provided in a **Federal Register** notice.

For further information, please contact Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16516 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–003 North Carolina]

Virginia Electric and Power Co.; Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings

July 1, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, at 18 CFR part 380 (Order 486, 52 FR 47897), the Commission will prepare an Environmental Impact Statement (EIS) for the application for Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project (FERC No. 2009), located on the Roanoke River. The proposed water intake and pipeline would be located in Brunswick, Greenville, Sussex, Southampton and Isle of Wight Counties, Virginia.

The Office of Hydropower Licensing has prepared a Final Environmental Assessment (FEA) for the proposed action. The FEA will be the scoping document. We intend to conduct a thorough and comprehensive analysis of all relevant issues while keeping to an expedited schedule for completion of a Final EIS.

Three scoping meetings will be held. The two open scoping meetings are intended for input from both the public and from resource agency and non-governmental organizations while the public meeting is intended primarily for public input. All interested individuals, organizations, and agencies are urged to attend one or more of these meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Open Scoping Meeting 1—Raleigh Durham NC . . . July 14 (10:00 am to 5:00 pm) Raleigh Sheraton Inn, Crabtree Valley, 45301 Creedmoor Road.

Public Scoping Meeting—South Hill VA . . . July 18 (7:00 to 10:00 pm) Holiday Inn, 585 US Route 58, South Hill, VA 23970.

Open Scoping Meeting 2—Virginia Beach VA . . . July 20 (10:00 am to 5:00 pm) Omni Waterside, 777 Waterside Drive, Norfolk, VA 23510.

Each scoping meeting will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for the project. Interested parties who are unable to attend the scoping meeting may provide written comments and information to the FERC as described below.

Federal, state, and local resource agencies, and other interested groups and individuals are requested to forward to the Commission, or present at the Commission's scoping meetings, information that they believe will assist the Commission in conducting an accurate and thorough analysis of the individual as well as cumulative effects of the proposed water withdrawal facility.

Requested information can be submitted at the scoping meetings or submitted in writing. If submitting comments in writing, communications must be received no later than August 19, 1994, and must be sent to: Secretary, Federal Energy Regulatory Commission, Mail code: DPCA, HL–21.1, 825 North Capitol Street, NE., Washington, DC 20426.

Any questions concerning the scoping process for the Non-project Use of Project Lands and Waters at the Gaston and Roanoke Rapids Project should be directed to Steve Edmondson at (202) 219–2653.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16517 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–54–000]

CNG Transmission Corp.; Notice of Proposed Changes In FERC Gas Tariff

July 1, 1994.

Take notice that on June 27, 1994, CNG Transmission Corporation (CNG), filed a revised tariff sheet for inclusion in its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet No. 522

The proposed effective date of the revised tariff sheet is October 1, 1993.

CNG states that it has filed this revised tariff sheet because it was inadvertently omitted from CNG's August 2, 1993, compliance filing in Docket No. RS92–14–005. CNG further states that this tariff sheet reflects the adoption of straight fixed-variable rate design for an incremental transportation service, as was contemplated in CNG's November 2, 1992, "Application and Compliance Filing" in Docket No. RS92–14–000, et al.

CNG states that copies of this filing are being served upon parties to the captioned proceedings, and to the one CNG customer that is affected by the revised sheet.

Any person desiring to be heard or 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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1994. 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. 94–16518 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 9195–012 Colorado]

City of Colorado Springs; Notice of Availability of Draft Environmental Assessment

July 1, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing reviewed an application to amend the license for the Stanley Canyon Hydroelectric Project located on West Monument Creek, El Paso County, Colorado. The application's major proposed changes are: (1) Construction of a new aboveground regulating reservoir and underground tailrace and transfer conduits, (2) a shorter and realigned transmission line, and (3) removal from the project boundary of certain facilities no longer needed for the project. A Draft Environmental Assessment (DEA) was prepared for the application. In the DEA, Commission staff finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA 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.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or

recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 9195–012 to all comments. For further information, please contact Steve Hocking at (202) 219–2656.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16515 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–632–000]

Columbia Gas Transmission Corp.; Notice of Request Under Blanket Authorization

July 1, 1994.

Take notice that on June 29, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94–632–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish eleven new points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia proposes to construct and operate eleven new delivery points for delivery of natural gas in Ohio and West Virginia to Columbia Gas of Ohio and Mountain Gas Company. Columbia states that the quantities to be provided through the new delivery points will be within Columbia's authorized level of services.

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 therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16519 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–329–000]

El Paso Natural Gas Company; Supplemental Notice of Technical Conference

July 1, 1994.

On June 9, 1994, the Commission issued a notice scheduling a technical conference in the above-captioned proceeding for 10:00 a.m. on August 11, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

The purpose of the conference is to discuss matters of interest and concern raised by several parties relating to El Paso Natural Gas Company's (El Paso) proposal to construct and operate the North/South Transfer Project. In order to facilitate discussion and assist the participants in preparing for the technical conference, El Paso should come prepared to address the following issues:

(1) Whether there are existing alternative means of providing the flexibility proposed by El Paso?

(2) Whether the project is economical based solely on the price advantage of the San Juan Basin natural gas?

(3) Whether a sufficient market exists, including evidence of contracts, a showing that a long-term fundamental market shift has occurred, and data demonstrating a long-term need for the project?

(4) Rate issues, including but not limited to the impact on existing rates, a showing of system-wide benefits, justification for rolling-in costs, and need for an at-risk condition.

Further, El Paso should be prepared to provide any information, data, or studies it may have which responds to any other issues, concerns or alleged deficiencies identified by the intervenors.

All interested parties are invited to attend. For additional information, interested parties may call Whit Holden at (202) 208–1118.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16520 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–34–001]

Florida Gas Transmission Company; Compliance Filing

July 1, 1994.

Take notice that on June 21, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of July 1, 1994:

Fifth Revised Sheet No. 8A
Fourth Revised Sheet No. 8B

FGT states that on May 11, 1994, it requested a waiver and filed tariff sheets, as provided in Section 27A.2 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, to make an out-of-cycle adjustment to lower its Fuel Reimbursement Percentage from 3.4% to 2.25%. FGT proposed an effective date of June 1, 1994, but in the event the Commission did not issue an order by May 23 in time for FGT's June nominations, FGT requested a July 1, 1994, effective date.

On June 17, 1994, the Commission issued an order accepting the tariff sheets effective July 1, 1994. FGT states that it is making the instant filing to reflect the July 1 effective date.

Any person desiring to be heard or 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 §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1994. 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. 94–16521 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–230–002]

Florida Gas Transmission Company; Compliance Filing

July 1, 1994.

Take notice that on June 20, 1994 Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised

Volume No. 1, the following tariff sheet, with an effective date April 29, 1994:

Substitute Original Sheet No. 8C

On April 29, 1994 FGT filed its Initial PGA Termination Report as required by Section 26 of the General Terms and Conditions of FGT's FERC Gas Tariff, Third Revised Volume No. 1. Subsequently, on June 9, 1994, the Commission issued an order accepting the filings subject to FGT recalculating the total refund by subtracting the same amount of unpaid accruals from FGT's Account 191 balance as of March 31, 1994, as FGT used for calculating carrying charges ($460,549 instead of $396,713). In the instant filing FGT is complying with the Commission Order by refunding additional amounts to its former sales customers.

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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16522 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA90–65–000]

Northern Border Pipeline Company; Compliance Filing and Technical Conference

July 1, 1994.

On June 16, 1994, Northern Border Pipeline Company (Northern Border) filed a preliminary report on potential adjustments in the above referenced docket. This filing purports to comply with the Commission's directive in its May 17, 1994 order in this docket which directed Northern Border to implement the "stand-alone method of allocating consolidated income tax liability based upon a review of the actual Federal tax returns on which taxable income and expenses of Northern Border are reported.

On July 15, 1994, at 9:00 a.m. at a room to be designated at the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, a technical conference will be convened to discuss the issues raised by Northern Border's compliance filing and its attempt to comply with the Commission's directive in the May 17, 1994 order.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16523 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–618–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

July 1, 1994.

Take notice that on June 20, 1994, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–618–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 157.211) for authorization to abandon certain obsolete facilities at the Connell Meter Station in Whitman County, Washington, and to construct and operate replacement facilities at this station to maintain the ability to accommodate its existing firm maximum daily delivery obligations to The Washington Water Power Company (Water Power) under Northwest's blanket certificate issued in Docket No. CP82–433–000 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.

Northwest proposes to replace the existing obsolete 4-inch positive displacement meter with a new 4-inch turbine meter at the Connell Meter Station. Northwest also proposes to abandon the operation of the existing 4-inch orifice meter at this station by removing the recorder and utilizing this second meter run only as a by-pass for the meter station. Northwest states the proposed modification will result in a decrease in the maximum design delivery capacity of the meter station from 4,700 Dth per day to approximately 3,433 Dth per day at a pressure of 150 psig, a capacity still adequate to accommodate existing delivery obligations to Water Power. Northwest further states that the total net of replacing the described facilities at the Connell Meter Station is estimated to be approximately $104,750.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–16524 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–229–002]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

Take notice that on June 29, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 1, 1994:

First Revised Sheet No. 13
Second Revised Sheet No. 244
First Revised Sheet No. 245
Second Revised Sheet No. 246
First Revised Sheet No. 247
Second Revised Sheet No. 248
Second Revised Sheet No. 249
Second Revised Sheet No. 250

Northwest states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's (Commission) directives in the Order on Compliance Filing, dated May 31, 1994, in Docket No. RP92–229–000 to change the allocation among Northwest's affected customers of the fixed component of supplier settlement payments (SSP) previously paid to Northwest by certain of its customers. First Revised Sheet No. 13 shows by customer the incremental principal amounts, with interest computed through June 30, 1994, that will be billed or refunded to the affected customers pursuant to further order of the Commission. The other sheets being tendered revise Section 19 of Northwest's General Terms and Conditions in its FERC Gas Tariff, Third Revised Volume No. 1, so that the SSP provisions comply with the directives of the Commission.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP92–229–000, upon Northwest's affected customers, and upon affected state regulatory commissions.

Any person desiring to be heard or 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 Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1994. 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. 94–16525 Filed 7–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. EA–98]

Application for Authorization to Export Electricity; Western Systems Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application correction.

SUMMARY: This document contains corrections to a notice of application published on Wednesday, May 11, 1994, (59 FR 24407).

On page 24407 in the third column, add Louis Dryfus Electric Power, Inc. and change Oklahoma Electric Company to Oklahoma Gas and Electric Company. In addition, the period during which the DOE will accept comments has been extended seven (7) business days to July 20, 1994.

Issued in Washington, DC, on July 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–16581 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order During the Week of May 30 Through June 3, 1994

Office of Hearings and Appeals

During the week of May 30 through June 3, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: July 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Reporting Requirements

R&R Oil, Inc., Gillette, Wyoming, LEE–0079

R&R Oil, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/ Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship as a result of the reporting requirement. Accordingly, on June 3, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 94–16585 Filed 7–7–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4713–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 20, 1994 Through June 24, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D–COE–D39025–00 Rating LO1, Anacostia River and Tributaries Feasibility Study relating to Restoration of Fish and Wild Habitat, Implementation, Prince George's and Montgomery Cos., MD, and DC.

Summary: EPA had no objections to the proposed action, but made several recommendations.

Final EISs

ERP No. F–FHW–F40331–WI, WI–TH–29 Improvement, from Chippewa Falls to Abbotoford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit, Clark and Marathon Counties, WI.

Summary: The final EIS responds to EPA's wetland comments made on the draft EIs. EPA encourages additional reductions in impacts to wetlands during the design phase.

ERP No. F-FHW-L40180–WA, WA–522 Transportation Improvements, WA–9 near Woodinville to WA–2 in Monroe, Funding, U.S. CGD Permit and Section 10 and 404 Permits, Snohomish River Bridge, Snohomish County, WA.

Summary: The final EIS has been responsive to concerns EPA expressed on the preliminary draft and draft EISs. Impacts to wetlands and drinking water have been satisfactorily addressed and EPA fully supports the inclusion of wildlife crossing.

Dated: July 5, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–16601 Filed 7–7–94; 8:45 am]

BILLING CODE: 6560–50–U

[ER–FRL–4712–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 27, 1994 Through July 01, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940252, Draft EIS, USA, IN, Fort Benjamin Harrison Disposal and Reuse, Implementation, City of Lawrence, Marion County, IN, Due: August 22, 1994, Contact: Maj. Michael A. Spasyk (703) 693–7556.

EIS No. 940253, Final EIS, FAA, AK, Anchorage International Airport Instrument Landing Systems (ILS), Construction and Operation, Install ILS on Runway 14, Approval, Funding and COE Section 404 Permit, Anchorage, AK, Due: August 08, 1994, Contact: Mel Leskiner (907) 271–5199.

EIS No. 940254, Final EIS, FHW, NC, NC–64/Pittsboro Bypass Construction, NC–1514 to NC–64 near B. Everett Jordan Lake, Funding and Possible COE Section 404 Permits, Town of Pittsboro, Chatham County, NC, Due: August 08, 1994, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 940255, Draft Supplement, NPS, MO, Page Avenue Extension, Bennington Place to US 40, Creve Coeur Lake Memorial Park Conversion of Land for Construction of a 10-Lane Elevated Extension of Page Avenue, Approval, St. Louis and St. Charles Counties, MO, Due: August 22, 1994, Contact: William Schenk (402) 221–3431.

EIS No. 940256, Draft EIS, FAA, NJ, Newark International Airport Ground Access Monorail-Northeast Corridor Connection Project, Funding, Construction, Operation, Airport Layout Plant and Approval, Essex and Union Counties, NJ, Due: August 22, 1994, Contact: Anthony Spera (718) 553–1250.

EIS No. 940257, Draft EIS, FHW, AL, Tuscaloosa East Bypass Corridor, Construction, I–59/I–20 east of Tuscaloosa to US 82 west of Northport, Funding, NPDES Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL, Due: August 23, 1994, Contact: Joe D. Wilkerson (205) 223–7374.

EIS No. 940258, Draft EIS, BOP, TX, Houston Metropolitan Detention Center, Site Selection, Construction and Operation, City of Houston County, TX, Due: August 22, 1994, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 940259, Final EIS, AFS, OR, ID, Snake River Recreation Wild and Scenic River Management Plan, Implementation, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest and Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce, Idaho and Adams Counties, ID, Due: August 08, 1994, Contact: Kurt Wiedermann (503) 523–6391.

EIS No. 940260, Draft EIS, USN, CA, Lemoore Naval Air Station Realignment, Relocation of 98 Military Construction Projects from Miramar Naval Air Station, Implementation, Lemoore County, CA, Due: August 22, 1994, Contact: Surinder Sikand (415) 244–3721.

EIS No. 940261, Final EIS, UMT, IL, Chicago Central Area Circulator Transit System Improvement, Division Street (north) Halsted Street to the Chicago River, Stevenson Expressway to Lake Michigan, Funding, Cook, DuPage, Kane, Lake, McHenry and Will, IL, Due: August 08, 1994, Contact: Joel Ettinger (312) 353–2865.

EIS No. 940262, Draft EIS, COE, LA, Port Fourchon Navigation Channel Project, Channel Deepening, Implementation, Lafourche Parish, LA, Due: August 08, 1994, Contact: Richard E. Boe (504) 862–1505.

Under Section 1506.10(d) of the Council on Environmental Quality Regulations For Implementating The Procedural Provisions of the National Environmental Policy Act a 15-day Reduction of the Comment Period has been Granted.

EIS No. 940263, Draft EIS, FHW, NC, US 70 Goldsboro Bypass Construction, US 70 in the vicinity of NC–1237 to US 70 in the vicinity of NC–1731, Funding and COE Permits, Wayne County, NC, Due: August 22, 1994, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 940264, Draft EIS, USA, NC, Military Ocean Terminal Navigation Basins and Entrance Channels Improvements, Implementation, Sunny Point, Brunswick and New Hanover Counties, NC, Due: August 22, 1994, Contact: Gordon Schwerzmann (703) 614–6605.

EIS No. 940265, Draft EIS, BPA, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and and Wildlife Activities, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia, Due: August 22, 1994, Contact: Carol M. Borgstrom (800) 472–2756.

Dated: July 5, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–16602 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5008–9]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATES: Notice is hereby given that the Subcommittee will hold an open meeting on July 19–20, 1994 at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, telephone (703) 418–1234, telefax (703) 418–1289. The Subcommittee is scheduled to meet from 9:00 a.m. to 5 p.m. on July 19 and 8:30 a.m. to 1 p.m. on July 20, 1994. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

At its last meeting on March 16–17, 1994, the Subcommittee discussed recommendations for program reform regarding Class I area impacts, best available control technology and NSR applicability. Since that meeting, the Agency staff have been working on draft preamble and regulatory language that addresses the numerous issues deliberated upon by the Subcommittee. At the upcoming July 19–20, 1994 meeting, the Subcommittee will have the opportunity to respond to the staff draft of the NSR reform rulemaking package.

Written comments on the draft package must be received on or before August 31, 1994. Comments concerning the draft proposal should be addressed to Ms. Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards (MD–10), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the

above-noted topics will be publicly available at the meeting. Thereafter, these documents, together with transcript of the Subcommittee's meeting, will be available for public inspection in EPA's Air and Radiation Docket and Information Center, No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air and Radiation Docket and Information Center (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

Approximately 1 week prior to the meeting, a copy of the staff draft of the NSR reform rulemaking package will be available to the public on EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. Approximately 3–4 weeks after the July 1994 Subcommittee meeting, a transcript of the meeting will also be available to the public through the TTN. Access to the TTN, via a computer and communications software, may be obtained by dialing (919) 541–5742. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina, 1:00 to 5:00 EST.

FOR FURTHER INFORMATION: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee at (919) 541–5375, telefax (919) 541–5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD–15), Research Triangle Park, North Carolina 27711.

As of the date of this notice, the Agency intends to proceed with the meeting as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend this meeting are advised to contact Alice Peland, TRC Environmental Corporation, 100 Europa Drive, Chapel Hill, North Carolina 27514, telephone (919) 968–9900, to confirm the July 19–20 meeting location and dates.

Dated: June 28, 1994.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 94–16579 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44611; FRL–4900–9]

TSCA Consent Order; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844–00–6), submitted pursuant to a Testing Consent Order entered into under the authority of the Toxic Substances Control Act (TSCA). Publication of this notice is required under section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA. Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted within 15 days after the test data are received.

I. Test Data Submissions

Test data for refractory ceramic fibers (RCFs) were submitted by three member companies of the Refractory Ceramic Fiber Coalition (Carborundum Company, Premier Refractories and Chemicals, Inc., and Thermal Ceramics, Inc.) pursuant to a Testing Consent Order at 40 CFR 799.5000. The test data were received by EPA on June 27, 1994. The submission includes workplace exposure monitoring data from RCFC company facilities, and their customers' facilities.

RCFs are used as insulation for industrial applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency has not determined whether the submissions are complete.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–42166A). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA NCIC, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Lists of Subjects

Environmental protection, Test data.

Dated: June 30, 1994.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–16600 Filed 7–7–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 1, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Expanded Interconnection with Local Telephone Company Facilities.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting and Other: one-time tariff filing to be made by approximately 9/30/94.

Estimated Annual Burden: 16 responses; 37 hours average burden per response; 592 hours total annual burden.

Needs and Uses: In the attached Third Report and Order, the Commission concluded that the LECs should be required to provide certain cost support to justify the rate levels for the tariff charges to be paid by parties for the offered signalling information. The Commission required the price cap

LECs to provide cost support for the signalling charge using the same methodology employed to support new services under the price cap rules. The Commission believes that this cost information is necessary to ensure the proper pricing of signalling information offerings since they will be used by the LECs' competitors. The LECs may use approved, commonly used public utility ratemaking methodologies to develop the required cost support, including sampling and averaging of certain costs, and thereby minimize the burden of this requirement. Absent these requirements, the Commission is concerned that the LECs would have a strong incentive to price these services in a manner that would undermine the growth of competition in interstate access. Unless parties can purchase expanded interconnection offerings at rates that are just, reasonable and nondiscriminatory, mandating expanded interconnection will not lead to effective competition and the anticipated benefits.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–16556 Filed 7–7–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Serfin, S.A. de C.V., Mexico City, Mexico; Application to Engage in Nonbanking Activities; Correction of Comment Period Date

This notice corrects a notice (FR Doc. 94-15271) published on page 32433 of the issue for Thursday, June 23, 1994.

The entry for Grupo Financiero Serfin, S.A., is revised to read as follows:

Grupo Financiero Serfin, S.A. de C.V., Mexico City, Mexico (Applicant), has applied 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 its subsidiary, Serfin Funds Transfer, Inc., Los Angeles, California (Company), in the following activities throughout the United States:

(1) making cash advances on credit cards to consumers pursuant to § 225.25(b)(1) of the Board's Regulation Y (12 CFR 225.25(b)(1));

(2) issuing and selling U.S. dollar denominated money orders and similar payment instruments with a face value of $1,000 or less pursuant to § 225.25(b)(12) of the Board's Regulation Y (12 CFR § 225.25(b)(12)) and foreign currency denominated money orders and similar payment instruments with a face value of the U.S. dollar equivalent of $1,000 or less;

(3) receiving money for transmission and transmitting the same to a foreign country;

(4) buying and selling foreign currency at retail and at wholesale solely to manage its retail inventory of currency;

(5) cashing U.S. dollar payroll checks; and

(6) cashing federal, state, and local government benefit checks.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior 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 that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806, January 5, 1984.

The Board has previously determined by regulation that engaging in credit card lending, and issuing and selling money orders and similar consumer-type payment instruments having a face value of less than $1,000 are closely related to banking and permissible for bank holding companies under section 4 of the BHC Act. *See* 12 CFR 225.25(b)(1) and (b)(12). Additionally, the Board previously has determined by order that the following activities that Applicant proposes to conduct are closely related to banking and proper incidents thereto under section 4 of the BHC Act:

(1) issuing and selling foreign currency denominated money orders and similar payment instruments with a face value of the U.S. dollar equivalent of $1,000 or less, *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990);

(2) receiving money for transmission and transmitting the same to a foreign country, *Philippines Commercial International Bank*, 56 Federal Reserve Bulletin 861 (1991);

(3) buying and selling foreign currency at retail and at wholesale solely to manage its retail inventory of currency, *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990); and

(4) cashing U.S. dollar payroll checks drawn on unaffiliated banks, *Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990).

Applicant has committed that it will conduct these activities in accordance with the limitations established by regulation and order on the conduct of such activities.

The Board has not previously determined that cashing federal, state, and local government benefit checks is permissible under section 4(c)(8) of the BHC Act. Applicant states that this proposed activity is closely related and a proper incident to banking because the cashing of government benefit checks is no less fundamental to banking than is the cashing of payroll checks, which the Board has determined is permissible under section 4(c)(8) of the BHC Act. Applicant also states that recipients of such checks should have the same access to check cashing services as do individuals who cash payroll checks.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

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 July 18, 1994. 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 San Francisco.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16546 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

Lakland Bancorp, Inc.; 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 August 1, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Lakland Bancorp, Inc., Oak Ridge, New Jersey, to acquire 9.9 percent of the voting shares of High Point Financial Corp., Branchville, New Jersey, and thereby indirectly acquire National Bank of Sussex County, Branchville, New Jersey.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. IBS Financial Corp., Cherry Hill, New Jersey, to become a bank holding company by acquiring 100 percent of the voting shares of Inter-Boro Savings and Loan Association, Cherry Hill, New Jersey. In connection with the holding company formation, Inter-Boro Savings and Loan Association will be converting from mutual to stock form. Inter-Boro Savings and Loan Association will lose its status as a qualified thrift lender due to its failure to comply with the Qualified Thrift Lender Test, as set forth in 12 CFR 563.50.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. HSB, Inc., Hedrick, Iowa, to become a bank holding company by acquiring 98.3 percent of the votings shares of Hedrick Savings Bank, Hedrick, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Hensley Investment Limited Partnership, Springfield, Missouri, to become a bank holding company by acquiring at least 76 percent of Peoples Bank of Fordland, Fordland, Missouri; at least 43 percent of the voting shares of Citizens Bank of the Ozarks, Camdenton, Missouri; and at least 52 percent of the voting shares of Peoples Bank of the Ozarks, Nixa, Missouri.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Froid Bankshares, Inc., Froid, Montana, to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Froid, Froid, Montana.

2. Winona Banc Holding Company, Winona, Minnesota, to acquire 93.2 percent of the voting shares of Town and Country State Bank of Winona, Winona, Minnesota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Peak Banks of Colorado, Inc., Nederland, Colorado, to become a bank holding company by acquiring 100 percent of the voting shares of Peak National Bank, Nederland, Colorado.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16547 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

Saban, S.A., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Saban S.A., Panama City, Panama, to engage *de novo* through its subsidiaries RNYC Holdings Limited, Marina Bay, Gibraltar, and Republic New York Corporation, New York, New York, in providing investment advice, including counsel, publications, written analyses and reports, as a futures commission merchant authorized pursuant to § 225.25(b)(18) of the Board's Regulation Y. As a commodity trading advisor registered with the Commodity Futures Trading Commission, with respect to the purchase and sale of futures contracts and options on futures contracts for the commodities and instruments referred to in 12 CFR 225.25(b)(18) of the Board's Regulation Y or in the Board's SR 93-27. These activities will be conducted on a worldwide basis.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Security National Corporation, Sioux City, Iowa, to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16548 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 1, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corp., Princeton, New Jersey, to acquire Palisade Savings Bank, FSB, Ridgefield Park, New Jersey, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-16549 Filed 7-7-94; 8:45 am]

BILLING CODE 6210-01-F

Gregory H. Wallander; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 27, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gregory H. Wallander, Froid, Montana, to acquire 18.39 percent for a resulting ownership interest of 40.41 percent of the voting shares of First State Bank of Froid, Froid, Montana.

Board of Governors of the Federal Reserve System, July 1, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16550 Filed 7–7–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegation of Authority

Part A (Office of the Secretary), Chapter AE (Office of the Assistant Secretary for Planning and Evaluation (OASPE)) of the Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services (most recently amended at 58 FR 247 on December 28, 1993) is amended as follows:

I. Chapter AE, paragraph B. "The Office of Program Systems," delete in its entirety and replace with the following:

B. The Office of Program Systems—The Office of Program Systems is responsible for providing guidance and direction to the Department's strategic, policy, and support planning, conducting policy and economic analyses of crosscutting issues, developing planning and policy information and related support systems, and providing technical and policy support services.

1. The Division of Planning and Policy Systems is responsible for managing strategic, policy and policy support planning for the Department. The Division coordinates the development and implementation of the Department's strategic plan, provides assistance to the Operating Divisions and Staff Divisions in the development of their components for the plan, and assists in developing and maintaining performance measurements and reporting under the plan. The Division

will coordinate these activities with other offices with implementation responsibilities and functions related to the Government Performance and Results Act. The Division coordinates the development of the Department's legislative program, including establishment of schedules and procedures to ensure the availability of supporting information. The Division also develops functional requirements for departmental policy support systems in the legislative and strategic planning areas. Finally, the Division coordinates the planning and conduct of evaluation and social research across the Department.

2. The Division of Policy and Regulatory Analysis is responsible for the conduct of policy and economic analysis in subjects and areas not covered by, or cutting across, the programmatic offices of the OASPE. It conducts analyses of economic issues and their implications for the Department's programs. It provides analyses to identify opportunities to improve program linkages and the effectiveness of HHS and related programs, and provides analytic support and direction for strategies to improve access to assistance at the community level. It develops approaches for conducting effective policy analysis of social programs, and provides support to other Departmental offices on techniques of policy analysis, policy systems, program design, and cost-benefit analyses.

3. The Division of Technical and Computer Support is responsible for providing statistical, scientific programming, computer systems support, and other technical services to support policy analyses, research and evaluation activities of the OASPE. It also is responsible for development, coordination, and oversight of Departmental policy for social and demographic statistics, including the revision and publication of the Poverty Income Guidelines. Finally, it provides technical assistance and advice to other policy offices within the Department on certain statistical and specialized scientific policy analyses, and administers a policy information center for identifying and retrieving evaluative and policy research studies.

II. Chapter AE, paragraph C. Within "The Office of Health Policy," delete paragraph 3. "Division of Health Economic Analysis and Research."

Dated: June 30, 1994.

Kenneth S. Apfel,

Assistant Secretary for Management and Budget.

[FR Doc. 94-16485 Filed 7-7-94; 8:45 am]

BILLING CODE 4110-12-M

Centers for Disease Control and Prevention; National Institute for Occupational Safety and Health

[Announcement Number 463]

Cooperative Agreement Program for Agricultural Safety Promotion Systems

Introduction: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program for agricultural safety promotion systems through the National Institute for Occupational Safety and Health (NIOSH). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority: This program is authorized under Section 21 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670). Applicable program regulations are set forth in 42 CFR Part 86, entitled "Grants for Educational Programs in Occupational Safety and Health."

Smoke-Free Workplace: The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants: Eligible applicants are the colleges of agriculture located in the land-grant university(ies) of the States. The selection of land-grant universities seeks to utilize the research expertise and knowledge of personnel resources familiar with agricultural safety issues and to use the existing intervention network which is available to land-grant universities—namely, the cooperative extension service. The restriction to colleges of agriculture in the land-grant universities is due to the original FY 1990 appropriations language providing funds to establish agricultural injury and disease prevention programs at land-grant universities.

Availability of Funds: Approximately $1,212,000 will be available in FY 1994 to fund approximately six awards. It is expected that the average award will be $200,000, ranging from $180,000 to $220,000. It is expected that the awards will begin on or about September 1, 1994, for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and on the availability of funds.

Purpose: The purpose of this new cooperative agreement is to stimulate agricultural safety and health intervention programs to reduce agricultural injury or to reduce exposure to hazards resulting in injury. A primary emphasis is the assessment of the efficacy of the proposed intervention programs.

Program Requirement: In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop a scientific protocol for the specific intervention which encompasses the following elements:

a. Design and implementation of intervention(s).

b. Target population—

i. Identification of the target population.

ii. Information regarding background rates for the pertinent outcomes within the target population.

iii. Procedures to recruit the target population into the study.

c. Description of evaluation design and methods for both scientific and operational aspects of the intervention evaluation, including statement of the questions to be answered and specific process and outcome data that will be collected.

2. Establish goals and time-oriented objectives for all phases of the project.

3. Disseminate the final results of the project to a wide audience including, but not limited to, peer-reviewed journal articles, presentations at professional conferences, and presentations to agricultural or other client groups.

B. CDC/NIOSH Activities

1. Provide liaison services between the land-grant universities and other CDC/NIOSH grantees and collaborate in the implementation of all phases of the study.

2. Provide consultation upon request on data collection instruments and procedures.

3. Monitor intervention implementation and collection of process and outcome data.

4. Collaborate in the analysis of process and outcome data and interpretation of research results.

5. Upon request, collaborate with recipient in dissemination of research results.

Evaluation Criteria: Applications will be reviewed and evaluated according to the following criteria (Maximum of 100 total points):

A. *Documentation of the Problem.* Documentation of the magnitude of the agricultural injury problem(s) for the applicant's State (and the relevance of the injury problem nationally) by both rate and frequency of agricultural hazardous exposure and injury. (10 points)

B. *Goals and Objectives.* The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which they encompass both process and outcome features of the intervention. The extent to which a qualified plan is proposed that will help achieve the goals stated in "Healthy People 2000." The extent to which specific research questions and/or hypotheses are described. (12 points)

C. *Intervention Description.* The extent to which the potential effectiveness of the intervention is theoretically justified and supported with epidemiologic, methodological, or behavioral research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group of interest. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes (e.g., behavior, injury, or death) are specified and definitions of measurable endpoints are provided. The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. (25 points)

D. *Evaluation Study Design.* The extent to which the study design is clearly described and is appropriate for the target population, intervention, data collection opportunities, and proposed project period. The extent to which the sampling methods, sample size estimates, power estimates, and attrition of the participating population are clarified. The extent to which the various threats to the validity of the study are recognized and addressed. The extent to which data collection, data processing, and management activities are described. The extent to which the major phases of the project are clearly presented and logically and realistically sequenced. (20 points)

E. *Target Group.* The extent to which the target group is described and access to the target group is demonstrated. The extent to which the target group has a high incidence of injury or prevalence of risk factors to be influenced by the proposed intervention and the extent to which appropriate demographic and morbidity data are described. The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the intervention in an unbiased fashion. (13 points)

F. *Project Management and Staffing Plan.* The extent to which the management staff and their working partners are clearly described, appropriately assigned, and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target population. The extent to which the applicant or a full working partner has the capacity and facilities to design, implement, and evaluate the proposed intervention. (10 points)

G. *Collaboration.* The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities. The extent to which a full working partnership between a community-based organization, agricultural organization, other academic institution(s), and a State or local health department has been established. Evidence should be provided that these funds do not duplicate already funded components of ongoing projects. (10 points)

H. *Proposed Budget.* The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds. (Not scored)

Funding Priorities: Following the guidelines of Executive Order 12876, Enhancement of Federal Support to Historically Black Colleges and Universities, one award will be made to a Historically Black Land-Grant University (HBU), contingent upon receiving application(s) from such institution(s) and the application(s) receiving a recommendation for funding. These applications should target underserved agricultural populations (e.g., migrant and/or seasonal farmworkers, black farmers, women farmers/farm wives, or farm youth) as the emphasis of the intervention and evaluation efforts.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372: Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 30 days after the application due date. (A waiver for the 60 day requirement has been requested.) The Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements: This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance number for this program is 93.287.

OTHER REQUIREMENTS

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act.

Application Submission and Deadline: The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before August 8, 1994.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information: A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Alfred A. Amendola, Ph.D., P.E., Acting Director, NIOSH, Division of Safety Research, telephone (304) 284–5700, or David L. Hard, Ph.D., Safety Specialist, telephone (304) 284–5704, at NIOSH, Division of Safety Research, Centers for Disease Control and Prevention (CDC), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888.

Please refer to Announcement Number 463 when requesting information pertaining to this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–00100473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 1, 1994.

Richard A. Lemen, Ph.D.,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16531 Filed 7–7–94; 8:45 am]

BILLING CODE 4163–19–P

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting:

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 8:30 a.m.–5 p.m., July 25, 1994; 8:30 a.m.–4 p.m., July 26, 1994.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Closed 8:30 a.m.–1:30 p.m., July 25; Open 1:30 p.m.–5 p.m., July 25; Open 8:30 a.m.–4 p.m., July 26.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters To Be Discussed: This meeting will convene in closed session from 8:30 a.m. to 1:30 p.m. on July 25, 1994. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. The full committee will then vote on a funding recommendation. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463. Following the closed session, the full committee will discuss: (1) An update from the Director of the National Center for Injury Prevention and Control (NCIPC) on NCIPC activities, (2) updates on injury issues from other Federal agencies, and (3) issues related to funding poison control centers. In two open work groups, discussion will center around priority setting and science and program review. A committee member and an NCIPC staff liaison will preside over each work group. Reports from each work group will be presented at the conclusion of the breakout session.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Mr. Larry W. Sparks, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4690.

Dated: July 1, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–16532 Filed 7–7–94; 8:45 am]

BILLING CODE 4163–18–M

National Institutes of Health

Forum on Cooperative Research and Development Agreements; Meeting

Notice is hereby given that the Forum on Cooperative Research and Development Agreements: Perspectives, Outlook, and Policy Development, convened as an *ad hoc* group of consultants to the Advisory Committee to the Director, NIH, will meet in public session on July 21, 1994, from 8:30 am to 8:00 p.m., at the Bethesda Holiday Inn, Bethesda, Maryland.

The purpose of the Forum is to provide recommendations that will be used in NIH's development of policy on the negotiation, execution, and implementation of Cooperative Research and Development Agreements (CRADAs) under the Federal Technology Transfer Act of 1986. The Forum Panel members will discuss several issues relating to CRADAs including the scope of the research plan, fair access to collaborative research opportunities, and the "reasonable pricing" clause. Case studies will be presented to illustrate these and other issues of importance to CRADAs. At the conclusion of the Forum, the Panel will develop and transmit its report to the Advisory Committee to the Director, NIH, for review.

Concerned organizations and individuals are invited to present their views at the Forum or submit written views of any length to the Panel. Please submit requests for a 5-minute presentation time, or written views to: Harold Safferstein, Technology Transfer Branch, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, Room 7A–32, 9000 Rockville Pike, Bethesda, MD 20892, (301) 402–7123 (fax).

Written views submitted by July 15 will be distributed to the Panel. Comments and questions related to the proposed Forum may also be addressed to Dr. Safferstein at (301) 496–2644.

Dated: June 28, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–16526 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–P

National Institute of Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on July 25, 1994. The meeting will be held at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814. The Board will meet July 25, 8:30 a.m. to approximately 3 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–0801.

A summary of the meeting and roster of the members may be obtained by contacting the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045.

Dated: July 1, 1994.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 94–16527 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, June 24, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution—0910–0045 (Revision)—This revision incorporates the Food and Drug Administration's new regulation, "Imprinting of Solid Oral Dosage Form Drug Products for Human Use—Final Rule." Information must be provided to insure agency regulatory action and surveillance of drug products. Information is also used to publish the NDC Directory which is used by the drug industry, third party reimbursement firms, insurance companies, and other government regulatory agencies.

Respondents: Businesses or other for-profit; Small Businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
21 CFR, 207.25(c) Imprint—Reporting.	1,500	12.04	.05 hour.
Currently Approved Reporting.	14,500	2.31	.50 hour.
Currently Approved Recordkeeping.	14,500	N/A	.039 hour.

Estimated Total Annual Burden: 31,367 hours.

2. Portable Self-Recording Flow-Meter in the Investigation of Occupational Airways Disorders—0920–0279 (Revision)—This submission is for extension of current approval for the National Institute of Occupational Safety and Health to test a newly developed portable self-recording flow meter which may offer important advantages in the investigation of occupational asthma and acutely toxic or irritating environments. The new device offers investigators the potential for reducing the requirements for recording results while obtaining multiple, accurate and valid lung function measures before, during and after the workshift.

Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Phase 1–5	230	2	1.84 hours.
Screener	275	1	.10 hour.

Estimated Total Annual Burden: 873 hours.

3. Health Education Assistance Loan (HEAL) Program Regulations—42 CFR Part 60—0915–0108 (Revision)—These notification, reporting and recordkeeping requirements insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans.

Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Reporting	351	1.9	2.5 hours.
Notification	31,255	13.8	.25 hour.
Recordkeeping.	351	1,114	.19 hour.

Estimated Total Annual Burden: 183,544 hour.

4. Evaluation of the Ryan White Title IV HIV Demonstration Program for Children, Adolescents, and Families—New—Information needed to evaluate the Ryan White Title IV HIV Demonstration Program for Children, Adolescents, and Families will be collected from project staff and clients. Multiple data collection mechanisms will be used, including self-administered questionnaires (all 36 grantees), site visits to 18 grantees, and focus groups with clients at ten grantee sites.

Respondents: Individuals or households; Non-profit institutions; Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Self-Study Guide.	36	1	4 hours.
Site Visits	180	1	3 hours.
Focus Groups.	120	1	3 hours.

Estimated Total Annual Burden: 1,044 hours.

5. Deferment Request Form for the National Health Service Corps and Native Hawaiian Health Scholarship Programs—New—Scholars participating in the National Health Service Corps or Native Hawaiian Health Scholarship Programs who wish to defer their service obligation in order to complete advanced training must submit

information on the training program to the Secretary. This is a request for approval of the deferment form and associated requirements.

Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response
Deferment Request Form.	200	1	.5 hour.
Associated Notification Requirements.	30	1	1 hour.

Estimated Total Annual Burden: 130 hours.

6. Evaluation of Learning Needs in AETC Service Areas—New—AIDS Education and Training Centers (AETCs) are required, as a condition of award, to conduct an assessment of training needs in their service areas every three years. A standardized protocol has been developed for identifying training needs of physicians, physician assistants, nurses, certified nurse practitioners, dentists, and dental hygienists. Respondents: Individuals or households; Number of Respondents: 13,561; Number of Responses per Respondent: 1; Average Burden per Response: .19 hour; Estimated Annual Burden: 2,557 hours.

7. Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding is Sought: 42 CFR Part 50 and 48 CFR Part 309—NPRM—New—The purpose of this rule is to protect the objectivity with which PHS-funded research is conducted. Disclosure of financial interests related to PHS-funded research by personnel who have decision making responsibilities that could affect the outcome of the research is required. The NPRM appeared in the **Federal Register** on June 28, 1994 (Vol. 59, No. 123, pp. 33242–33251). Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; Estimated Annual Burden: 1 hour.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Dated: June 30, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–16486 Filed 7–7–94; 8:45 am]

BILLING CODE 4160–17–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) (NIH) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 30366–7, June 13, 1994, is amended to reflect the reorganization of the Office of Management (HNA9), Office of the Director, NIH (HNA). The reorganization consists of the following: (1) Revise the functional statement for the Office of Administration (OA) (HNA92), Office of Management (OM) (HNA9); (2) transfer the Division of Financial Management (HNA923) from the OA to the OM and retitle it as the Office of Financial Management and change its Standard Administrative Code (SAC) to (HNA96); (3) transfer the Office of Human Resource Management (HNA926) from the OA to the OM and change its SAC to (HNA97); (4) transfer the Office of Information Resources Management (HNA94) from the OM to the OA and change its SAC to (HNA928); and (5) transfer the Office of Management Assessment (HNA95) from the OM to the OA and change its SAC to (HNA929).

Section HN–B, Organization and Functions, is amended as follows:

1. Under the heading *Office of Management (HNA9),* delete the functional statement for the *Office of Administration (HNA92)* in its entirety and substitute the following: (1) Advises the NIH Director and staff on NIH administration and management; (2) provides leadership and direction to NIH components on administrative management; and (3) develops/implements policies and provides oversight in the areas of information resources management, management assessment, grant administration and contract management, procurement, and logistics.

2. After the heading *Office of Management Assessment (HNA95),* insert the following:

Office of Financial Management (HNA96). (1) Advises the NIH Director and staff and provides leadership and direction for NIH financial management activities; (2) develops policies and instructions for budget preparation and presentation; (3) administers allocation of funds and manages a system of fund and budgetary controls; (4) provides an NIH staffing resource control system designed to allocate resources; (5) provides, develops, and maintains an NIH Management Account Structure; (6) directs planning and implementation of NIH fiscal systems and procedures and provides accounting services to all NIH components; and (7) participates in the development of policies and procedures pertaining to grants and contracts.

Office of the Director (HNA961). (1) Advises the NIH Director and staff on financial management activities, including budget, accounting, and the cost advisory aspects of grants and contracts administration; and (2) plans and directs the activities of the Office.

Office of Human Resource Management (HNA97). (1) Advises the NIH Director and staff on human resource management; (2) directs central human resource management services; (3) provides NIH leadership and planning on human resource program development, salary administration, upward mobility, and other functions; and (4) conducts studies and makes recommendations to senior NIH and PHS management for new or redirected human resource efforts and policies, as appropriate.

Office of the Director (HNA971). (1) Advises the NIH Director and staff on all matters pertaining to human resource management; and (2) plans and directs the activities of the Office.

3. Under the headings *Office of Information Resources Management (HNA94)* and the *Office of Management Assessment (HNA95),* delete the titles and functional statements in their entirety.

Dated: June 21, 1994.

Harold Varmus, M.D.,

Director, NIH.

[FR Doc. 94–16528 Filed 7–7–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–91]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60-day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (This is not a toll-free number).

Dated: July 1, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 07/08/94

Suitable/Available Properties

Buildings (by State)

California

17 Housing Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420130
Status: Pryor Amendment
Base closure: Number of Units: 17
Comment: 3,000–121,716 sq. ft., 1–3 stories, incl. duplex w/two apts., barracks, & other housing types, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

24 Comm. Support Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420131
Status: Pryor Amendment
Base closure: Number of Units: 24
Comment: 128–34,856 sq. ft., 1–2 stories, incl. day care centers, stores, chapels, fire stations, etc., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

94 Admin. Support Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420132
Status: Pryor Amendment
Base closure: Number of Units: 94
Comment: 48–164,914 sq. ft., 1–5 stories, presence of asbestos, some need rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

27 Training Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420133
Status: Pryor Amendment
Base closure: Number of Units: 27
Comment: 400–126,852 sq. ft., 1–5 stories, incl. 2 trailers & 4 school bldgs., some need rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

2 Medical Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420134

Status: Pryor Amendment
Base closure: Number of Units: 2
Comment: 1, 572 & 69,727 sq. ft., 1–2 stories, incl. a first aid station & a dispensary, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

15 Recreational Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420135
Status: Pryor Amendment
Base closure: Number of Units: 15
Comment: 144–89,589 sq. ft., 1–2 stories, includes gym, racket ball court, dugouts, & stables, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

3 Vehicle Parking Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420136
Status: Pryor Amendment
Base closure: Number of Units: 3
Comment: 543–3,066 sq. ft., 1 story, includes 3 garages, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

11 Guard Houses
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420137
Status: Pryor Amendment
Base closure: Number of Units: 11
Comment: 46–77 sq. ft., 1 story, some need rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

38 Maintenance Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420138
Status: Pryor Amendment
Base closure: Number of Units: 38
Comment: 120–436,328 sq. ft., 1–6 stories, some need rehab., presence of asbestos, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

7 Utility Support Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420139
Status: Pryor Amendment
Base closure: Number of Units: 7
Comment: 81–2,890 sq. ft., 1–2 stories, includes heating plants, pumphouses, substations, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

239 Storage Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420140
Status: Pryor Amendment
Base closure: Number of Units: 239
Comment: 84–263,032 sq. ft., 1–4 stories, some need rehab., incl. warehouses, bomb shelters, underground bunkers, presence of asbestos, may be subject to the Tidelands Trust, vacated 4–96.

17 Industrial Facilities
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420141
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: 248–149,680 sq. ft., 1–3 stories, some need rehab., presence of asbestos, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 1301
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420142
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 207 sq. ft., 1 story, bridge operation house, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 99A
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420143
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4,352 sq. ft., 2 stories, needs rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 146
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420144
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4,000 sq. ft., 1 story, breathing air stations, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. 237A
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420145
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 25,915 sq. ft., 1 story, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. A–292
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420146
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 70 sq. ft., 1 story, needs rehab., may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Bldg. S11–04
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420147
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2,148 sq. ft., 1 story, includes bomb/air raid shelter, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

2 Housing Facilities
Naval Station Treasure Island
Croaker Court Co: San Francisco CA 94130-
Landholding Agency: Navy Base Close
Property Number: 789420164
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4695 sq. ft. each, 2-story, scheduled to be vacated 9–97.

2 Housing Facilities
Naval Station Treasure Island
Halibut Court Co: San Francisco CA 94130
Landholding Agency: Navy Base Close
Property Number: 789420165
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4695 sq. ft. each, 2-story, scheduled to be vacated 9–97.

10 Housing Facilities
Naval Station Treasure Island
Chinook Court Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420166
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 2822–4695 sq. ft., 2-story, scheduled to be vacated 9–97.

4 Housing Facilities
Naval Station Treasure Island
Westside Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420167
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 3468–5202 sq. ft., 2-story, scheduled to be vacated 9–97.

5 Housing Facilities
Naval Station Treasure Island
Mariner Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420168
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 4620 sq. ft., 2-story, scheduled to be vacated 9–97.

7 Housing Facilities
Naval Station Treasure Island
Bayside Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420169
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 4620–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

7 Housing Facilities
Naval Station Treasure Island
Exposition Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420170
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 4620–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

18 Housing Facilities
Naval Station Treasure Island
North Point Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420171
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 4352–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

10 Housing Facilities
Naval Station Treasure Island
Yerba Buena Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close

Property Number: 789420172
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 1597–15504 sq. ft., 1 to 2 story, scheduled to be vacated 9/97.

4 Housing Facilities
Naval Station Treasure Island
Nimitz Drive Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420173
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 3797–5952 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

6 Housing Facilities
Naval Station Treasure Island
Forest Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420174
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 2244–2783 sq. ft., 1-story, scheduled to be vacated 9/97.

9 Housing Facilities
Naval Station Treasure Island
13th Street Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420175
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 2496–5510 sq. ft., 2-story, scheduled to be vacated 9/97.

2 Housing Facilities
Naval Station Treasure Island
Hillcrest Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420176
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1133–1502 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

4 Housing Facilities
Naval Station Treasure Island
Macalla Road Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420177
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 1199–12083 sq. ft., 1 to 3 story, scheduled to be vacated 9/97.

7 Housing Facilities
Naval Station Treasure Island
Whitting Way Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420178
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 1126–3393 sq. ft., 2 to 3 story, scheduled to be vacated 9/97.

36 Housing Facilities
Naval Station Treasure Island
Gateview Avenue Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420179
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 2496–5940 sq. ft., 2-story, scheduled to be vacated 9/97.

7 Detached Garages
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420180
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 300–6482 sq. ft., 1 to 2 story garages, scheduled to be vacated 9/97.

88 Detached Carports
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Naval Base Close
Property Number: 789420181
Status: Pryor Amendment
Base closure Number of Units: 88
Comment: 231—1260 sq. ft., scheduled to be vacated 9/97.

15 Pers. Support/Svc. Facs.
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420182
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: various sq. ft., includes stores, chapel, laundry, day care, fire & police stations, possible asbestos & lead base paint, scheduled to be vacated 9/97.

10 Recreation Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420183
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: various sq. ft., includes clubs, gym, theater, rec center, hobby shops, possible asbestos & lead base paint, scheduled to be vacated 9/97.

26 Training Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420184
Status: Pryor Amendment
Base closure Number of Units: 26
Comment: various sq. ft., some need repair, includes training centers, schools, educ. & instr. bldgs., possible asbestos & lead base paint, scheduled to be vacated 9/97.

15 Administrative Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420185
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 512–149799 sq. ft., includes admin/ofc bldgs. & museum, possible asbestos & lead base paint, scheduled to be vacated 9/97.

2 Communication Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420186
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 12886 sq. ft. communication center & signal tower, possible asbestos & lead base paint, scheduled to be vacated 9/97.

2 Medical Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420187
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 73037 sq. ft., former dispensary/dental bldg., needs repair, 2880 sq. ft. dental clinic, possible asbestos & lead base paint, scheduled to be vacated 9/97

27 Storage/Support Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420188
Status: Pryor Amendment
Base closure Number of Units: 27
Comment: various sq. ft., includes warehouses, storage bldgs & sheds, possible asbestos & lead base paint, scheduled to be vacated 9/97.

11 Maintenance/Ind. Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420189
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: various sq. ft., includes repair shops, maintenance bldgs., possible asbestos & lead base paint, scheduled to be vacated 9/97.

17 Utility Support Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420190
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: various sq. ft., includes water treatment, elec. dist. & heating bldgs., scheduled to be vacated 9/97.

Land (by State)

California

Rifle Ranges—M–135, M–136
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad E–4
Landholding Agency: Navy Base Close
Property Number: 789420148
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 20,000 sq. ft. & 9 acres, includes 2 rifle ranges, may be subject to the Tidelands Trust, scheduled to be vacated 4/96.

17 Recreation Areas
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quads C–2, C–3, E–3, F–2, I–2, K–1, & K–2
Landholding Agency: Navy Base Close
Property Number: 789420149
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: Incl. tennis & basketball courts, football & baseball fields, playgrounds & picnic areas, 54 acre golf course, & a pool, may be subject to Tidelands Trust, to be vacated 4–96.

3 Parking Areas
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quads H–1, K–1, & K–2
Landholding Agency: Navy Base Close
Property Number: 789420150
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 169,000–303,400 sq. ft., paved parking lots, may be subject to the

Tidelands Trust, scheduled to be vacated 4–96.

Storage Area
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad H–3
Landholding Agency: Navy Base Close
Property Number: 789420151
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 90,000 sq. ft., concrete pad, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

2 Vacant Areas
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quads H–1 & J–1
Landholding Agency: Navy Base Close
Property Number: 789420152
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 3.2 & 6.5 acres, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

Recreational Land
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad C–2
Landholding Agency: Navy Base Close
Property Number: 789420153
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4 acres, includes baseball field with 2 dugouts, may be subject to the Tidelands Trust, scheduled to be vacated 4–96.

4 Recreation Grounds
Naval Station Treasure Island Co: San Francisco CA 94130–
Location: TI–86, TI–251, TI–288, TI–289
Landholding Agency: Navy Base Close
Property Number: 789420191
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: scheduled to be vacated 9/97

Unsuitable Properties

Buildings (by State)

California

Latrines
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Bldgs. 77A, 138, 261, 390A, 624, 849, 858, 879, 888, 1025, 1325, A–194
Landholding Agency: Navy Base Close
Property Number: 789420154
Status: Pryor Amendment
Base closure Number of Units: 12
Reason: Other
Comment: Detached latrines.

Bldgs. 547, 878
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420155
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Other
Comment: Sewer pump houses.

Bldg. 650
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420156
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 869
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420157
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Sewage treatment tank.

Bldg. 919
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420158
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Garbage cooker.

Bldg. 1274
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420159
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 1276
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420160
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 1332
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Landholding Agency: Navy Base Close
Property Number: 789420161
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

15 Sewage Pumping Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420192
Status: Pryor Amendment
Base closure Number of Units: 15
Reason: Other
Comment: Sewage Pumping Stations.

Bldg. 277YBI
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420193
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Detached latrines.

Bldg. 480TI
Naval Station Treasure Island Co: San Francisco CA 94130–
Landholding Agency: Navy Base Close
Property Number: 789420194
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Detached latrines.

10 Recreation Facilities
Naval Station Treasure Island Co: San Francisco CA 94130–
Location: #P2TI, P23TI, P12TI, 273TI, 397TI, 398TI, 407TI, 478TI, 485TI, 492TI
Landholding Agency: Navy Base Close
Property Number: 789420195
Status: Pryor Amendment
Base closure Number of Units: 10
Reason: Extensive deterioration.

10 Bldgs.
Naval Station Treasure Island Co: San Francisco CA 94130–
Location: #P1TI, P21TI, 195TI, 358TI, 379TI, 383TI, 459TI, 460TI, 482TI, 493TI
Landholding Agency: Navy Base Close
Property Number: 789420196
Status: Pryor Amendment
Base closure Number of Units: 10
Reason: Extensive deterioration

Land (by State)

California

Landfill
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad J–1
Landholding Agency: Navy Base Close
Property Number: 789420162
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Garbage dump.

Land—A–0

Mare Island Naval Shipyard
Vallejo Co: Solano CA 94592–5100
Location: Quad A–1
Landholding Agency: Navy Base Close
Property Number: 789420163
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Other
Comment: Cemetery.

[FR Doc. 94–16537 Filed 7–7–94; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Earth Observing System (EOS) Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel; Renewal

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the EOS Land Processes DAAC Science Advisory Panel.

The purpose of the Panel is to advise the U.S. Geological Survey, Earth Resources Observation Systems (EROS) Data Center in the definition, development, implementation, and operation of data processing, archiving, and distribution systems and associated science support capabilities required in

its role as one of eight primary DAACs established by the National Aeronautics and Space Administration (NASA) as part of the EOS Program. EOS is a major component of the U.S. Global Change Program.

The Panel is responsible for providing advice and consultation on a broad range of scientific and technical topics and for representing the interests and requirements of the scientific research community in guiding development of Land Processes DAAC systems and capabilities. Membership on the Panel includes representation by scientists formally affiliated with the EOS Program and by scientists who do not have such formal affiliation, including representation from the U.S. academic research community.

The Panel functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, fifteen days from the date of publication of this notice. Further information regarding the Land Processes DAAC Science Advisory Panel may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Certification of renewal is published below.

Certification

I hereby certify that the renewal of the EOS Land Processes DAAC Science Advisory Panel is necessary and in the public interest in connection with the performance of duties undertaken by the Department of the Interior pursuant to the Memorandum of Understanding between the U.S. Geological Survey and the National Aeronautics and Space Administration (NASA) for Experimental Land Remotely Sensed Data Processing, Distribution, Archiving, and Related Science Support. The U.S. Geological Survey is authorized to cooperate with NASA in developing and operating the Land Processes DAAC pursuant to the Organic Act of the U.S. Geological Survey of March 3, 1879 (43 U.S.C. 31), Section 101(h) of Public Law 99–591 (An act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 10, 1987, and for other purposes), 100 Stat. 3341, 3341–252; and NASA's Section 203(c)(5) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5)).

Dated: April 11, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–16587 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[CO–920–94–4110–03;COC48893]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC48893, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective November 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office at (303) 239–3767.

Dated: June 8, 1994.

Milada Krasilinec,

Land Law Examiner, Lease Closure Team.

[FR Doc. 94–16501 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–JB–M

[CO–920–94–4110–03; COC49401]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC49401, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1994, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Milada Krasilinec of the Colorado State Office at (303) 239–3767.

Dated: June 8, 1994.

Milada Krasilinec,

Land Law Examiner, Lease Closure Team.

[FR Doc. 94–16502 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–04; N–57773, N–7301–G, N–36900, N–54882 and N–44642]

Amendment to Previous Notices of Realty Action (NORAs) for Exchange Proposal N–57773; Partial Termination of Recreation and Public Purposes (R&PP) Classifications and Segregation Under N–7301–G, N–36900, and N–54882; and Partial Termination of Segregation of Airport Lease Application N–44642; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice (1) amends previously published NORAs pertaining to exchange proposal N–57773, (2) provides for partial termination of recreation and public purposes classifications and segregation under N–7301–G, N–36900, and N–54882, and (3) terminates, in part, the segregation of airport lease application N–44642.

FOR FURTHER INFORMATION CONTACT: Gary Ryan, Acting District Manager, BLM Las Vegas District Office, PO Box 26569, Las Vegas, NV 89126; (702) 647–5000.

EFFECTIVE DATE: July 8, 1994.

SUPPLEMENTARY INFORMATION: The Notice of Realty Action pertaining to exchange N–57773, published in the **Federal Register** on September 9, 1993 (58 FR 47472) is hereby corrected as to the following:

T. 19 S., R. 60 E.,
Sec. 6, lots 1–5, 12–18, S½NE¼, SE¼NW¼SE¼.

It has been determined that the following described Federal lands are suitable for disposal to the proponent

and/or its joint ventures in Phase 1 of exchange proposal N–57773:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 21, SW¼NW¼.
T. 20 S., R. 60 E.,
Sec. 5, lot 1, E½NE¼SE¼NE¼.
T. 21 S., R. 60 E.,
Sec. 11, E½SW¼SW¼,
N½NW¼SW¼SW¼.
T. 22 S., R. 61 E.,
Sec. 14, NE¼NE¼NE¼NE¼,
W½NW¼NE¼NE¼NE¼,
SW¼NE¼NE¼NE¼,
E½SE¼NE¼NE¼NE¼,
E½SE¼NE¼NE¼,
E½W½SE¼NE¼NE¼,
N½NE¼SE¼NE¼,
E½SE¼NE¼SE¼NE¼,
E½SW¼NE¼SE¼NE¼,
E½NW¼SE¼NE¼,
SW¼NW¼SE¼NE¼,
NE¼NE¼SW¼NE¼,
E½SE¼SE¼NW¼NE¼,
NE¼SE¼NW¼NE¼,
SE¼NE¼NW¼NE¼,
E½NE¼NE¼NW¼NE¼,
S½NW¼NE¼NE¼,
E½NW¼NW¼NE¼NE¼,
E½NE¼NW¼NE¼NE¼,
SW¼NE¼NE¼;
Sec. 23, N½NE¼NE¼NE¼,
SW¼NE¼NE¼NE¼, W½NE¼NE¼,
SE¼NE¼NE¼, NE¼NE¼NW¼NE¼,
SW¼NE¼NW¼NE¼,
N½NW¼NW¼NE¼,
SE¼NW¼NW¼NE¼, S½NW¼NE¼,
E½SW¼NE¼, S½NW¼SW¼NE¼,
N½SW¼SW¼NE¼,
N½NE¼SE¼NE¼,
SE¼NE¼SE¼NE¼, NW¼SE¼NE¼,
N½S½SE¼NE¼, SW¼SW¼SE¼NE¼,
SW¼SE¼SE¼NE¼, N½N½SE¼,
E½SW¼NE¼SE¼, SE¼NE¼SE¼,
SW¼NW¼SE¼, E½SE¼NW¼SE¼,
W½NE¼SW¼SE¼,
W½NW¼SW¼SE¼, S½SW¼SE¼,
W½NE¼SE¼SE¼, NW¼SE¼SE¼,
E½SE¼SE¼SE¼.
Sec. 26, Lots 2, 3, 4, N½N½NE¼NE¼,
S½NW¼NE¼NE¼, S½NE¼NE¼,
S½SW¼NW¼NE¼, NE¼SW¼NE¼,
S½SW¼SW¼NE¼,
N½SE¼SW¼NE¼, S½NE¼SE¼NE¼,
NW¼SE¼NE¼, S½SE¼NE¼,
N½NE¼SE¼, N½SE¼NE¼SE¼,
SW¼NE¼SE¼, N½SE¼NW¼SE¼,
S½SW¼NW¼SE¼, NE¼SW¼SE¼,
N½SW¼SW¼SE¼.

Aggregating 589.09 acres (gross).

The patent, when issued, will contain reservations to the United States for (1) ditches or canals, and (2) all minerals except those having no known mineral value. Further, the patent will be subject to easements for road, public utility and flood control purposes in accordance with City of Las Vegas/Clark County's transportation plan, and all valid existing third party rights including but not limited to the following rights-of-way of record: Highways CC–018138, Nev–031066 and N–46063; Powerlines Nev–043546, Nev–059100, N–597, N–2557, N–10402, N–12852, N–15291, N–17395, N–18560, N–37967, N–42592, N–53121, N–54685, N–54735; Power/communication lines N–29910, N–57446; communication lines N–6486, N–7883, N–7353, N–13192, N–24393; gas pipelines N–38771, N–55952; drainage channel N–51823; roads N–57226, N–57868; power substation N–53428; road/public utilities N–55084; and water main N–55369.

The non-Federal lands involved in this exchange were previously identified in a NORA published in the **Federal Register** on April 12, 1994 (59 FR 17396). As mentioned in that NORA, acreage adjustments and/or monetary payments may be necessary in order to equalize the values of the Federal and non-Federal lands in accordance with regulations contained in 43 CFR 2200. The mineral interests owned by the proponent in the non-Federal lands will be conveyed to the United States simultaneously with the surface estate. Previous NORA's identified the proponent as Olympic Nevada Inc. The proponent of the exchange will be Olympic Land Corporation.

The following actions are also accomplished upon publication of this NORA in the **Federal Register**:

1. R&PP classification N–7301–G is partially terminated as it affects the SW¼NE¼NE¼ of sec. 14, T. 22 S., R. 61 E., MDM.
2. R&PP classification N–36900 is partially terminated as it affects the NE¼NE¼NE¼NE¼ of sec. 14, T. 22 S., R. 61 E., MDM.
3. R&PP application N–54882 has been withdrawn in part and the classification is hereby terminated as to the NW¼NE¼SE¼ of sec. 26, T. 22 S., R. 61 E., MDM.
4. Airport lease application N–44642 has been withdrawn in part and the segregation is terminated on the SW¼NW¼ of sec. 21, T. 19 S., R. 60 E., MDM.

Detailed in formation concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Nevada State Office, 850 Harvard Way, Reno, Nevada 89502.

Dated: June 30, 1994.

Gary Ryan,

District Manager.

[FR Doc. 94–16491 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–57468]

Issuance of Land Exchange Conveyance Document

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issuance of Land Exchange Conveyance Document, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. With the exception of oil, gas, sodium, potassium and saleable minerals, the mineral estate in the Federal lands was conveyed with the surface estate. As to the non-federal lands, the United States acquired no minerals.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785–6532.

SUPPLEMENTARY INFORMATION: The following described lands were conveyed out of Federal ownership pursuant to Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 29, E½NE¼NE¼,
E½NW¼NE¼NE¼.

The area described contains 25 acres in Clark County, Nevada. Patent was issued on June 29, 1994 to Gilbert Development Company.

The non-Federal lands acquired by the United States in this exchange are described as follows:

Mount Diablo Meridian, Nevada

T. 3 N., R. 42 E.,
Sec. 36, a portion of the E½W½, described as a portion of the Eula and Rescue patent lode mining claims, Survey No. 2792, the Maggie May, Survey No. 2291, and the Last Thought, Survey No. 2792, described as follows:

Surface rights only to a depth of TWO HUNDRED FEET (200) in and to the following:

That certain parcel of land particularly referred to as Parcel 2 on the parcel map filed and recorded on behalf of Hilda A. McGowan on May 20, 1983, having File No. 81052, in the Office of the County Recorder of the County of Nye, State of Nevada.

The area described contains 8.23 acres in Nye County, Nevada. Title to the non-Federal land was accepted on June 28, 1994.

The value of the Federal lands exceeded the value of the non-Federal lands. Proponent expenses documented and allowed by the authorized officer in the amount of $11,235.00 was credited against the necessary cash equalization payment required. An equalization

payment of $154,390.00 was made by the exchange proponent. The purpose of the exchange was to acquire private land in the Town of Tonopah, Nevada to be used as an administrative office complex for the Bureau of Land Management's Tonopah Resource Area Office.

Dated: June 29, 1994.

Dennis J. Samuelson,

Acting Deputy State Director, Operations.

[FR Doc. 94–16588 Filed 7–17–94; 8:45 am]

BILLING CODE 4310–HC–M

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 49 N., R. 62 W.,
Accepted June 29, 1994.
T. 38 N., R. 64 W.,
Accepted June 29, 1994.
T. 41 N., R. 81 W.,
Accepted June 29, 1994.
T. 50 N., R. 105 W.,
Accepted June 29, 1994.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys and subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: June 29, 1994.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 94–16589 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–4210–06; GP4–201; OR–50892 (WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 1,712.50 acres of National Forest System lands to protect the recreational and visual resources of the White Pass Ski Area in the Snoqualmie and Gifford Pinchot National Forests. This notice closes the lands for up to two years from mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by October 6, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On June 14, 1994, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2) subject to valid existing rights:

Willamette Meridian

Snoqualmie and Gifford Pinchot National Forests

T. 13 N., R. 11 E., unsurveyed,
Sec. 1, that portion of the N½ lying northerly of the withdrawal for State Highway 12 (PLO 2434);
Sec. 2, that portion of the N½ lying outside the William O. Douglas Wilderness Area;
Sec. 10, that portion of the E½ lying southerly of the withdrawal for State Highway 12 (PLO 2434);
Sec. 11, S½S½;
Sec. 12, that portion of the S½SW¼ lying outside the Goat Rocks Wilderness Area;
Sec. 14, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 15, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 22, that portion lying outside the Goat Rocks Wilderness Area;
Sec. 23, that portion lying outside the Goat Rocks Wilderness Area.
T. 14 N., R. 11 E., unsurveyed,
Sec. 35, that portion lying outside the William O. Douglas Wilderness Area;
Sec. 36, those portions of the S½SW¼ and SW¼SE¼ lying outside the William O. Douglas Wilderness Area and outside the three unpatented mining claims known as Cover All Bets (ORMC–30522), Up The Creek (ORMC–30523), and Spiral View (ORMC–111969).

The areas described aggregate approximately 1,712.50 acres in Lewis and Yakima Counties.

The purpose of the proposed withdrawal is to protect the recreational and visual resources of the White Pass Ski Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, cooperative agreements, mineral leases, and mineral material permits that are compatible with the intended use under the discretion of the authorized officer.

Dated: June 24, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–16590 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–33–P

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Great Lakes and Northern Great Plains Population of the Piping Plover for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the Great Lakes and Northern Great Plains Population of the Piping Plover (*Charadrius melodus*). The Service listed the piping plover as endangered and threatened in January, 1986, and completed a recovery plan for the Great Lakes and Northern Great Plains populations in May, 1988. That recovery plan is being revised to incorporate new information on the species' biology, the results of the 1991 International Piping Plover Census, and changes in threats experienced by the two populations. The Service solicits review and comments from the public on this draft revised plan.

DATES: Comments on the draft recovery plan must be received on or before October 6, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (phone: 612/725–3276; fax 612/725–3526). Written comments and materials regarding the plan should be addressed to Ronald L. Refsnider at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ronald L. Refsnider at the above address and phone numbers.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed. The Service revises existing recovery plans, as needed, to reflect important new biological information, significant changes in a species' status, or the accomplishment of tasks identified in the original plan.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The piping plover was listed as endangered in the Great Lakes watershed, and threatened in the Great Plains, along the Atlantic coast, and throughout the remainder of its range due to the near-extirpation of the species in the Great Lakes area and its dwindling population elsewhere. To facilitate recovery of this widespread species, it was separated into two recovery programs, one of which deals with Atlantic coast-nesting birds and the second includes the inland-nesting piping plovers. This recovery plan deals only with the inland-nesting populations of the piping plover.

In recent years the Great Lakes piping plovers have nested only along the sandy shorelines of Michigan. Predation, disturbance, habitat degradation and destruction, and possibly insufficient prey are believed to be the factors preventing the expansion of this population. Northern Great Plains piping plovers are more widespread, nesting along prairie rivers and alkali wetlands in Iowa, Minnesota, North and South Dakota, Nebraska, Montana, and the Prairie Provinces of Canada. Predation, disturbance, and habitat loss also affect these nesting areas. Piping plovers from both nesting areas spend the winter along the Gulf Coast of the United States and Mexico, where they face the same threats, as well as contaminant spills from Gulf Coast shipping and oil extraction activities.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 29, 1994.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 94–16490 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of applications for permit.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–791803

Applicant: Mr. Ron Redman, Conway Arkansas.

The applicant requests a permit to take (survey and monitor) gray bats (*Myotis grisescens*), Indiana bats (*Myotis sodalis*), and Ozark big-eared bats (*Plecotus townsendii ingens*) to document new populations in the Ozark Mountains of Arkansas, Oklahoma, and Missouri. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791805

Applicant: Mr. Chris Charlton, Fayetteville, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791797

Applicant: Leithold Wildlife Management Consulting, Shulerville, South Carolina.

The applicant requests a permit to take (conduct population surveys, handle, band, and release) red-cockaded woodpeckers (*Picoides borealis*) throughout the Southeastern United

States. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–791801

Applicant: Barry A. Vittor & Associates, Incorporated, Mobile, Alabama.

The applicant requests a permit to take (conduct population surveys, handle, collect 1 dead shell of each species) 44 species of endangered mussels throughout the Southeastern United States for the purpose of enhancement of survival of the species.

PRT–791799

Applicant: Mr. Douglas N. Shelton, Mobile, Alabama.

The applicant requests a permit to take (conduct population surveys, handle, collect 1 dead shell of each species) 43 species of endangered mussels and snails throughout all southeastern States for the purpose of enhancement of survival of the species.

PRT–792102

Applicant: Mr. Rex Roberg, Cabot, Arkansas.

The applicant requests a permit to take (conduct population surveys) Ozark big-eared bats (*Plecotus townsendii ingens*) in Arkansas, Oklahoma, and Missouri for the purpose of enhancement of survival of the species.

PRT–792106

Applicant: Mr. Glyn Turnipseed, Russellville, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–792116

Applicant: Mr. William L. Matthews, M & M Environmental, Fort Smith, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) on Fort Smith, Arkansas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–792113

Applicant: Mr. Bruce Shackleford, Little Rock, Arkansas.

The applicant requests a permit to take (trap, survey, and monitor) American burying beetles (*Nicrophorus americanus*) to document new populations in Arkansas, Louisiana, Oklahoma, and Texas. These activities are proposed for the purpose of enhancement of survival of the species.

PRT–750477 (Renewal)

Applicant: Mr. Gerald B. Pottern, Robert J. Goldstein and Associates, Inc., Raleigh, North Carolina.

The applicant requests a permit to take (collect dead shells) of dwarf wedge mussel (*Alasmidonta heterodon*) in North Carolina for the purpose of enhancement of survival of the species.

PRT–769270 (Renewal)

Applicant: Mr. Gerald B. Pottern, Robert J. Goldstein and Associates, Inc., Raleigh, North Carolina.

The applicant requests a permit to take (capture using sienes) the Cape Fear shiner (*Notropis mekistocholas*) in North Carolina for the purpose of enhancement of survival of the species.

PRT–697819

Applicant: Fish and Wildlife Service, Atlanta, Georgia.

The applicant requests an amendment to their current permit to include take activities for the following species if and when they become federally protected as endangered or threatened under the Endangered Species Act:

Alabama sturgeon—*Scaphirhynchus suttkusi*
Appalachian elktoe— *Alasmidonta raveneliana*
ortegón—*Coccoloba rugosa*
uvillo—*Eugenia haematocarpa*
no common name—*Mitracarpus maxwelliae*
no common name—*Mitracarpus polycladus*
no common name—*Eugenia woodburyana*
no common name—*Gesneria pauciflora*
chupacallos—*Pleodendron macranthum*
Cherokee darter—*Etheostoma (Ulocentra) sp.*
Etowah darter—*Etheostoma etowahae*
rock gnome lichen—*Gymnoderma lineare*
rock cress—*Arabis perstellata*
Arkansas River shiner—*Notropis girardi*
Jaguar—*Panthera onca*
Puerto Rican broad-winged hawk—*Buteo platypterus brunnescens*
Puerto Rican sharp-shinned hawk—*Accipiter striatus venator*
West Indian whistling duck—*Dendrocygna arborea*
Spruce-fir moss spider—*Microhexura montivaga*
St. Francis satyr—*Neonympha mitchellii francisci*
Stones River bladderpod—*Lesquerella stonensis*
Spring Creek bladderpod—*Lesquerella perforata*
Cumberland elktoe—*Alasmidonta atropurpurea*
Oyster mussel—*Epioblasma capsaeformis*
Cumberlandian combshell—*Epioblasma brevidens*
Purple bean—*Villosa perpurpurea*
Rough rabbitsfoot—*Quadrula cylindrica strigillata*
Chipola slabshell—*Elliptio chipolaensis*
purple bankclimber—*Elliptiodeus sloatianus*
fat three-ridge—*Amblema neislerii*
shiny-rayed pocketbook—*Lampsilis subangulata*
Gulf moccasinshell—*Medionidus penicillatus*
Ochlockonee moccasinshell—*Medionidus simpsonianus*
oval pigtoe—*Pleurobema pyriforme*
Armored snail—*Pyrgulopsis (=Marstonia) pachyta*
Eggert's sunflower—*Helianthus eggertii*

The purpose of adding the species to the current permit will be to conduct scientific research and enhancement of propagation or survival of the species as prescribed by Fish and Wildlife Service recovery documents.

Written data or comments on any of these applications should be submitted to: Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be received by the Regional Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Permit Coordinator). Telephone: 404/679–7110; Fax: 404/679–7081.

Dated: June 30, 1994.

John R. Eadie,

Acting Regional Director.

[FR Doc. 94–16534 Filed 7–7–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–718 (Preliminary)

Glycine From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–718 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of glycine, provided for in subheading 2922.49.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 15, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 1, 1994, by Hampshire Chemical Corporation, Lexington, MA, and Chattem, Inc., Chattanooga, TN.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 22, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than July 20, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 27, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 5, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16674 Filed 7–7–94; 8:45 am]

BILLING CODE 7020–02–P

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–347, Global Competitiveness of U.S. Environmental Technology Industries: Municipal and Industrial Water and Wastewater, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: two

(2) Title of form: Global Competitiveness of U.S. Environmental Technology Industries: Municipal and Industrial Water and Wastewater-Questionnaires for U.S. Producers of Equipment and Services

(3) Type of request: new

(4) Frequency of use: Producer questionnaire, single data gathering, scheduled for 1994.

(5) Description of respondents: U.S. firms which produce equipment or provide services for the provision of water and/or wastewater.

(6) Estimated number of respondents: 150 (Equipment producer questionnaire); 150 (Service producer questionnaire)

(7) Estimated total number of hours to complete the forms: 6,000

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from David

Ingersoll (USITC, telephone no. (202) 205–2218). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202–395–7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

LIST OF SUBJECTS: Environmental protection, environmental technology, water supply, wastewater treatment, export promotion, air pollution.

By order of the Commission.

Issued: July 1, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–16508 Filed 7–7–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32528]

CSX Transportation, Inc.—Tracking Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT) over approximately 15.4 miles of rail line from the connection between the tracks of CSXT and NS at milepost 161.2W at Princeton, IN, to the connection between NS and the Algers, Winslow and Western Railway (AWW) at milepost 176.6W at Oakland City Jct., IN. The trackage rights were to become effective on June 30, 1994.

The trackage rights will allow an alternative route for CSXT's transportation of coal shipments from origins on the AWW line to the Southern Indiana Gas and Electric Company plant in Abee, IN, and thereby facilitate more economical and efficient operations. CSXT now transports these shipments, in part, over the track of the Indiana Southern Railway Company.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John W. Humes, Jr. and Charles M. Rosenberger, 500 Water Street, J150, Jacksonville, FL 32202.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 24, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–16225 Filed 7–7–94; 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 cagetories, 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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Travel Document. (I–131).

(2) Form I–131. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form is used to apply for an Immigration and Naturalization Service Travel Document, ReEntry Permit, Refugee Travel Document or Advance Parole Document. Also, this data will be used by the service to determine eligibility for the requested immigration benefit.

(5) 290,000 annual respondents at .90 hours per response.

(6) 261,000 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16562 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 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 the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Replacement Initial Nonimmigrant Arrival-Departure Document. (I–102).

(2) Form I–102. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This information will be used to determine eligibility for a replacement nonimmigrant arrival/departure document.

(5) 20,000 annual respondents at .410 hours per response.

(6) 8,200 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16563 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Request for Certification of Military or Naval Service (Form N–426).

(2) Form N–426. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. Form N–426 is used by the Immigration and Naturalization Service to request a verification of the military or naval service claimed by an applicant under sections 328 and 329 of the Immigration and Naturalization Act.

(5) 32,000 annual respondents at .166 hours per response.

(6) 5,312 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16564 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202)

395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application To File Declaration of Intention. (Form N–300)

(2) Form N–300. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used by the Immigration and Naturalization Service to determine eligibility for a declaration of intention to become a citizen of the United States.

(5) 1,400 annual respondents at .750 hours per response.

(6) 1,050 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16565 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Issuance or replacement of Northern Mariana Card (Form I–777).

(2) Form I–777. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. The information collected by this form will be used by the Immigration and Naturalization Service to determine the eligibility for replacement of the citizen ID card.

(5) 100 annual respondents at .5 hours per response.

(6) 50 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16558 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Petition to Remove Condition on Residence (Form I–751).

(2) Form I–751. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form is for a conditional resident who obtained such status through marriage to apply to remove the conditions on his or her residence.

(5) 108,000 annual respondents at 1.335 hours per response.

(6) 144,180 annual burden hours.

(7) Not applicable under section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16559 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Action on an Approved Application or Petition (I–824).

(2) Form I–824. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used to request a duplicate approval notice, to notify the United States Consulate that a person has been adjusted to permanent resident status so family members can apply for derivative immigrant visa and to request another United States Consulate be notified that a petition has been approved.

(5) 25,000 annual respondents at .410 hours per response.

(6) 10,250 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 5, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16560 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–10–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) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indications as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/ collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Refugee/Asylee Relative Petition (I–730).

(2) Form I–730. Immigration and Naturalization Service.

(3) On Occasion.

(4) Individuals or households. This form will be used to file petitions on behalf of the applicant's spouse and/or child who had never had refugee or asylee status.

(5) 2,500 annual respondents at .083 hours per response.

(6) 207 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this time is encouraged.

Dated: July 5, 1940

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–16561 Filed 7–8–94; 8:45 am]

BILLING CODE 4410–10–M

Notice of Lodging of Consent Decree Pursuant to the Toxic Substances Control Act

In accordance with Department of Justice Policy set forth at 28 CFR 50.7, notice is hereby given that a proposed second modification to the consent decree previously entered by the United States District Court for the Southern District of Texas in *United States* v. *Texas Eastern Transmission Corp. d/b/a/ Texas Eastern Gas Pipeline Co.* Civ. No. H–88–1917, has been lodged with this Court on June 16, 1994.

The proposed modification integrates certain provisions of an administrative settlement between Texas Eastern and the Commonwealth of Pennsylvania with those set forth in the consent decree. Integration of these provisions is necessary to protect Texas Eastern from being made subject to inconsistent remediation requirements imposed in the administrative settlement and the consent decree. The Environmental Protection Agency has analyzed the cleanup requirements in the administrative settlement and concluded that, although different from those in the consent decree, are equally protective of human health and the environment. The provisions of the administrative settlement being integrated will be applicable only to Texas Eastern's remedial efforts at its compressor station sites located in Pennsylvania. For sites located outside of Pennsylvania, the cleanup requirements set forth in the consent decree will continue to apply.

In addition, the second proposed modification would allow Texas Eastern to propose to clean up areas or environmental media (e.g. off-site areas or streambeds) that it is not presently required to remediate under the consent decree. This provision is not limited to locations in Pennsylvania, but would apply at any of the compressor station sites and off site locations covered by the original decree. EPA's decision to accept Texas Eastern's proposal is entirely discretionary, and Texas Eastern has no ability to invoke the Court's dispute resolution authority if it disagrees with EPA's decision. If EPA approved the additional cleanup, and Texas Eastern performed the cleanup adequately, then Texas Eastern would be granted the same covenant not to sue at these additional areas that would apply at the areas covered by the original consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments related to the proposed modification. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Texas Eastern Gas Transmission Corp. d/b/a/ Texas Eastern Gas Pipeline Co.* DOJ Ref. #90–5–1–1–2820.

The proposed modification may be examined at the TSCA Public Docket Office, room NE–G004, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 and at the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC (20005), 202–624–0892. A copy of the proposed modification may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–16591 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993, Electrical Wiring Component Applications Partnership

Notice is hereby given that, on June 9, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; Chrysler Corporation, Highland Park, MI; and Ford Motor Company, Dearborn, MI. General areas of planned activities are to identify opportunities for joining aspects of their independent research and development efforts in the use of electrical wiring component technology relating to automotive wiring, connectors, electrical components and connection systems. The objectives are to avoid inefficient duplication of effort and expense in research in this area, improve general scientific knowledge and accelerate the development of technologies in this area. To meet these objectives, the Parties will collect, exchange and analyze research information, interact with suppliers and other entities interested in this area and perform other acts allowed by the National Cooperative Research and Production Act that would advance the Partnership's objectives.

Membership in this venture remains open, and General Motors Corporation intends to file additional written notification disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–16592 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division; Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on May 24, 1994, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 93–15 filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to Project No. 93–15 and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Production Company, Tulsa, OK; Exxon Production Research Company, Houston, TX; Mobil Exploration and Production Company, Dallas, TX; Texaco, Inc., Bellaire, TX; Chevron U.S.A., Houston, TX; and Remediation Technologies, Inc., Pittsburgh, PA.

The nature of the research program performed in accordance with PERF Project 93–15 is to test, verify, develop and refine the process for ex-situ soil washing of salt contaminated soils,

developed under PERF Project No. 91–07, by testing the process in a field/pilot scale continuous mode operation utilizing various soil types, process fluids, equipment and process variables.

Participation in this project will remain open until termination of the Agreement for Project 93–15.

Information about participating in project 93–15 may be obtained by contacting Grant A. Young, Amoco Production Company, P.O. Box 3385, Tulsa, OK 74102.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–16593 Filed 7–7–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. TX940009 dated March 25, 1994, and ND940057 dated April 29, 1994.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume III

Georgia
GA940081 (Jul. 8, 1994)

Volume V

Iowa
IA940069 (Jul. 8, 1994)
IA940070 (Jul. 8, 1994)
IA940071 (Jul. 8, 1994)
IA940072 (Jul. 8, 1994)
IA940073 (Jul. 8, 1994)
IA940074 (Jul. 8, 1994)
Oklahoma
OK940025 (Jul. 8, 1994)
OK940026 (Jul. 8, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ940002 (Feb. 11, 1994)
NJ940003 (Feb. 11, 1994)
NJ940004 (Feb. 11, 1994)
NJ940007 (Feb. 11, 1994)
New York
NY940007 (Feb. 11, 1994)
NY940011 (Feb. 11, 1994)
NY940022 (Feb. 11, 1994)
NY940031 (Feb. 11, 1994)
NY940032 (Feb. 11, 1994)
NY940034 (Feb. 11, 1994)
NY940037 (Feb. 11, 1994)
NY940040 (Feb. 11, 1994)
NY940044 (Feb. 11, 1994)
NY940046 (Feb. 11, 1994)
NY940047 (Feb. 11, 1994)
Rhode Island
RI940001 (Feb. 11, 1994)
RI940002 (Feb. 11, 1994)

Volume II

Pennsylvania
PA940001 (Feb. 11, 1994)
PA940002 (Feb. 11, 1994)
PA940003 (Feb. 11, 1994)
PA940004 (Feb. 11, 1994)
PA940007 (Feb. 11, 1994)
PA940008 (Feb. 11, 1994)

PA940010 (Feb. 11, 1994)
PA940011 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940013 (Feb. 11, 1994)
PA940015 (Feb. 11, 1994)
PA940016 (Feb. 11, 1994)
PA940020 (Feb. 11, 1994)
PA940021 (Feb. 11, 1994)
PA940022 (Feb. 11, 1994)
PA940024 (Feb. 11, 1994)
PA940027 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
PA940029 (Feb. 11, 1994)
PA940032 (Feb. 11, 1994)
PA940033 (Feb. 11, 1994)
PA940041 (Feb. 11, 1994)
PA940051 (Feb. 11, 1994)
PA940052 (Feb. 11, 1994)
PA940053 (Feb. 11, 1994)
PA940062 (Feb. 11, 1994)
PA940063 (Feb. 11, 1994)
PA940065 (Feb. 11, 1994)

Volume III

Alabama
AL940003 (Feb. 11, 1994)
AL940027 (Feb. 11, 1994)
AL940034 (Mar. 25, 1994)
Georgia
GA940003 (Feb. 11, 1994)
GA940008 (Feb. 11, 1994)
GA940016 (Feb. 11, 1994)
GA940018 (Feb. 11, 1994)
GA940022 (Feb. 11, 1994)
GA940031 (Feb. 11, 1994)
GA940033 (Feb. 11, 1994)
GA940040 (Feb. 11, 1994)
GA940045 (Feb. 11, 1994)
GA940050 (Feb. 11, 1994)
GA940052 (Feb. 11, 1994)
GA940053 (Feb. 11, 1994)
GA940065 (Feb. 11, 1994)
GA940073 (Feb. 11, 1994)
Kentucky
KY940001 (Feb. 11, 1994)
KY940002 (Feb. 11, 1994)
KY940003 (Feb. 11, 1994)
KY940004 (Feb. 11, 1994)
KY940007 (Feb. 11, 1994)
KY940025 (Feb. 11, 1994)
KY940026 (Feb. 11, 1994)
KY940027 (Feb. 11, 1994)
KY940028 (Feb. 11, 1994)
KY940029 (Feb. 11, 1994)
KY940011 (Feb. 11, 1994)
South Carolina
SC940011 (Feb. 11, 1994)

Volume IV

Illinois
IL940001 (Feb. 11, 1994)
IL940002 (Feb. 11, 1994)
IL940003 (Feb. 11, 1994)
IL940004 (Feb. 11, 1994)
IL940005 (Feb. 11, 1994)
IL940006 (Feb. 11, 1994)
IL940007 (Feb. 11, 1994)
IL940008 (Feb. 11, 1994)
IL940009 (Feb. 11, 1994)
IL940011 (Feb. 11, 1994)
IL940012 (Feb. 11, 1994)
IL940013 (Feb. 11, 1994)
IL940014 (Feb. 11, 1994)
IL940015 (Feb. 11, 1994)
IL940016 (Feb. 11, 1994)
IL940017 (Feb. 11, 1994)
IL940023 (Apr. 15, 1994)
IL940024 (Apr. 15, 1994)
IL940025 (Apr. 15, 1994)
IL940033 (Apr. 15, 1994)
IL940039 (Apr. 15, 1994)
IL940041 (Apr. 15, 1994)
IL940044 (Apr. 15, 1994)
IL940045 (Apr.15,1994)
IL940054 (Apr.15,1994)
IL940072 (Apr.15,1994)
IL940083 (Apr.15,1994)
IL940088 (Apr.15,1994)
IL940093 (Apr.15,1994)
IL940099 (Apr.15,1994)
Indiana
IN940002 (Feb.11,1994)
Minnesota
MN940005 (Feb.11,1994)
MN940007 (Feb.11,1994)
MN940008 (Feb.11,1994)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st day of July 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–16469 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–29,450]

Gandalf Systems Corporation Cherry Hill, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating in the Following States

TA–W–29,450A	Connecticut
TA–W–29,450B	Georgia
TA–W–29,450C	Illinois
TA–W–29,450D	Maryland
TA–W–29,450E	Massachusetts

TA–W–29,450F Minnesota
TA–W–29,450G North Carolina
TA–W–29,450H Ohio
TA–W–29,450I Pennsylvania

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1994, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on June 1, 1994 (59 FR 28429).

At the request of the State Agency, the Department reviewed its certification for the workers of Gandalf Systems Corporation. The findings show that Gandalf Systems had several field worker separations occurring in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, and Pennsylvania.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending its certification to include worker separations in the below cited States.

Also, on further review the Department found a typographical error in the impact date. The new impact date is changed to January 11, 1993 from January 11, 1994.

The amended notice applicable to TA–W–29,450 is hereby issued as follows:

All workers of Gandalf Systems Corporation, Cherry Hill, New Jersey engaged in employment related to the production of mechanical and circuit board assemblies and all field workers of Gandalf Systems Corporation engaged in employment related to the production of mechanical and circuit board assemblies in Connecticut, Georgia, Illinois, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, and Pennsylvania who became totally or partially separated from employment on or after January 11, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

This certification does not apply to workers engaged in regional sales.

Signed in Washington, DC, this 29th day of June, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–16538 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,394]

Martin Marietta Projection Display Products Syracuse, NY; Notice of Revised Determination on Reconsideration

On June 8, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 16, 1994 (59 FR 30954).

The company indicated in its application for reconsideration that the Department's original survey was inadequate and submitted a new list of lost bid customers in the domestic market which accounted for a major portion of its 1993 sales decline.

On reconsideration, the Department conducted a survey of lost bids in 1993. The respondents which accounted for a major portion of the Projection Display Products sales decline in 1993 showed that most named a Belgian firm as the successful awardee of the bids instead of Martin Marietta.

Other findings showed that sales and production of video projectors at Syracuse declined in 1993 compared to 1992. Substantial worker separations occurred in 1993 and will continue into 1994.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Projection Display Products workers at Martin Marietta in Syracuse, New York were adversely affected by increased imports of articles like or directly competitive with the video projectors produced at Martin Marietta in Syracuse, New York.

All workers and former workers of Projection Display Products of Martin Marietta in Syracuse, New York who became totally or partially separated from employment on or after March 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of June 1994.

James D. Van Erden,

Administrator, Office of Work-Based Learning.

[FR Doc. 94–16539 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,418]

Rohr, Inc., Chula Vista, CA; Notice of Negative Determination Regarding Application for Reconsideration

By an application postmarked May 21, 1994, Local #755 of the Machinists Union (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 21, 1994 and published in the **Federal Register** on May 11, 1994 (59 FR 24482)

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers of Rohr, Inc., in Chula Vista, California produce aircraft engine nacelle systems and components.

The union claims that the production of engine mounts and cascades was transferred overseas.

Investigation findings show that, with the exception of a few spares which account for a negligible portion of current production, engine mounts were outsourced to Singapore and other manufacturers in the United States in 1991. This transfer is beyond the period applicable to the petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were laid off prior to one year of the date of the petition which in this case is November 18, 1993.

With respect to cascades, the findings show that they haven't been produced in Chula Vista for some eight to ten years. Further, company officials indicated that no production workers were laid off because of the production transfer of engine mounts and cascades to offshore producers. Sufficient work was available at Chula Vista so as not to negatively impact employees.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 28th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–16540 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-29,838]

Western Atlas Geophysical Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 2, 1994 in response to a worker petition which was filed on April 10, 1994 on behalf of workers at Western Atlas Geophysical, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-29,802). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-16541 Filed 7-7-94; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Chestnut Coal Company

[Docket No. M-94-72-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Chestnut Coal Company

[Docket No. M-94-73-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Chestnut Coal Company

[Docket No. M-94-74-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Chestnut Coal Company

[Docket No. M-94-75-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Chestnut Coal Company

[Docket No. M-94-76-C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its No. 10 Slope (I.D. No. 36-07059) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Costain Coal Inc.

[Docket No. M-94-77-C]

Costain Coal Inc., P.O. Box 289, Sturgis, Kentucky 42459-0289 has filed a petition to modify the application of 30 CFR 75.380(f)(2) (escapeways; bituminous and lignite mines) to its Wheatcroft Mine (I.D. No. 15-13920); its Baker Mine (I.D. No. 15-14492); and its Smith Underground No. 1 Mine (I.D. No. 15-16020) all located in Webster County, Kentucky. The petitioner requests to be excluded from the requirement that equipment used to transport persons in the primary escapeway be equipped with a multi-purpose dry powder fire suppression system, as it may apply to electric, nonpermissible golf carts. The petitioner states that the golf cart operators are experienced supervisory or maintenance personnel; that the golf carts are equipped with a 10-pound, dry chemical fire extinguisher; that the golf carts have virtually no flammable materials incorporated in their structure; and that a golf cart fire would have minimal effect on the mine environment because of the nominal size of the golf cart and the relatively large size of the entries being traveled. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. K & S Coal Company

[Docket No. M-94-78-C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its First Chance Slope (I.D. No. 36-07629) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible

abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. K & S Coal Company

[Docket No. M–94–79–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. As an alternative to removing the batteries and transporting them in the gunboat to the surface for charging, the petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have the intake air which is used to ventilate the charging station continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. K & S Coal Company

[Docket No. M–94–80–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. K & S Coal Company

[Docket No. M–94–81–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. K & S Coal Company

[Docket No. M–94–82–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. K & S Coal Company

[Docket No. M–94–83–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mines above and below mine workings to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Brookside Coal Company

[Docket No. M–94–84–C]

Brookside Coal Company, Box 64, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Diamond Vein Slope (I.D. No. 36–08456) located in Schuylkill County, Pennsylvania. Because of the steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternative, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. K & S Coal Company

[Docket No. M–94–85–C]

K & S Coal Company, R.D. #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Shadle Coal Company

[Docket No. M–94–86–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Shadle Coal Company

[Docket No. M–94–88–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the

application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. Shadle Coal Company

[Docket No. M–94–89–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mines above and below mine workings to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. Shadle Coal Company

[Docket No. M–94–90–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. Shadle Coal Company

[Docket No. M–94–91–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364)(b)(1), (4), and (5) (weekly examination) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

20. Shadle Coal Company

[Docket No. M–94–92–C]

Shadle Coal Company, R.D. #4, Box 358–D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Shadle Slope (I.D. No. 36–06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

21. Island Creek Coal Company

[Docket No. M–94–93–C]

Island Creek Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (trolley wires and trolley feeder wires, high-voltage cables and transformers) to its VP–8 Mine (I.D. No. 44–03795) located in Buchanan County, Virginia. The petitioner proposes to use high-voltage cables to supply power to a longwall mining system in by the last open crosscut. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 8, 1994. Copies of these petitions are available for inspection at that address.

Dated: July 1, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–16575 Filed 7–7–94; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Grant Awards For Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award seventeen (17) grants under its Law School Civil Clinical Program to expand relationships between legal services programs and law schools in meeting the challenges of equal access to justice. Pursuant to the Corporation's announcement of funding availability on March 10, 1994 (59 FR 11327), a total of $1,394,000 will be awarded to the following organizations:

Name of organization	State	Amount
University of Arkansas Law School.	AR	$80,770
San Francisco Neighborhood Legal Assistance Foundation/New College of California School of Law.	CA	72,553
Santa Clara University School of Law.	CA	100,000
University of Connecticut School of Law.	CT	71,091
National Association for Public Interest Law.	DC	258,910
The Florida Bar Foundation.	FL	90,000
Georgia Legal Services Program.	GA	39,295
Idaho Legal Aid Services.	ID	62,200
Southern New England School of Law/Legal Services for Cape Cod & Islands/Southeastern Massachusetts Legal Assistance Corporation.	MA	33,167
Legal Services of Eastern Missouri.	MO	100,000
University of Michigan Law School.	MI	100,000
Southern Minnesota Regional Legal Services.	MN	92,000
University of Mississippi School of Law.	MS	34,026
University of Nebraska-Lincoln College of Law.	NE	59,790
Southern New Mexico Legal Services.	NM	50,198

Name of organization	State	Amount
Brooklyn Legal Services Corp. "A"/City University of New York (CUNY) Law School.	NY	50,000
Evergreen Legal Services.	WA	100,000

These one-time, one-year grants are awarded under the authority conferred on LSC by Section 1006(a)(1)(B) and 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended (LSC Act). This public notice is issued pursuant to Section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received on or before the close of business on August 8, 1994 at the Office of Program Services, Legal Services Corporation, 750 First Street, 11th Floor, Washington, D.C. 20002–4250.

FOR FURTHER INFORMATION CONTACT: Janice P. White, Office of Program Services, (202) 336–8924.

Date Issued: July 5, 1994.

Leslie Q. Russell,

Assistant to the Director, Office of Program Services.

[FR Doc. 94–16578 Filed 7–7–94; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL LABOR RELATIONS BOARD

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The National Labor Relations Board (NLRB), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35) and Executive Order 12862 (Setting Customer Service Standards), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review

As required by E.O. 12862, the NLRB will publish the Agency recordkeeping/reporting requirements under review by OMB. The designated Clearance Officer will, upon request, be able to advise members of the public of the nature of this submission.

Each survey (4) contains the following information:

The title of the recordkeeping/reporting requirement.

How often the recordkeeping/reporting requirement is needed.

Which segment of the public is affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent to complete each survey.

An abstract describing the need for and uses of the information collected through the surveys.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the designated Clearance Officer, Donald Hartline on (202) 273–3907. Comments and questions about the surveys should be directed to Mr. Donald Hartline, Budget Branch, National Labor Relations Board, 1099 14th Street, NW., Washington, DC 20570. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for NLRB (Daniel Chenok), Office of Management and Budget, Room 3002, Washington, DC 20503 or call (202) 395–7316.

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Hartline of this intent at the earliest possible date.

The following information applies: Director of Administration; Customer Satisfaction Survey Generic Clearance; One-time surveys (4).

Individuals or households; Businesses or other for-profit; Small businesses or organizations; 10,500 respondents; 15 minutes per response; 2,625 total hours. The NLRB is seeking a generic clearance for customer satisfaction surveys (4) in accordance with the requirements of Executive Order 12862, Setting Customer Service Standards.

Dated July 1, 1994.

By direction of the Board:

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 94–16492 Filed 7–7–94; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corp.; (Seabrook Station, Unit No. 1); Order for Modification of Order Approving Transfer of License

I

Great Bay Power Corporation, formerly EUA Power Corporation, is the holder of a 12.1324 percent ownership share in Seabrook Station, Unit No. 1, Great Bay Power Corporation's interest in Seabrook Station, Unit No. 1, is governed by License No. NPF–86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), on March 15, 1990, in Docket No. 50–443. Under this license, only North Atlantic Energy Service Corporation, acting as agent and representative of the 11 joint owners listed in the license, has the authority to operate Seabrook Station, Unit No. 1. Seabrook Station, Unit No. 1, is located in Rockingham County, New Hampshire.

II

The transfer of any right under License No. NPF–86 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). By letter of May 14, 1993, from its counsel, Ropes & Gray, North Atlantic Energy Service Corporation filed two requests with the NRC. One requested NRC approval of the indirect transfer of control of EUA Power Corporation's 12.1324 percent ownership share in Seabrook Station, Unit No. 1. The other requested an amendment to the Operating License to reflect EUA Power Corporation's change of name to Great Bay Power Corporation. The name of EUA Power Corporation was formally changed to Great Bay Power Corporation in February 1993 following the redemption of all outstanding stock in EUA Power Corporation from its corporate parent, Eastern Utility Associates. Following the redemption of its outstanding stock, EUA Power Corporation was no longer a subsidiary of Eastern Utility Associates, and the name was changed to remove any implication of a continuing relationship with its former corporate parent. The name change did not affect the corporate entity of the debtor in bankruptcy. An indirect transfer of ownership occurs with the elimination of the existing stock of the debtor (now known as Great Bay Power Corporation) and the issuance of new stock to others.

On August 16, 1993, the NRC issued Amendment 23 to License No. NPF–86 that incorporated the name change of EUA Power Corporation to Great Bay Power Corporation in the footnote to page 1 of the operating license and issued an order approving the indirect transfer of the ownership interest of EUA Power Corporation. The order was contingent on the transfer of control being completed no later than February 15, 1994, and included the provision that upon application and showing of good cause, the order may be extended for a short period beyond February 15, 1994.

On February 3, 1994, North Atlantic Energy Service Corporation, through their counsel Ropes & Gray, filed an application requesting extension of the Order until June 30, 1994, and identified the reasons why the transfer of control could not be completed by February 15, 1994. In that application, it was asserted that the sole obstacle to final implementation of the Plan of Reorganization was the difficulty with completing the contemplated $45 million credit facility for the source of funds to cover Great Bay Power Corporation's cash requirements. In lieu of this credit facility, the debtor's bondholders entered into an agreement in principle with Omega Advisors that provided for an investment of $35 million by Omega Advisors in exchange for 60 percent equity in Great Bay Power Corporation. This agreement, reached on February 2, 1994, was a modification to the Plan of Reorganization and additional time was required to formalize the agreement, recirculate a revised Disclosure Statement to the creditors, and obtain reconfirmation of the revised Plan of Reorganization from the Bankruptcy Court.

On February 15, 1994, the NRC issued an Order which modified the August 16, 1993, Order Approving Transfer of License by extending the expiration date to June 30, 1994. On April 7, 1994, a Stock Subscription Agreement was entered into with Omega Advisors and Elliot Associates, L.P.,[1] and a revised Disclosure Statement was circulated to all creditors. The Revised Plan of Reorganization was confirmed by the Bankruptcy Court on May 23, 1994, and a closing of the transaction was scheduled for June 15, 1994. However, on June 11, 1994, Omega Advisors notified Great Bay Power Corporation that unanticipated events leading to the delay in the completion of the Seabrook Station, Unit No. 1 third refueling outage from early June 1994 until early August 1994 has the potential to adversely affect Great Bay Power Corporation's financial projections, and the delay constitutes a material adverse change in Great Bay Power Corporation's financial condition. Omega Advisors requested postponement of the scheduled closing while the impact of these events could be assessed by independent financial and engineering consultants retained by Omega Advisors. Because these evaluations will not be available by June 30, 1994, North Atlantic Energy Service Corporation has requested further extension of the Order until August 31, 1994.

On the basis of the information in North Atlantic Energy Service Corporation's application (Ropes & Gray letter dated June 27, 1994), I find good cause to extend the expiration date of the Order Approving Transfer of License dated August 16, 1993.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954 (as amended), 42 U.S.C. 2201 *et seq.*, and 10 CFR 50.80, It Is Hereby Ordered that: the Order Approving Transfer of License dated August 16, 1993, is modified to change the latest date for completion of the transfer, as specified in Section III of the August 16, 1993, Order, to August 31, 1994. The Order of August 16, 1993, except as modified herein, remains in effect.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 30th day of June 1994.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16543 Filed 7–7–94; 8:45 am]

BILLING CODE 7590–01–M

[1] On April 14, 1994, Ropes & Gray submitted a status report on behalf of North Atlantic Energy Service Corporation and a copy of the Supplemental Disclosure Statement. That statement disclosed that in addition to Omega Advisors, Elliot Associates, L.P., would participate in the acquisition of an aggregate of 60 percent of Great Bay Power Corporation's equity securities. Previously, Omega Advisors was identified as the sole participant in the equity financing. The stock purchase agreement discloses that the Omega entities will purchase 49 percent of the equity position and Elliot Associates will purchase the remaining 11 percent.

[Docket No. 50–238 License No. NS–1]

State of South Carolina Patriots Point Development Authority U.S. Maritime Administration (N.S. Savannah); Order Approving Transfer and Notice of Issuance of License Amendment

I

On August 5, 1965, pursuant to 10 CFR Part 50, License No. NS–1 was issued to First Atomic Ship Transport Inc., (FAST) for the N.S. *SAVANNAH*. On November 9, 1970, Amendment No. 7 was issued to License No. NS–1 transferring the license from FAST to the U.S. Maritime Administration (MARAD). On May 16, 1976, Amendment No. 8 was issued to License No. NS–1 which authorized MARAD to possess but not operate the N.S. *SAVANNAH* reactor facility. On August 14, 1981, Amendment No. 9 was issued to License No. NS–1 adding the State of South Carolina Patriots Point Development Authority (PPDA) to the license as a co-licensee. On July 15, 1986, Amendment No. 11 was issued renewing the license until July 15, 1996.

II

On May 9, 1994, the State of South Carolina PPDA formally informed MARAD that it was exercising its option to return the vessel upon giving 30 days notice according to the charter agreement under which MARAD made the N.S. *SAVANNAH* available to PPDA. PPDA gave notice and stipulated that PPDA will remain a co-licensee and fulfill its obligations as a co-licensee until a license amendment is issued and effectively deletes PPDA as a co-licensee.

III

To remove PPDA from the license as a co-licensee, PPDA and MARAD applied to the U.S. Nuclear Regulatory Commission (NRC) for an exigent amendment to License No. NS–1, by letter dated May 19, 1994, as supplemented by later filings. Under this requested license amendment, the license and Technical Specifications would reflect the deletion of PPDA as a co-licensee and would make other changes to the Technical Specifications related to the deletion of PPDA as a co-licensee. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration, and requested that any comments on the proposed no significant hazards consideration be submitted to the staff by the close of business on June 2, 1994. The notice was published in the Virginian-Pilot/Ledger-Star, Norfolk,

Virginia, on Sunday, May 29, 1994, the Daily Press, Newport News, Virginia, on Friday, May 27, 1994, and the Post and Courier, Charleston, South Carolina, on Friday, May 27, 1994.

IV

The transfer of rights under License No. NS–1 is subject to NRC approval under 10 CFR 50.80. On the basis of information submitted by PPDA and MARAD, and other information before the Commission, it is determined that the proposed deletion of PPDA as a co-licensee, subject to the conditions stated herein, is in the public interest and is consistent with the applicable provisions of law, regulations, and orders issued by the Commission. These actions were evaluated by the staff as documented in a safety evaluation, dated June 29, 1994, which contains final no significant hazards consideration determinations. The conditions of deletion of the co-licensee, to which neither PPDA nor MARAD have objected, are:

The title on page 1 of the license shall read: U.S. MARITIME ADMINISTRATION, DOCKET NO. 50–238, N.S. *SAVANNAH*, AMENDED FACILITY LICENSE.

1.D. The licensee is technically and financially qualified to engage in the activities authorized by this amended license in accordance with the rules and regulations of the Commission;

1.E. The licensee has complied with the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;

2.B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the U.S. Maritime Administration:

(1) Pursuant to Section 104b of the Act and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," to possess, but not operate, the reactor as a utilization facility in accordance with the procedures and limitations in this license; and

(2) Pursuant to the Act and 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," to possess, but not separate, such byproduct material as may have been produced by operation of the facility.

2.C.(1) The licensee shall not reactivate the reactor without prior approval of the Commission;

2.C.(2) The licensee shall not dismantle or dispose of the facility without prior approval of the Commission.

V

Accordingly, pursuant to Sections 104b, 161b, 161i, 184, and 187 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq., and 10 CFR Part 50, *It Is Hereby Ordered* that the deletion of PPDA as a co-licensee, is approved, and Notice Is Given that a license amendment providing for the deletion of PPDA as a co-licensee, subject to the license conditions stated is issued.

For further details with respect to this action see (1) the application for amendment dated May 19, 1994, as supplemented by letters dated May 24 and 27, 1994, and June 3, 1994, (2) the Commission safety evaluation related to the amendment, and (3) the Environmental Assessment and Finding of No Significant Impact. Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20037.

Copies of items 2 and 3 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland, this 29th day of June 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–16447 Filed 7–7–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form DPRS 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form DPRS 2809, Request to Change FEHB Enrollment or to Receive Plan Brochures, is used by former spouses who are eligible to elect, cancel, or change health benefits enrollment during open season.

Approximately 15,000 forms are completed annually. The form requires approximately 10 minutes to complete. The annual burden is 2,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before August 8, 1994.

ADDRESSES: Send or deliver comments to—

Maurice O. Duckett, Retirement and Insurance Group, Fiscal Management Division, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3451, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–16441 Filed 7–7–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34294; File No. SR–Amex–94–3]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Amendments to Rules 575 ("Giving of Proxies Restricted"), 576 ("Transmission of Proxy Material to Customers"), 577 ("Giving Proxies by Member Organization") and 585 ("Transmission of Interim Reports and Other Material")

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on February 22, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 26, 1994, the Amex submitted to the Commission Amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rules 575, 576, 577, and 585 governing proxies, to allow designated registered investment advisers to vote proxies and receive proxy and related issuer material in lieu of the beneficial owners. The Amex also proposes to amend Rule 575 to allow a member organization which is the investment manager for an ERISA Plan to vote proxies on behalf of the ERISA Plan.[4] The text of these rules follows (italics reflects proposed additions to the Rules):

Giving of Proxies Restricted

Rule 575. No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 577, unless such member organization is the beneficial owner of such stock.

Notwithstanding the foregoing,

(1) any member organization designed by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

Transmission of Proxy Material to Customers

Rule 576. (a) Whenever a person soliciting proxies shall furnish a member organization:

(1) copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation,

such member organization shall transmit to each beneficial owner of stock which is in its possession or control *or to an investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner,* the material furnished; and

(b) such member organization shall transmit with such material either:

(1) a request for voting instructions and, as to matters which may be voted without instructions under Rule 577, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock *or to the beneficial owner's designated investment adviser,* at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock *or to the beneficial owner's designated investment adviser* twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(2) a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such member organization, and also a letter informing the beneficial owner *or the beneficial owner's designated investment adviser,* of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

* * * Commentary

.01 Annual reports to be transmitted.—The annual report shall be transmitted to beneficial owners *or to the beneficial owners' designated investment advisers* under the same conditions as those applying to proxy soliciting material under Rule 576 even though it is not proxy soliciting material under the proxy rules of the Securities and Exchange Commission.

.20 through .50—No Change.

.60 Duty to transmit even when requested not to.—The proxy material must be sent to a beneficial owner even though such owner has instructed the member organization not to do so, *unless the beneficial owner has instructed the member organization in writing to send such material to the beneficial owner's designated investment adviser.*

.70 through .92—No Change.

Giving Proxies by Member Organization

Rule 577. A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting Member Organization Holdings as Executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

Voting Procedure Without Instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock *or to an investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner* and solicited voting instructions in accordance with the provisions of Rule 576, and which has not received instructions from the beneficial owner *or from the beneficial owner's designated investment adviser* by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

Instructions on Stock in Names of Other Member Organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which has solicited voting instructions in accordance with the provisions of Rule 576(b)(1), shall

(1) forward to the second member organization any voting instructions received from the beneficial owner, or

(2) if the proxy soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 576 and no instructions have been received by the date specified in the statement accompanying such material, notify the second member organization of such fact in order that such member organization may give the proxy as provided in the third paragraph of this rule.

Signed Proxies for Stock in Names of Other Member Organizations

A member organization which has in its possession or control stock registered in the

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[3] See letter from Linda Tarr, Senior Counsel, Amex, to Sandra Sciole, Special Counsel, SEC, dated May 25, 1994. Amendment No. 1 made certain clarifying changes to the proposed rule change.

[4] ERISA is an acronym for the Employee Retirement Income Security Act of 1974. *See* 29 U.S.C. 1001–1461 (1988). ERISA defines the term "investment manager" to mean any fiduciary (other than a trustee or named fiduciary, as defined in Section 1102(a)(2) of Title 29): (A) who has the power to manage, acquire, or dispose of any asset of a plan; (B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940 (ii) is a bank, as defined in that Act or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and (C) has acknowledged in writing that he is a fiduciary with respect to the plan. *See* 29 U.S.C. § 1002(38) (1988).

name of another member organization, and which desires to transmit signed proxies pursuant to the provisions of Rule 576(b)(2), shall obtain the requisite number of signed proxies from such holder of record.

* * * Commentary

Giving a Proxy to Vote Stock

.10 When member organization may vote without customer instructions.—Rule 577, above, provides that a member organization may give a proxy to vote stock provided that:

(1) it has transmitted proxy soliciting material to the beneficial owner of stock *or to the beneficial owner's designated investment adviser* in accordance with Rule 576, and

(2) it has not received voting instructions from the beneficial owner *or from the beneficial owner's designed investment adviser,* by the date specified in the statement accompanying such material, and

(3)—No Change.

.11 through .20—No Change.

Transmission of Interim Reports and Other Material

Rule 585. A member organization, when so requested by a company, and upon being furnished with:

(1) copies of interim reports of earnings or other material being sent to stockholders; and

(2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or materials to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner *unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner.*

* * * Commentary—No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange's rules currently prohibit a member organization from voting proxies, on a discretionary basis, on securities held in its custody unless (1) the securities are beneficially owned by the member organization, or (2) the beneficial owner has failed to provide the member organization with voting instructions and the subject of the vote is nonsubstantive. Exchange rules further require member organizations to transmit proxy and related issuer materials to each beneficial owner of stock held in the member organization's possession even when the beneficial owner has instructed the member organization not to do so.

The Exchange is proposing to amend Rules 575, 576, 577 and 585 to provide that a beneficial owner of stock may designate in writing that a registered investment adviser who exercises investment discretion for his account(s) pursuant to an advisory contract, is to receive proxy materials and vote proxies on behalf of such beneficial owner. The proposed rule amendments would also allow designated registered investment advisers to receive annual reports and other related issuer materials in lieu of the beneficial owner. The term investment adviser is defined to include a registered broker-dealer, such as a member organization.[5]

The Board of Directors of the New York Stock Exchange, Inc. ("NYSE") recently approved a proposal to amend its comparable proxy rules, and filed such proposal with the SEC.[6] The NYSE proposal was developed in response to concerns raised by a number of its member organizations and by the Investment Adviser Committee of the Securities Industry Association, that many customers do not want to receive proxy materials and vote. These customers apparently would prefer that their registered investment advisers represent their interests in this regard because, as professionals, they are better qualified to perform this function.

It is also proposed that the Board approve an additional amendment to Exchange Rule 575 to conform that rule to a comparable NYSE rule which allows a member organization managing stock under an ERISA Plan to vote the proxies on the stock in accordance with its ERISA Plan fiduciary responsibilities.[7]

Most Amex member firms doing a public business are dual members of both the NYSE and Amex, and the rules of the two exchanges regarding proxies and voting have historically been substantially the same. Accordingly, it is appropriate to modify these Amex rules to track the NYSE amendments.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it prevents fraudulent and manipulative acts, promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and, in general, protects the investing public in that it establishes standards for investment advisers to receive proxy and related material and to vote proxies, thereby meeting customer needs while providing appropriate regulatory safeguards.

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[5] The Investment Advisers Act of 1940 defines an "investment adviser" as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to Section 3(a)(12) of the 1934 Act, as exempted securities for the purposes of that Act; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order. 15 U.S.C. § 80b–2(a)(11) (1988).

[6] See File No. SR-NYSE–93–37 filed with the Commission on October 22, 1993.

[7] This NYSE Rule currently states that no member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 452, unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing, any member organization, designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary, may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities. See NYSE Rule 450, Restriction on Giving of Proxies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–3 and should be submitted by July 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16567 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34299; File No. SR–Amex–94–02]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rescission of Rules 560 and 570, and Amendment of Rule 550, Commentary .02

July 1, 1994.

On February 16, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Rules 560 and 570, and to amend Commentary .02 to Rule 550 to delete its reference to Rules 560 and 570.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33750 (March 10, 1994), 59 FR 12386 (March 16, 1994). No comments were received on the proposal.

In light of the Commission's rescission of Rule 10b–2, promulgated under the Act,[3] the Exchange is rescinding its Rules 560 and 570. Rule 10b–2, adopted by the Commission in 1937, was part of a comprehensive package of antifraud provisions.[4] Its purpose was to prevent persons participating in the distribution of a security from stimulating the purchase on an exchange of such security by paying compensation to any person for soliciting such purchases.

In 1942, the Commission amended Rule 10b–2 to permit an exemption for special offerings under a plan filed with the Commission by an exchange.[5] The Amex's plan, contained in Rule 560, permits special offerings, at a fixed price and for a fixed period of time, on the Exchange where the quantity of stock involved cannot be absorbed in the regular auction market within a reasonable time and at a reasonable price. Rule 560 permits a person making a special offering to pay a special commission to a broker for a purchasing customer.[6]

In 1953, the Commission amended Rule 10b–2 to expand the scope of its exemption by eliminating the requirements that the compensation paid be a "special commission."[7] Amex Rule 570, which permits distributions of stock of the type addressed under Exchange Act Rule 10b–2, requires that compensation be paid in accordance with the terms of a Commission approved plan for an exchange distribution, and that the payer not know or have reasonable grounds to believe that transactions violating the terms of an approved plan are taking place.

In proposing the rescission of Rule 10b–2, the Commission stated that the significant changes that have taken place in the securities markets since Rule 10b–2's adoption, and the coverage of other antifraud and antimanipulation provisions of the federal securities laws, such as Rule 10b–5 and Rule 10b–6, made it appropriate to rescind Rule 10b–2.[8] The Exchange is rescinding Rules 560 and 570, its plans adopted in response to Rule 10b–2, because they are obsolete. The Exchange also is amending Rule 550 (which pertains to secondary distributions) to delete a reference to the Special Offering and Exchange Distribution rules.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

[4] See Securities Exchange Act Release No. 1330 (August 4, 1937).

[5] See Securities Exchange Act Release No. 3146 (February 6, 1942).

[6] Rule 560 specifies a minimum share size of 1,000 shares, with a value of $25,000. By today's standards, 1,000 shares of stock with a value of $25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. Rule 560 predates special Amex block trading rules, such as Rule 24, which defines a block of stock as 10,000 shares or more.

[7] See Securities Exchange Act Release No. 4922 (August 20, 1953).

[8] The Commission recently issued a concept release to solicit comments on a broad range of issues relating to antimanipulation regulation of securities offerings under the Act, including Rule 10b–6. See Securities Act Release No. 7057, Securities Exchange Act Release No. 33924, International Series Release No. 657 (April 19, 1994), 59 FR 21681 (April 26, 1994).

[9] The Commission approved the rescission of analogous New York Stock Exchange rules. See Securities Exchange Act Release No. 32822 (August 31, 1993), 58 FR 47484 (September 9, 1993).

[10] 15 U.S.C. 78f(f) (1988).

prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[11]

The Commission believes that the rescission of Exchange Rules 560 and 570, and the amendment to Exchange Rule 550 (which deletes any reference to the substance of Exchange Rules 560 and 570), is appropriate because these Exchange Rules were adopted in response to recently rescinded Rule 10b–2 under the Act. The Commission believes that the activities with which these Exchange rules are concerned are sufficiently addressed by the general antifraud and antimanipulation provisions of the federal securities laws as discussed in the Commission's release rescinding Rule 10b–2 of the Act. Furthermore, the Commission believes that it is consistent with the Act to allow the Exchange to delete obsolete and redundant rules.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–94–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16568 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34300; International Series Release No. 678; File No. SR–Amex–94–04]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Listing Standards for Non-U.S. Companies

July 1, 1994.

I. Introduction

On February 23, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit non-U.S. issuers to distribute summary annual reports to U.S. holders of Amex-listed foreign securities and American Depositary Receipts (ADRs) ("U.S. Holders") under certain circumstances.[3] On May 19, 1994, the Amex submitted Amendment No. 1 to the rule filing.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33864 (April 5, 1994), 59 FR 17406 (April 12, 1994). No comments were received on the proposal.

II. Description of the Proposal

Current Amex policy requires all listed companies to submit to shareholders an annual report with financial information as detailed in the Amex Company Guide. The Exchange is modifying its annual report requirements to allow U.S. Holders to receive summary annual reports if it is the practice in the home country of the foreign issuer and certain other conditions are met. The following is the text of the rule, with italics representing the language added:

Section 110. Securities of Foreign Companies

* * * * *

(d) Disclosure—The Exchange will require the company to: (i) furnish to American shareholders an English language version of its annual financial statements and all other materials regularly provided to other shareholders, and (ii) publish, at least semi-annually, an English language version of its interim financial statements. *In addition, the Exchange will permit non-U.S. issuers to follow home country practices regarding the distribution of annual reports to shareholders, if, at a minimum, shareholders (i) are provided at least summary annual reports, including summary financial information, and (ii) have the ability, upon request, to receive a complete annual report, and the financial information contained in the summary annual report is reconciled to U.S. generally accepted accounting principles to the extent that such reconciliation would be required in the full annual report.*

The rule change is, in part, in response to an amendment, adopted in 1990, to the U.K. Companies Act that permits issuers listed on the London Stock Exchange to provide holders of their ordinary shares a choice to receive a full annual report or a summary annual report.[5] The Amex rule is formulated to permit foreign issuers to distribute summary annual reports consistent with the practices of their home countries. The rule does not attempt to specify particular financial requirements.[6] Instead, the Exchange will review specific proposals to ensure that U.S. Holders receive adequate information.[7]

The rule also does not mandate any specific method for providing U.S. Holders with summary annual reports. As with the substantive requirements, the Amex proposal recognizes that foreign countries will develop their own procedures for issuers to provide summary reports in lieu of full annual reports. The Exchange, however, has indicated that it will review all proposed programs to ensure that U.S. Holders have reasonable access to the full annual report and receive full disclosure of their option to receive the full report.[8]

III. Discussion

The Commission finds that the proposed rule change to permit non-U.S. issuers to distribute summary annual reports to U.S. Holders according to the home country practice of the foreign issuer is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the

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[11] 15 U.S.C. 78f(b)(5) (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] An ADR is a negotiable receipt that is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country. ADRs are traded on the national stock exchanges and in over-the-counter markets like stocks of domestic companies.

[4] Letter from Claudia Crowley, Amex, to Sharon Lawson, Assistant Director, SEC, dated May 18, 1994 ("Amex Letter"). The amendment added the phrase "including summary financial information" in subsection (i) of the new language. *See* text of new rule, *infra.*

[5] The U.K. Companies Act sets forth the specific financial and management information that must be contained in the summary reports. In addition, the U.K. Companies Act requires that shareholders who receive only the summary report be given the opportunity, at any time, to obtain the full annual report from the company and that companies must notify shareholders annually of this right and how the report can be obtained. When the program was instituted in the U.K. in 1990, shareholders received both reports and notice of the available option with respect to future reports.

[6] Although the new rule is formulated to accommodate the U.K.'s program, other foreign countries may adopt different practices.

[7] Amex Letter, *supra* note 4. The letter clarified that the Exchange does not intend to adopt the substance of the U.K. program, and that it will permit the practice of providing shareholders with an option to receive summary annual reports as opposed to full annual reports to evolve over time. The Amex has committed to review each home country's practices to determine their sufficiency in providing information to U.S. Holders.

[8] *Id.* Under the Amex rule, full annual reports must still be prepared and made available to all U.S. shareholders.

[9] 15 U.S.C. 78f(b) (1988).

rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest, in that it accommodates foreign practices while ensuring that U.S. shareholders of foreign securities and holders of ADRs continue to receive adequate information concerning the companies in which they invest.

As the securities markets of the world become increasingly interconnected, it is inevitable that application of certain exchange rules conflict with customs and market practices in other jurisdictions.[10] The Commission believes that the Amex's rule reflects an appropriate balance between the need to protect U.S. investors and the costs associated with requiring non-U.S. companies to provide U.S. investors with full annual reports while the companies' home country law permits summary reports to foreign investors. Accordingly, for the reasons discussed in more detail below, we believe it is appropriate, in this limited situation pursuant to the conditions set forth in Section 110, to allow foreign issuers to comply with their home country practices for the distribution of annual reports to U.S. Holders.

First, the rule sets forth certain minimum requirements before summary reports can be used, including that financial information contained in the summary annual report be reconciled to U.S. generally-accepted accounting principles, and that all shareholders have the ability upon request to receive a full annual report. Second, the Amex will evaluate each country's program for providing shareholders with summary annual reports to verify that U.S. Holders are receiving adequate information under the laws of the foreign country. Finally, the Amex will also review the procedure the country has provided for disclosing to shareholders the option to receive a full annual report. If the Exchange determines that either the substance or the procedure provided by a foreign country's law is unsatisfactory, the Exchange may prescribe additional requirements before the summary annual report can be distributed to U.S. Holders under the Amex rule. In this regard, the Amex has stated it will ensure, under its new rule, that shareholders receive adequate information and are provided with full and meaningful disclosure of their choices to receive the full annual report as opposed to the summary report.[11] Based on the above, the Commission believes the Exchange's review and oversight, combined with the minimum requirements set forth in the rule, should ensure the continued protection of investors and the public interest consistent with Section 6(b)(5) of the Act.

The Commission finds good cause for approving Amendment No. 1 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 added language to subsection (a) of the proposed rule to clarify the Exchange's intention that summary annual reports include summary financial information.[12] The Amex's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–04 and should be submitted by July 29, 1994.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–94–04), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[FR Doc. 94–16569 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[10] The Commission previously has allowed exchanges to waive or modify certain of its listing standards for foreign companies based on the laws, customs or practices of their home countries. See Securities Exchange Act Release No. 33661 (February 23, 1994), 59 FR 10028 (March 2, 1994); Securities Exchange Act Release No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987).

[11] See Amex Letter, *supra* note 4.

[12] *Id.*

[13] See Securities Exchange Act Release No. 33864 (April 5, 1994), 59 FR 17406 (April 12, 1994).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34303; File No. SR–NYSE–93–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Handling Block Crosses at Significant Premiums or Discounts

July 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an Information Memo which discusses procedures under current Exchange Rules for handling block crosses that are proposed to be executed at significant premiums or discounts from the last sale.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to review the Exchange's existing procedures for handling block crosses that are proposed to be executed at significant premiums or discounts from the prevailing market in the subject security. These procedures are designed to ensure that such block transactions are subject to appropriate oversight and exposure to other market interest.

There are three types of decisions that may be made, as appropriate, when a block cross is proposed to be effected at a significant premium or discount. First, pursuant to Exchange Rule 79A.30, whenever any transaction is to be effected at a price that is $1 or more away from a last sale in the subject security under $20, or $2 or more away from a last sale of $20 or more, it must be approved by a Floor Official. In addition, in the case of a proposed block transaction which would be effected at a significant price change from the last sale (and particularly any trade at a price which would be the lesser of 10% or three points from the previous sale in the subject security, or five points if the previous sale was $100 or more), a floor Governor, a Senior Floor Official, or two Floor Officials, should make a determination whether the expected price change suggests that the overall market in that security would be better served by a trading halt, with telescoping price indications that come progressively closer to the re-opening price.

Third, in exceptional circumstances, a Floor Governor or a Senior Floor Official may determine that it is appropriate to continue trading rather than calling a trading halt. In such a case, when a member proposes to effect a block transaction at a significant premium or discount from the prevailing market and the specialist is aware of interest on the contra side, the specialist, with approval of a Floor Governor or Senior Floor official, may widen the quotation for a brief period, generally not to exceed five minutes, to try to contact and/or attract contra side market interest. In the case of a significant discount, the bid would represent the proposed cross price, the offer would touch the last sale price and the quotation size would be 100 shares by 100 shares. Conversely, in the case of a significant premium, the bid would touch the last sale and the offer would represent the proposed cross price, with the quotation size being 100 shares by 100 shares. The same principles would also apply to a situation where a sudden influx of market orders on only one side of the market make a significant price change likely.

All block transactions are subject to the Exchange's auction market rules (*e.g.*, Rules 72, 76, and 127), which provide the opportunity for other market participants to improve the price for one side or the other of the proposed cross. However, if a block transaction at a significant premium or discount is proposed very near the close of trading, there may not be sufficient time to implement the procedures described above and a Floor Governor or a Senior Floor Official, or two Floor Officials may determine that it is therefore appropriate to halt trading.

Specialists must be prepared to participate in such transactions, as dealer, to the extent necessary to maintain a fair and orderly aftermarket following the execution of such transactions. Any situation where there is a disagreement between the specialist and the broker representing the block orders as to the extent of the needs of the specialist should be referred to a Floor Official for resolution.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–48 and should be submitted by July 29, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[3] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's policy requiring the approval of a Floor Governor, Senior Floor Official, or two Floor Officials for block transactions effected at significant price changes from the last sale provides appropriate Exchange oversight of specialists' conduct and is consistent with Section 6(b)(5) of the Act in that this oversight may tend to prevent fraudulent and manipulative acts and practices and assist specialists in maintaining fair and orderly markets by ensuring that block transactions are properly priced and exposed to other market interest.

The Commission believes the rule change is consistent with NYSE Rule 79A.30, which requires that all transactions that are made at one point or more away from a last sale in a security priced under $20, or two points or more away from a last sale of $20 or more must be approved by a Floor

[3] 15 U.S.C. 78f(b)(5) (1988).

Official. Where a block transaction is proposed that would result in a more significant price change than the one or two point parameter discussed in Rule 79A.30, the Information Memo states that consultation should involve a Floor Governor, a Senior Floor Official or two Floor Officials. The Commission believes that in such situations, a trading halt or a gap quotation may be needed to maintain orderly markets, and that consultations with the specified officials could aid specialist in fulfilling their market making responsibilities.[4]

The Commission believes that the Information Memo highlights the responsibilities of specialists in terms of block crosses that are already set forth in the Exchange's Rules and policies. In addition, the Commission believes that the adoption of the Information Memo will ensure that floor members are aware of their obligation to consult with floor officials when proposing to execute block crosses at prices that would result in significant price changes from the last sale. The Commission therefore finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2)[5] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16570 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34295; File No. SR–PSE–94–3]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to its Net Capital Requirements for Specialists

July 1, 1994.

I. Introduction

On January 14, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's net capital requirements for Exchange specialists. On March 8, 1994, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On April 1, 1994, the PSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

The proposed rule change, together with Amendment Nos. 1 and 2, was noticed in Securities Exchange Act Release No. 34026 (May 9, 1994), 59 FR 25134 (May 13, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange is amending Rules 2.8 and 2.1, and adopting Rules 2.1(b), 2.1(c) and 2.1(d) of the PSE Rules of the Board of Governors, concerning capital requirements for specialists. The amended and adopted rules will become effective July 1, 1994. The Exchange is amending PSE Rule 2.8(a), which currently exempts specialists from the Exchange's net capital rule.[5] The Exchange is deleting "specialists" from this list of exempt members and adding "lead market makers in listed options" to the list. The Exchange stated that this amendment is intended to make the Exchange's rules conform to the recent amendments to the SEC's net capital rule, which effective April 1, 1994, made the SEC's net capital rule applicable to equity specialists.[6]

The PSE is amending Rule 2.1(a) to require, to the extent applicable, every member organization to maintain a minimum net capital in accordance with the provisions of SEC Rule 15c3–1.[7] This amendment also reflects the SEC's amendments to SEC Rule 15c3–1, which, as mentioned above, made the SEC's net capital rule applicable to the Exchange's equity specialists. Rule 2.1 is also being amended to clarify that the PSE's net capital requirements will be in addition to the Specialist Post Capital requirement of Rule 2.2.[8]

The PSE is adopting Rule 2.1(b) to establish a net capital requirement for Exchange specialist firms that are subject to the aggregate indebtedness and alternative net capital requirements under Rule 15c3–1.[9] Rule 2.1(b) requires specialist firms subject to the SEC's aggregate indebtedness requirement to maintain a minimum net capital of not less than $200,000. Rule 2.1(b)(4) establishes a lesser minimum net capital requirement of $150,000 for broker-dealers in specialist posts subject to the SEC's aggregate indebtedness requirement and backed by more than one broker-dealer.

Rule 2.1(c)(1) adopts a net capital requirement for equity specialist firms subject to the SEC's alternative net capital requirement. Pursuant to the adopted Rule, specialist firms subject to the SEC's alternative net capital standard are required to comply with subsection (a)(1)(ii) of Rule 15c3–1.[10] With respect to joint accounts, Rule 2.1(c)(2) requires each broker-dealer in a specialist post backed by more than one broker-dealer and subject to the SEC's alternative net capital requirement to comply with the requirements of SEC Rule 15c3–1(a)(1)(ii).[11]

The Exchange's amendments also adopt new requirements and establish related procedures for specialist firms

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 4, 1994. Amendment No. 1 made various clarifying amendments to the proposed rule change.

[4] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated March 28, 1994. Amendment No. 2 made further clarifying amendments to the proposed rule change.

[5] The term "net capital", as used in the PSE proposal, means net capital as defined by Commission Rule 15c3–1. Rule 15c3–1 defines net capital as the net worth of a broker or dealer, adjusted by certain adjustments prescribed in Rule 15c3–1. See 17 CFR 240.15c3–1(c)(2) (1994).

[6] See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993).

[7] 17 CFR 240.15c3–1 (1994).

[8] Rule 2.2 provides, in part, that members registered as specialists shall at all times maintain for each specialist post a minimum of $150,000 in either cash or marketable securities or an amount equal to 25% of the sum of the market value of its securities positions, both long and short, whichever is greater.

[9] The Aggregate Indebtedness Standard under Rule 15c3–1 states that no broker or dealer, other than one that elects the Alternative Standard, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer). See 17 CFR 240.15c3–1(a)(1)(i) (1994). Rule 15c3–1(a)(1)(ii) contains the Alternative Standard, which states in part, that a broker or dealer shall not permit its net capital to be less than the greater of $250,000 or 2 percent of aggregate debit items computed in accordance with Exhibit A to Rule 15c3–3. See 17 CFR 240.15c3–1(a)(1)(ii) (1994). The Commission's net capital rule requires the Exchange's equity specialists to maintain net capital, under the aggregate indebtedness method, equal to a minimum of $100,000 and, under the alternative method, equal to a minimum of $250,000. See Securities Exchange Act Release No. 32737, *supra* note 6.

[10] Rule 15c3–1(a)(1)(ii) contains the SEC's alternative net capital requirement. See 17 CFR 240.15c3–1(a)(1)(ii) (1994).

[11] See *supra* note 10.

[4] Nothing in the rule change effects the Exchange's current rules regarding execution of block transactions, such as NYSE Rule 72 (Priority and Precedence of Bids and Offers), NYSE Rule 76 ("Crossing" Orders), NYSE Rule 78 (Sell and Buy Orders Coupled at Same Price), and NYSE 127 (Block Positioning).

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 17 CFR 200.30–3(a)(12) (1993).

whose net capital falls below certain levels.[12] With respect to specialist firms subject to the SEC's aggregate indebtedness requirement, adopted Rule 2.1(b)(2) states that if at any time a specialist firm's net capital falls below $200,000, the firm shall promptly notify the Financial Compliance Department of the Exchange and, in addition, the firm shall not operate as a specialist with net capital of between $150,000 and $199,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency. If a specialist firm's net capital falls below $150,000, the firm shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

With respect to specialist posts backed by more than one broker-dealer and subject to the SEC's aggregate indebtedness requirement, Rule 2.1(b)(4) provides that if at any time such a broker-dealer's net capital falls below $150,000, the broker-dealer shall promptly notify the Financial Compliance Department of the Exchange and, in addition, such broker-dealer shall not operate as a specialist with net capital between $120,000 and $149,999 for more than 60 days unless such firm (a) obtains from the Vice President, Regulation, or a senior officer of the Exchange written consent to continue to operate as a specialist; and (b) takes corrective action including, but not limited to, actively seeking financing to correct its net capital deficiency. In addition, if such broker-dealer's net capital falls below $120,000, such broker-dealer shall be subject to remedial action including, but not limited to, the loss of specialist privileges.

The PSE is also adopting Rule 2.1(d) to require each specialist firm to report its net capital to the Exchange in a form and manner prescribed by the Exchange. The Exchange will promptly notify the Equity Floor Trading Committee of any specialist firm's net capital deficiency and of any action taken by the Vice President, Regulation, or senior officer of the Exchange in connection therewith.

The Exchange believes that the proposed amendments are appropriate to assure that the customers and creditors of its equity specialists are protected from monetary losses and delays in the event of a specialist's failure.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest.

III. Discussion

The Commission finds that the PSE's amendments to its net capital requirements for specialists are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) and 11(b) of the Act.[13] The Commission believes that the PSE's amendments are consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also believes that the rule change is consistent with Section 11(b) of the Act, and Rule 11b–1 thereunder,[14] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets. The rule change is consistent with the Rule 11b–1(a)(2)(i) requirement that the rules of a national securities exchange that permits a member to register as a specialist and to act as a dealer include, among other things, adequate minimum capital requirements in view of the markets for securities on such exchange.

The rules of the PSE, in addition to the rules set forth under the act, impose certain obligations upon specialists, including, but not limited to, the maintenance of fair and orderly markets.[15] Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks on the Exchange. Generally, specialists are under an affirmative obligation to trade for their own accounts to minimize order imbalances and contribute to continuity and depth in their speciality stocks.[16] Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. To ensure that specialists fulfill these obligations, it is important that they maintain an adequate amount of capital.

The importance of specialists' net capital as it relates to the quality of Exchange markets was highlighted during the October 1987 Market Break. In the Division of Market Regulation's ("Division") report on the 1987 Market Break, the Division reviewed, among other things, specialists' ability to maintain fair and orderly markets and minimum capital requirements imposed by the exchanges. During the 1987 Market Break, most exchange specialists were exempt from the Commission's net capital rule, and therefore, were only required to maintain a minimum amount of capital as determined by the rules of their exchange. In this respect, the Division stated its concern that the minimum capital requirements imposed by the exchanges on specialists did not reflect the actual capital needed to ensure the maintenance of fair and orderly markets in different types of securities.[17] Accordingly, as a result of the staff's concerns regarding the availability of capital for specialists, today's more volatile market conditions, and the state of the exchanges' specialist surveillance and monitoring system, the staff began to examine the ramifications of eliminating the specialist exemption from the SEC's net capital rule and applying the net capital rule to all specialists.[18]

The Commission believes that amending Rules 2.1 and 2.8(a) to make the PSE net capital rule applicable to all specialists except lead market makers in listed options, and adopting minimum net capital requirements for specialist firms and specialist posts backed by more than one broker-dealer is consistent with recent amendments to SEC Rule 15c3–1 under the Act, as well as a positive step toward procuring stronger capital foundations for specialists on its floor.

The Commission believes that adopting rules to require each specialist firm and each broker-dealer in a specialist post backed by more than one broker-dealer to maintain minimum amounts of net capital is consistent with Section 6(b)(5) of the Act in that the

[12] Pursuant to amendments to the Commission's net capital rule, effective April 1, 1994, Exchange equity specialists became subject to the Commission's net capital rule. *See* Securities Exchange Act Release No. 32737, *supra* note 6. As a result, Exchange equity specialists are required to comply generally with the provisions of the Commission's early warning notification procedures as codified in Section 17a–11 under the Act. See 17 CFR 240.17a–11 (1994).

[13] 15 U.S.C. 78f(b)(5) and 78k(b) (1988).

[14] 17 CFR 240.11b–1 (1994).

[15] See generally Rule 5.29(f) PSE Rules of the Board of Governors. See also Rule 11b–1 under the Act.

[16] See *supra* note 15.

[17] See Division of Market Regulation, The October 1987 Market Break, February 1988, at 4–66 to 4–67. See also Market Analysis of October 13 and 16, 1989, A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission, December 1990, at 4, 16 and 33.

[18] See 1987 Market Break, *supra* note 17 at 4–68.

required reserves of specialist net capital should help to ensure that PSE specialists have greater access to the capital necessary for the maintenance of fair and orderly markets in their registered securities. In the Commission's release amending the SEC's net capital rule to make the rule applicable to certain specialists, the Commission stated that it did not believe that sufficient reasons still exist to exempt specialists other than options market makers from the net capital rule and the overall uniform, minimum financial responsibility which results from its application. The Commission further stated that application of the net capital rule to specialists other than options market makers is necessary to provide reasonable assurance that specialists are maintaining minimum levels of liquid capital. More significantly, the Commission believes that application of the rule will provide significant monitoring and consistent reporting benefits.[19] By assuring that specialists have capital sufficient to perform their market making responsibilities, the proposal should provide additional protection for the Exchange, member organizations, and public investors.

The Commission believes that Rules 2.1(b)(2), 2.1(b)(3), 2.1(b)(4), and 2.1(d), which establish procedures and requirements for specialist firms whose net capital falls below certain levels should help to ensure compliance with the PSE's net capital requirements by encouraging specialists to actively obtain additional financing in a reasonable amount of time. Specifically, by requiring a specialist firm subject to the aggregate indebtedness requirement to notify the Financial Compliance Department of the Exchange when its net capital falls below $200,000, and requiring a specialist post backed by more than one broker-dealer to notify the Exchange when its net capital falls below $150,000 gives the Exchange adequate early warning of potential financial problems. Furthermore, after receiving notice of a potential net capital deficiency, the Exchange will be able to increase its surveillance of a specialist experiencing difficulty and to obtain any additional information necessary to assess and monitor the specialist's financial condition.

Moreover, subjecting specialist firms to remedial action, including, but not limited to, the loss of specialist privileges if a specialist firms net capital falls below a certain amount should help to ensure that specialists will not be allowed to make markets in stocks indefinitely if they fall below the capital requirements.

The Commission believes that exempting lead market makers in listed options from the PSE's net capital rule is consistent with Rule 15c3–1 under the Act. In the release amending Rule 15c3–1 to make the Commission's net capital rule applicable to all specialists except options market makers, the Commission stated that it does not believe that it is necessary to apply the net capital rule to options market makers because, on an individual basis, they are not as integral to the proper functioning of the markets in their securities. The release further states that specialists other than options market makers perform several functions that options market makers do not, including the maintenance of a specialist's book containing a listing of all orders away from the current market price and the dissemination of accurate quotations in their speciality securities. Moreover, the exchanges that use options specialists look to a single specialist or specialist unit to handle all trades whereas options market makers compete with other market makers. Options lead market makers on the Exchange floor compete with other market makers for orders and do not maintain a specialist book containing a list of all orders away from the current market price. Accordingly, the Commission agrees with the Exchange that it is appropriate to exclude options lead market makers from the Exchange capital regulations.[20]

It is therefore ordered, pursuant to Section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[21] that the proposed rule change (SR–PSE–94–3) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16566 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[19] See *supra* note 6.

[20] See securities Exchange Act Release No. 32737, *supra* note 6.

[21] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1994).

[22] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–34302; File No. SR–NYSE–94–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 127 (Block Positioning) and Rule 72(b) ("Clean" Agency Crosses)

July 1, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 127 on Block Positioning and 72(b) on "clean" agency crosses.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 127, which governs procedures for handling block crosses outside the prevailing quotation, was originally adopted in June 1972 and amended in February 1976. The Exchange recently undertook a review of the Rule and determined that, due to changes in trading rules and practices since the Rule was first adopted, it should be revised to simplify the language and eliminate a number of provisions that the Exchange believes are no longer appropriate.

Specifically, the Exchange has determined:

- To eliminate the requirement that a member affecting an agency cross outside of the prevailing quotation give up the greater of 5% of 1,000 shares of the amount crossed to orders on the specialist book limited to the cross (clean-up) price;
- To eliminate the reference to the block positioner's responsibility for maintaining the after market when the block positioner has not satisfied the reasonable needs of the specialist;
- To require documentation on the Floor when an agency block cross outside the prevailing quotation is effected and the specialist's book does not participate. This may be done after the trade has been completed. The Exchange expects these procedures to include notification of a Floor Official.

In addition, Rule 72(b) will be amended to include the same documentation requirements for agency crosses under the Rule as those proposed for agency block crosses under Rule 127.

The Exchange believes that the deletion of the requirements to give the greater of 5% or 1,000 shares of the cross to orders on the specialist's book in agency cross transactions is appropriate to conform the agency cross principles of Rule 127 with the agency cross principles of Rule 72(b). Under both rules, a member may still participate in the cross transaction by providing price improvement to one side of the cross. The Exchange is not proposing to amend the requirement in Rule 127 that a member organization that is establishing or increasing a position must fill, at the clean-up price, public orders limited to the clean-up price or better before retaining any stock for its proprietary account.

The Exchange believes that it is appropriate to place responsibility for the after-market on the specialist rather than the block positioner, as the specialist is otherwise responsible under Exchange rules for the maintenance of a fair and orderly market.[1] The Exchange believes that the proposed Floor documentation requirement will help ensure appropriate regulatory oversight with respect to agency cross transactions.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect their mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–10 and should be submitted by July 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16571 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[1] See NYSE Rule 104 (Dealings by Specialists).

[Release No. 34–34301; File No. SR–NYSE–94–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. to Amend Rule 321 to Clarify the Term "Control" and Amend Rules 113, 122 and 321 to Delete the Word "Affiliate" and Insert the Word "Subsidiary"

July, 1, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change is intended to clarify the term "control" for purposes of Rule 321 and to delete the word "affiliate" and insert the word "subsidiary" in Rules 113, 122 and 321 in order to minimize confusion and avoid potential problems which could arise as a result of differing definitions of the term "affiliate."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved amendments to Exchange Rule 321 ("Formation or Acquisition of Affiliates") as part of a rule package designed to allow members and member organizations greater flexibility in structuring their affiliates while maintaining appropriate regulatory safeguards.[1]

Rule 321 requires a member or member organization to obtain Exchange approval for the formation or acquisition of an affiliate and to comply with certain reporting and other requirements. Rule 321.10 defines "affiliate" as an entity engaged in a securities or kindred business that is controlled by the member or member organization within the meaning of Exchange Rule 2, except for paragraph (iii) of Rule 2. As such, control would currently be presumed if a member or member organization owns 25% or more of the voting securities of an entity or is entitled to receive 25% or more of the net profits. Control would currently not be presumed for purposes of Rule 321.10, if an associate person is a director, general partner or principal executive officer of another entity.[2]

The Exchange does not feel it is appropriate to continue to exclude situations where a member or member organization is a general partner of other entities from being subject to the rule. Since general partner status represents control it should therefore be included in the presumption of "control" for purposes of Rule 321. It is proposed that Rule 321.10 be amended to exclude only Directors and Principal Executive Officers from the presumption of control and not General Partners.

Further, Rule 321 is, in effect, applicable only to subsidiaries and not other types of affiliates.[3] Some confusion as to which entities are subject to the rule has arisen because of the word "affiliate's" general and often broad usage.

The Securities Act of 1933 and the Securities Exchange Act of 1934 and the rules thereunder define affiliate as follows: "an 'affiliate' or person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified."[4] As such, under the statutory definitions, an affiliate can be a parent company, subsidiary or "sister" company, while current Rule 321 is only applicable to subsidiaries. Similarly, the term "affiliate" is used to include other than subsidiaries in the legal and accounting fields.

In order to minimize confusion and avoid potential problems which could arise as a result of differing definitions of the term "affiliate," it is proposed that Rule 321 as well as Rules 113 and 122 (that refer to an affiliate within the meaning of Rule 321) be amended to delete the word "affiliate" and insert the word "subsidiary."[5]

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange in that the amendments are designed, in accordance with Section 6(b)(1) of the Act, to enhance the Exchange's capacity to carry out the purposes of the Act and to compel and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members, member organizations or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–09 and should be submitted by July 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16572 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 32823 (August 31, 1993), 58 FR 47164 (September 7, 1993).

[2] See supra note 5 for text of proposed rule change to NYSE Rule 321.10.

[3] The term "affiliate" is defined in NYSE Rule 321 as "an entity engaged in a securities, or kindred business that is controlled by a member or member organization * * *."

[4] See, e.g., Regulation D under the Securities Act of 1933, 17 CFR 230.501 (1993); and Regulation 12B under the Securities Exchange Act of 1934, 17 CFR 240.12b–2 (1993).

[5] The text of the proposed rule change to NYSE Rule 321.10 is as follows, with language to be deleted in brackets and language to be added in italics:

.10 Definition of *subsidiary* [affiliate].—For purposes of this rule, the term *"subsidiary"* ["affiliate"] means an entity engaged in a securities or kindred business that is controlled by a member or member organization within the meaning of Rule 2 of the Constitution and Rules. [except that it shall not include paragraph (iii) of said Rule 2.] *However, control shall not be presumed, for purposes of this rule, merely because a member is a director or principal executive officer of another person.*

[Release No. 34–34290; File No. SR–Phlx–93–49]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Unbundling of PACE Orders

June 30, 1994.

On November 3, 1993 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to prohibit the unbundling of orders entered for execution through the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). On February 7, 1994, the Phlx submitted Amendment No. 1 to the proposal.[3]

The proposed rule change, as amended, was published for comment in Securities Exchange Act Release No. 33594 (February 8, 1994), 59 FR 6989 (February 14, 1994). No comments were received on the proposal.

The proposed rule change adopts Commentary .19 to Phlx Rule 229,[4] which details the execution guarantees due a PACE order. Commentary .19 prohibits members from unbundling customer orders, or soliciting customers to unbundle their orders, for purposes of availing upon PACE volume and size execution guarantees.

PACE is the Exchange's automated order routing, delivery and execution system for equity securities. Pursuant to Phlx Rule 229, customer orders entered through PACE are entitled to certain execution guarantees. For example, limit orders for less than 600 shares become due an execution once an accumulative volume of 1,000 shares of that security prints at the limit price or better on the New York Stock Exchange ("primary market guarantee").[5]

Unbundling occurs when a member organization or its agent splits a larger sized order into two or more small-sized orders. Because PACE does not have a size maximum for order entry,[6] the Commission agrees with the Phlx that there may be circumstances where the member organizations are justified in unbundling a customer order to attain best execution. For example, if a customer places a buy order for 20,000 shares, a better overall price may often be obtained if the order is entered as two orders for 10,000 shares each (*i.e.*, the first half would probably be filled at a lower price than the second). However, the Exchange believes, and the Commission agrees, that unbundling orders solely to take advantage of PACE execution guarantees is abusive and contrary to the Act.

The Phlx proposal prohibits members from unbundling customer orders, as well as from soliciting their customers to unbundle orders, for the purpose of taking advantage of PACE execution guarantees. However, because the Exchange does not have any jurisdiction over non-members, the proposed prohibition against unbundling does not extend to any orders broken up by a non-member customer at his or her own discretion as long as the customer was not solicited to do so by the Phlx member firm for the aforementioned purpose.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it prevents the abuse of the Exchange's execution guarantees available through PACE. Such abuse can result in increased risk to the Phlx specialists who are required to fill these trades and can potentially result in misleading market information with respect to legitimate trading interest. Moreover, unbundling of orders solely to take advantage of PACE execution guarantees is contrary to the intent of the system to facilitate guaranteed automatic execution of small public customer orders.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Phlx–93–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16494 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20381; 812–8998]

Massachusetts Mutual Life Insurance Company, et al.; Notice of Application

June 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Massachusetts Mutual Life Insurance Company (the "Insurance Company"), MassMutual Corporate Investors ("Fund I"), and MassMutual Participation Investors ("Fund II") (Fund I and Fund II collectively, the "Funds").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order amending previous orders that allow them to co-invest in securities acquired in private placements ("Private Placement Securities"). The amended order would let applicants co-invest with an additional entity, MassMutual Corporate Value Partners Limited ("Newco"), in Private Placement Securities. The order also would modify the previous orders to let applicants and Newco sell, exchange, or otherwise dispose of the Private Placement Securities and exercise warrants, conversion privileges and other rights, and make follow-on investments at different times and in differing amounts, subject to the approval of a committee comprised of all of the trustees of each participating Fund who are not "interested persons" (as defined in section 2(a)(19)) of the Fund or the Insurance Company (a "Joint Transaction Committee").

FILING DATE: The application was filed on May 18, 1994, and amended on June 16, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sandy Sciole, Branch Chief, Commission, dated February 1, 1994. The language submitted originally by the Phlx prohibited unbundling "for the primary purpose of availing upon PACE volume and size execution guarantees." In the amendment the Phlx clarified the language of the rule to prohibit any such action for the purpose of attaining PACE guarantees by removing the world "primary" which originally preceded "purpose."

[4] See Philadelphia Stock Exchange Rules, Rule 229.

[5] See Phlx Rule 229, Supplementary Material .10(a).

[6] Phlx Rule 229 does, however, have size maximums with respect to automatic order execution.

[7] 15 U.S.C. 78f(b) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 1994, and should be accompanied by proof of service on applicants, in the from 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 who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Springfield, Massachusetts 01111.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or C. David Messman, 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.

Applicants' Representations

1. The Insurance Company is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts. The Insurance Company acts as investment adviser to Fund I and Fund II and will act as investment adviser to Newco.

2. Fund I is a registered, non-diversified, closed-end management investment company. Fund I invests primarily in Private Placement Securities with equity features.

3. Fund II is a registered, diversified, closed-end management investment company. Fund II invests in Private Placement Securities, both with and without equity features.

4. The Insurance Company and Fund I received exemptive relief from Section 17(d) of the Act in 1971, as subsequently amended, to allow the Insurance Company to invest concurrently in each issue of Private Placement Securities purchased by Fund I.[1] Fund II was permitted to participate in transactions in Private Placement Securities with Fund I and the Insurance Company by an exemptive order granted in 1988 (the "1988 Order").[2]

5. The Insurance Company anticipates having its wholly-owned subsidiary, MassMutual Holding Company, join with a limited number of other United States investors to acquire all the equity securities of MassMutual Corporate Value Limited ("MCV"), an entity that is presently contemplated to be a special purpose Cayman Islands corporation. MCV in turn would join with one or more non-United States investors to acquire and hold all the equity securities of Newco, another special purpose Cayman Islands corporation. Substantially all of the assets of MCV would be invested in Newco. As an alternative to the foregoing organization of Newco, may be organized as a United States entity (such as a Delaware business trust) in which United States investors invest directly, with the Insurance Company holding an indirect voting equity stake of approximately 30 to 50 percent.

6. Both MCV and Newco will be investment funds that are not required to be registered under the Act. MCV and Newco: (a) will be excepted from the definition of investment company pursuant to section 3(c)(1) because their outstanding securities (other than short-term paper) will be beneficially owned by no more than 100 persons; or (b) will not be subject to registration pursuant to section 7(d) because they will not be organized or otherwise created under the laws of the United States or any state, will not make use of the mails or any means or instrumentality of interstate commerce in connection with any public offering of their securities, and their outstanding securities (other than short-term paper) will be beneficially owned by no more than 100 persons resident in the United States.

7. Newco will invest its assets primarily in high yield bank debt and public and private high yield debt; mezzanine securities consisting of private debt securities with equity features, convertible debt and convertible preferred stock; and special situations consisting of public or private equity, restructured loans and non-performing debt. Many of the Private Placement Securities that are suitable for co-investment by the Funds also will be suitable investments for Newco.

8. Applicants seek an order pursuant to sections 6(c) and 17(d) and rule 17d–1 to permit them to co-invest with Newco. Applicants also propose to modify two conditions of the 1988 Order to allow applicants and Newco to sell, exchange, or otherwise dispose of the Private Placement Securities and exercise warrants, conversion privileges and other rights, and make follow-on investments at different times and in differing amounts, subject to the approval of each Fund's Joint Transaction Committee. If exemptive relief is granted, the minimum amount of Private Placement Securities of any issuance that the Insurance Company and Newco collectively will be required or permitted to purchase if either or both of the Funds participate will be calculated by aggregating the amount purchased for the Insurance Company with any amount purchased by Newco that is attributed to the Insurance Company based on its direct or indirect percentage ownership interest in Newco.

9. Newco may from time to time incur indebtedness secured by a pledge of its assets. For purposes of this application, Newco's pledge of Private Placement Securities and a transfer of Private Placement Securities by Newco to the Insurance Company will not be deemed to be a sale, exchange, or other disposition.

Applicants' Legal Analysis

1. Section 17(d) and rule 17d–1, in the absence of an exemption granted by the SEC, preclude an affiliated persons of a registered investment company, or an affiliated person of such person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company, or a company controlled by such registered investment company, is a participant. The determination of whether to grant relief under section 17(d) and rule 17d–1 turns on whether the participation of the investment company in the joint arrangements is consistent with the provisions, policies and purposes of the Act and not on a basis different from or less advantageous than that of the other participants in such arrangements.

2. Applicants believe that the conditions in the 1988 Order, as modified in this application, ensure that the participation of the Funds in Private Placement Securities will be on a basis no less advantageous than that of the Insurance Company and Newco and consistent with the policies and purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

[1] Massachusetts Mutual Life Insurance Company, Investment Company Act Release Nos. 6634 (Jul. 22, 1971) (notice) and 6690 (Aug. 19, 1971) (order); amended by Investment Company Act Release Nos. 10688 (May 10, 1979) (notice) and 10718 (June 4, 1979) (order) and Investment Company Act Release Nos. 14494 (Apr. 30, 1985) (notice) and 14532 (May 21, 1985) (order).

[2] Massachusetts Mutual Life Insurance Company, Investment Company Act Release Nos. 16578 (Sept. 28, 1988) (notice) and 16601 (Oct. 19, 1988) (order).

1. Each time the Insurance Company proposes to acquire Private Placement Securities having equity features, the acquisition of which would be consistent with the investment objectives and policies of both Fund I and Fund II, the Insurance Company will offer both Fund I and Fund II the opportunity to acquire an amount of each class of such Private Placement Securities equal to the amount proposed to be acquired by the Insurance Company. Each time the Insurance Company proposes to acquire Private Placement Securities without equity features, the acquisition of which would be consistent with the investment objective and policies of Fund II, the Insurance Company will offer Fund II the opportunity to acquire an amount of each class of such Private Placement equal to the amount of such Private Placement Securities proposed to be acquired by the Insurance Company. Each of Fund I and Fund II may choose to acquire none of such securities or any amount of such securities up to the entire amount of securities offered to it by the Insurance Company. If either Fund shall have declined such offer or accepted a portion of Private Placement Securities offered to it, the Insurance Company shall offer the other Fund up to 50% of the aggregate amount of such Private Placement Securities then available for acquisition; provided that the amount of any individual issuance of Private Placement Securities acquired by either Fund shall not exceed the amount of such issuance of Private Placement Securities acquired by the Insurance Company. For purposes of this condition, the amount of any Private Placement Securities acquired or proposed to be acquired by the Insurance Company shall be deemed to equal (a) the amount (if any) acquired or proposed to be acquired by the Insurance Company plus (b) the amount (if any) acquired or proposed to be acquired by Newco that is attributable to the Insurance Company's direct or indirect percentage ownership interest in Newco.

2. If Fund I and Fund II choose, or either of them chooses, to acquire Private Placement Securities concurrently with the Insurance Company or Newco, then the Insurance Company, Newco, Fund I and Fund II or either of the Funds together with the Insurance Company or Newco may acquire such Private Placement Securities at the same time and at the same unit price without further order of the SEC. If Fund I or Fund II chooses to acquire Private Placement Securities, but to acquire less than the entire amount of such securities offered to it by the Insurance Company, such Fund's decision must be approved by a majority vote of the members of the Joint Transaction Committee who have no financial interest in the transaction ("Required Majority"). The determination of Fund I or Fund II to acquire less than all of such securities and the reasons therefor will be recorded and become a part of the permanent records of such Fund.

3. If Fund I or Fund II chooses not to acquire any Private Placement Securities offered to it by the Insurance Company, such Fund's decision must be approved by the Required Majority of the Joint Transactions Committee. The determination of Fund I or Fund II not to acquire such Private Placement Securities and the reasons therefore will be recorded and become a part of the permanent records of such Fund.

4. None of the Insurance Company, Newco, Fund I or Fund II shall "make available significant managerial assistance" (within the meaning of Section 2(a)(47) of the Act) to any issuer (a "Portfolio Company") of a Private Placement Security that is acquired in a joint transaction by the Insurance Company, Newco and the Funds or either of them. However, the Insurance Company, Newco and the Funds may take steps to protect their rights as creditors.

5. None of the Insurance Company, Newco, Fund I or Fund II shall be involved in the sponsorship of any Portfolio Company.

6. None of the Insurance Company, Newco, Fund I or Fund II shall be materially involved in the structuring of any Portfolio Company or of any Private Placement Security issued by a Portfolio Company; provided that the Insurance Company may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing Private Placement Securities.

7. Neither the Insurance Company nor Newco shall receive any transaction fees in connection with any investment in any security of a Portfolio Company (such fees include monitoring, "topping," breakup, and termination fees).

8. None of the Insurance Company, Fund I, Fund II, or Newco will make follow-on investments ("Follow-on Investments") or will exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, unless each Fund and the Insurance Company and/or Newco holding such Private Placement Securities shall make such Follow-on Investments or exercise such rights and such investments or exercises are made at the same time and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transaction Committee, as set forth below.

If (a) the Insurance Company and/or Newco determines to make a Follow-on Investment or exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, and the Insurance Company determines not to make such Follow-on Investments or exercise such rights with respect to such Private Placement Securities on behalf of the Funds or either of them in accordance with the first paragraph of this condition, or (b) the Insurance Company determines to cause the Funds or either of them to make Follow-on Investments or to exercise warrants, conversion privileges, or other rights with respect to a class of Private Placement Securities of a class held by the Funds or either of them, and the Insurance Company, Newco, or the other Fund, as the case may be, shall not also so elect to make such Follow-On Investments or exercise such rights in accordance with the first paragraph of this condition, then the Insurance Company shall notify in writing the chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the chairman by messenger, overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for the Insurance Company's recommendations to the Fund in light of the contrary decision made with respect to the Insurance Company, Newco, or the other Fund. The chairman shall convene a meeting of the Joint Transactions Committee no later than five business days after receipt of the above-referenced notification, at which meeting the Joint Transactions Committee will consider the Insurance Company's recommendation and, based upon its review, shall determine to make such Follow-On Investments or exercise the rights with respect to such Private Placement Securities if it determines

(pursuant to the vote of the Required Majority) such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and made a part of the records of the Fund. None of the Insurance Company, Newco, or the Funds of either of them shall effect such Follow-On Investments or exercise such rights until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority, the action to be taken by the Fund.

9. None of the Insurance Company, Fund I, Fund II, or Newco will sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, unless each Fund holding such Private Placement Securities and the Insurance Company and/or Newco, if it or they hold such securities, shall dispose of such interest in such Private Placement Securities and such dispositions shall be made at the same time, for the same unit consideration, and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) the Insurance Company and/or Newco determines to sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and the Insurance Company and/or Newco, and the Insurance Company determines not to so dispose of the Private Placement Securities held by the Funds or either of them in accordance with the first paragraph of this condition, or (b) the Insurance Company determines to cause the Funds or either of them to sell, exchange, or otherwise dispose of any interest in Private Placement Securities of a class held by the Funds or either of them, and the Insurance Company, Newco, or the other Fund, as the case may be, shall not also so dispose of such interest in the Private Placement Securities in accordance with the first paragraph of this condition, then the Insurance Company shall notify in writing the chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the chairman by messenger, overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for the Insurance Company's recommendations to the Fund in light of the contrary decision made with respect to the Insurance Company, Newco, or the other Fund. The chairman shall convene a meeting of the Joint Transactions Committee no later than five business days after receipt of the above-referenced notification, at which meeting the Joint Transactions Committee will consider the Insurance Company's recommendation and, based upon its review, the Joint Transactions Committee shall determine (pursuant to the vote of a Required Majority), to sell, exchange, or dispose of such Private Placement Securities pursuant to the Insurance Company's recommendation if it determines that such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and made a part of the records of the Fund. None of the Insurance Company, Newco, or the Funds of either of them shall effect such disposition until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority, the action to be taken by the Fund.

10. The expenses, if any, associated with acquiring, holding or disposing of any Private Placement Securities (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act of 1933) shall, to the extent not payable solely by the Insurance Company under its investment management agreements with each of the Funds and Newco, be shared by the Insurance Company, Newco and the Funds in proportion to the relative amounts of such securities held or being acquired or disposed of, as the case may be, by the Insurance Company, Newco, and each of the Funds.

11. The Joint Transactions Committee of each Fund will be provided quarterly for review all information concerning co-investments made by the Insurance Company, Newco and the Funds, including investments made by the Insurance Company or Newco in which the Fund declined to participate, so that the Joint Transactions Committee may determine whether all investments made during the preceding quarter, including those investments in which the Fund declined to participate, comply with the conditions set forth above.

12. Each of the applicants will maintain and preserve all records required by Section 31 of the Act and any other provisions of the Act and the rules and regulations thereunder applicable to such applicant.

13. For purposes of the requested order, any Private Placement Securities acquired or held by applicants and Newco that are identical in all respects except for the fact that only Private Placement Securities acquired and held by both Funds or either of them have voting rights shall be considered to be of the same class of securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–16495 Filed 7–7–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2032]

Garnishment of Federal Employees Wages for Payment of Debt

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: On February 23, 1994, the Department of State gave notice that requests for payments pursuant to court-ordered garnishments as authorized under 5 U.S.C. 5520a for all employees of the Department of State are to be submitted to the Executive Director (L/EX), Office of the Legal Adviser, Department of State, room 5519, 2201 C Street, NW., Washington, DC 20520, (202) 647–8323. The Department now gives notice that, in order to standardize its processing of garnishments, it is instituting use of a Garnishment Application for garnishments under 5 U.S.C. 5520a, as well as garnishments for child support or alimony under 42 U.S.C. 659, 661 and 662.

The Garnishment Application can be obtained from the office listed above, or from Ms. Sheila McCoy, at 202–647–7359. Use of the application form is voluntary. However, failure to provide requested information may result in delay in processing a garnishment or return of the request.

EFFECTIVE DATE: July 8, 1994.

ADDRESSES: Comments regarding this notice should be sent to the Assistant Legal Adviser for Legislation and General Management (L/LM), Office of

the Legal Adviser, Department of State, room 5425, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Ms. Sheila McCoy, at (202) 647–7359.

SUPPLEMENTARY INFORMATION: This form has been approved by the Office of Management and Budget, pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Dated: June 28, 1994.

Mary Beth West,

Assistant Legal Adviser for Legislation and General Management.

[FR Doc. 94–16594 Filed 7–7–94; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration (FHWA)

Supplemental Environmental Impact Statement; Riverside County, CA

ACTION: Withdrawal of NOI/EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent for preparation of a Supplemental Environmental Impact Statement (SEIS) for a highway project in Riverside County, California has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Leonard E. Brown, Chief, District Operations "C", Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814–2724. Telephone: 916/551–1307.

SUPPLEMENTAL INFORMATION: The August 26, 1993 **Federal Register** indicated that the FHWA in cooperation with the California Department of Transportation (CALTRANS) would prepare an Environmental Impact Statement (SEIS) for the proposed State Route 86 expressway project in Riverside County.

The purpose and need of the project have remained the same and are defined as: the overall purpose of the project is to improve safety conditions and provide for efficient transportation of people, goods and services within and through Coachella Valley between the existing 4-lane expressway south of Oasis and Interstate 10. The need for the project is to reduce accidents to or below normal rates and to simultaneously provide for improved mobility of local, regional and international traffic.

Subsequent interdisciplinary studies and consultation with Federal, State, and local agencies to date indicate that an Environmental Assessment (EA) is the appropriate environmental document. Accordingly, the NOI/SEIS notice is hereby withdrawn. If it is determined that a public hearing is needed then a public notice will be issued with advertisements in local newspapers, regarding the time and place of the hearing.

Comments or questions concerning this proposed action and the EA should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 28, 1994.

Leonard E. Brown,

Chief, District Operations—C, Sacramento, California.

[FR Doc. 94–16595 Filed 7–7–94; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 30, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of The Public Debt (BPD)

OMB Number: 1535–0005.
Form Number: PD F 3253.
Type of Review: Extension.
Title: Exchange Application for U.S. Savings Bonds of Series HH.
Description: This form is used by owners of Series EE/E bonds or notes to request exchange for Series HH Savings Bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 60,000.
Estimated Burden Hours Per Response: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 39,960 hours.

OMB Number: 1535–0014.
Form Number: PD F 1025.
Type of Review: Extension.
Title: Application for Relief on Account of Loss, Theft or Destruction of United States Registered Securities.
Description: This form is needed and required by the Bureau of the Public Debt to obtain compensation for lost, stolen, or destroyed securities. It is generally used by parties that have purchased securities or the owner of registered securities when such securities are no longer in their possession.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 460 hours.

OMB Number: 1535–0015.
Form Number: PD F 1022.
Type of Review: Extension.
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of United States Bearer Securities (Organizations).
Description: This form is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchased, were holding in safekeeping/custody or are entitled to bearer securities and these securities are no longer in their possession.
Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response: 55 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0016.
Form Number: PD F 1022–1.
Type of Review: Extension.
Title: Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individual).
Description: This form is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchase, were given or entitled to bearer securities and these securities are no longer in their possession.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0016.

Form Number: PD F 1022–1.

Type of Review: Extension.

Title: Report/Application for Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individual).

Description: This form is needed and required by the Bureau in order to obtain compensation for lost, stolen, or destroyed bearer securities. It is usually executed by parties that purchase, were given or entitled to bearer securities and these securities are no longer in their possession.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 92 hours.

OMB Number: 1535–0098.

Form Number: PD F 3062–4.

Type of Review: Extension.

Title: Claim for Relief on Account of the Nonreceipt of United States Savings Bonds.

Description: This application is used by owner(s) to request substitute savings bond(s) in lieu of bond(s) not received.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Response: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 92 hours.

Clearance Officer: Vicki S. Ott (304) 480–6553. Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16496 Filed 7–7–94; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

June 30, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0123.

Form Number: IRS Form 1120, Schedule D (Form 1120), Schedule H (Form 1120), and Schedule PH (Form 1120).

Type of Review: Revision.

Titles: U.S. Corporation Income Tax Return (1120); Capital Gains and Losses (Schedule D); Section 280H Limitations for a Personal Service Corporation (PSC) (Schedule H); U.S. Personal Holding Company (PHC) Tax (Schedule PH).

Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 2,462,931.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120	71 hr., 16 min.	41 hr., 8 min.	72 hr., 2 min.	8 hr., 2 min.
1120–A	43 hr., 3 min.	23 hr., 44 min.	41 hr., 18 min.	4 hr., 34 min.
Sch. D	6 hr., 56 min.	3 hr., 31 min.	5 hr., 39 min.	32 min.
Sch. H	5 hr., 59 min.	35 min.	43 min.	0 min.
Sch. PH	15 hr., 19 min.	6 hr., 6 min.	8 hr., 29 min.	32 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 481,624,275 hours.

OMB Number: 1545–0195.

Form Number: IRS Form 5213.

Type of Review: Extension.

Title: Election to Postpone Determination as to Whether the Presumption That an Activity is Engaged in for Profit Applies.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 10,730.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Recordkeeping	7 minutes
Learning about the law or the form	5 minutes
Preparing the form	10 minutes
Copying, assembling, and sending the form to the IRS	20 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 7,511 hours.

OMB Number: 1545–0410.

Form Number: IRS Forms 6468 and 6469.

Type of Review: Extension.

Title: How To Prepare Form 6469, Tape Label For Form W–4 (6468); Tape Label For Form W–4 (6469).

Description: 26 USC 3402 requires all employers making payments of wages to deduct (withhold) tax upon such payments. Employers are further required under Regulation 31.3402(f)(2)–1(g) to submit certain withholding certificates (W–4) to IRS. Form 6469 (labels) and 6468 (instructions) are sent to employers who prefer to file this information on magnetic tape.

Respondents: State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 25,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 2,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7316, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–16497 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

Public Meetings in Boston and New York on Customs Automated Export System

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meetings.

SUMMARY: This notice announces the location and dates of public meetings to be held in Boston, MA, and New York, NY, on the development of the Automated Export System (AES). Dates and locations of further meetings on this subject will be scheduled and announced in a subsequent notice. These meetings are being held to: (1) Give Customs managers an opportunity to provide the public with information related to the development of AES and (2) give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. A notice published by Customs in the **Federal Register** on June 13, 1994 (59 FR 30383) announced that the first of these meetings would be held in Washington, D.C. on July 8, 1994. Customs is now announcing that AES meetings will be held in Boston, Massachusetts, on July 19, 1994 and in New York City on July 21, 1994. Those planning to attend a meeting are requested to so notify Customs in the city where the meeting will be held in advance.

DATES: Boston, MA., July 19, 1994, commencing at 2:00 p.m.; New York, NY, July 21, 1994, commencing at 9:00 a.m.

ADDRESSES:

Boston, MA; Thomas P. "Tip" O'Neil Federal Building Auditorium, 10 Causeway Street, Boston, MA 02222.

New York, NY; 6 World Trade Center, Room 770, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT:

Boston Meeting: James Knight, (617) 565–6242; Pre-registration Fax: (617) 565–6662.

New York Meeting: Susan Mitchell, (212) 466–4494; Pre-registration Fax: (212) 466–4507.

General AES questions: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, NW, Room 7331, Washington, DC, 20229, (202) 927–0280.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the **Federal Register** on June 13, 1994, (59 FR 30383) Customs announced its intention of developing an Automated Export System (AES) and informed the public that a series of meetings would be held around the country regarding the AES. That notice provided information on the first such meeting which was scheduled in Washington, DC. This notice is being issued to inform the public of the date and time of meetings which will be held in Boston, MA and New York, NY.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public meetings for the purpose of: (1) Giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future. After this presentation, the floor will be open to all attendees for general informal discussion of the AES program.

In this document, Customs is announcing the following public meetings on AES:

1. Boston, Massachusetts—July 19, 1994, commencing at 2:00 p.m., Thomas P. "Tip" O'Neil Federal Building Auditorium 10 Causeway Street, Boston, MA 02222. Point of Contact: Mr. James Knight (617) 565–6242, Pre-registration Fax Number (617) 565–6662
2. New York, New York—July 21, 1994, commencing at 9:00 a.m., 6 World Trade Center, Room 770, New York, NY 10048. Point of Contact: Ms. Susan Mitchell (212) 466–4494, Pre-registration Fax Number (212) 466–4507

In order to ensure that overcrowding does not result, persons planning to attend a meeting are requested to preregister by contacting the individual identified as the contact person for the city where they plan on attending.

Additional public meetings on AES are planned for the following locations: Houston, Texas; New Orleans, Louisiana; Seattle, Washington; Los Angeles, California; and Portland, Oregon. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been established.

Dated: July 5, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–16545 Filed 7–7–94; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Tax on Certain Imported Substances (Di-2 Ethyl Hexyl Phthalate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include di-2 ethyl hexyl phthalate.

EFFECTIVE DATE: This modification is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether

such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that di-2 ethyl hexyl phthalate should be added to the list of taxable substances in section 4672(a)(3), effective October 1, 1993.

The rate of tax prescribed for di-2 ethyl hexyl phthalate, under section 4671(b)(3), is $3.42 per ton. This is based upon a conversion factor for xylene of 0.272 and a conversion factor for propylene of 0.431.

The petitioner is Aristech Chemical Corporation, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination:

HTS number: 2917.32.00.00

CAS number: 117–81–7

Di-2 ethyl hexyl phthalate is derived from the taxable chemicals xylene and propylene. Di-2 ethyl hexyl phthalate is a liquid produced predominantly by acid catalyzed esterification of phthalic anhydride (derived from o-xylene) and 2-ethyl hexanol (derived from propylene).

The stoichiometric material consumption formula for di-2 ethyl hexyl phthalate is:

C_8H_{10} (xylene)+4 C_3H_6 (propylene)+3 O_2 (oxygen)+4 CO (carbon monoxide)+8 H_2 (hydrogen) → $C_{24}H_{38}O_4$ (di-2 ethyl hexyl phthalate)+6 H_2O (water)

Di-2 ethyl hexyl phthalate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 55 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16482 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Polycarbonate); Notice of Determination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include polycarbonate.

EFFECTIVE DATE: This modification is effective July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that polycarbonate should be added to the list of taxable substances in section 4672(a)(3), effective July 1, 1993.

The rate of tax prescribed for polycarbonate, under section 4671(b)(3), is $4.91 per ton. This is based upon a conversion factor for methane of 0.083, a conversion factor for chlorine of 0.276, a conversion factor for benzene of 0.614, a conversion factor for propylene of 0.165, and a conversion factor for sodium hydroxide of 0.315.

The petitioner is Miles Inc., a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 3907.40.00.00

CAS number: 127133–67–9

Polycarbonate is derived from the taxable chemicals methane, chlorine, benzene, propylene, and sodium hydroxide. Polycarbonate is a solid produced predominantly by the interfacial polycondensation reaction of the sodium salt solution of bisphenol-A in an aqueous phase and phosgene in an organic phase.

The stoichiometric material consumption formula for polycarbonate is:

CH_4 (methane)+$C1_2$ (chlorine)+2 C_6H_6 (benzene)+C_3H_6 (propylene)+2 NaOH (sodium hydroxide)+3 O_2 (oxygen) → $O(C_6H_4)C(CH_3)_2(C_6H_4)OCO$ (polycarbonate)+5 H_2O (water)+2 NaCl (sodium chloride)

Polycarbonate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 79.1 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16483 Filed 7–7–94; 8:45 am]

BILLING CODE 4830–01–U

Tax on Certain Imported Substances (Sodium Nitriolotriacetate Monohydrate, et al.); Notice of Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice announces determinations, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include sodium nitriolotriacetate monohydrate, diphenyl oxide, and tetrachlorophthalic anhydride.

EFFECTIVE DATE: This modification is effective April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Tyrone J. Montague, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether such substance should be listed as a taxable substance. The Secretary shall add such substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce such substance. This determination is to be made on the basis

of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On June 30, 1994, the Secretary determined that sodium nitriolotriacetate monohydrate, diphenyl oxide, and tetrachlorophthalic anhydride should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1993.

The rate of tax prescribed for sodium nitriolotriacetate monohydrate, under section 4671(b)(3), is $2.45 per ton. This is based upon a conversion factor for methane of 0.24, a conversion factor for sodium hydroxide of 0.52, a conversion factor for propylene of 0.25, and a conversion factor for ammonia of 0.10.

The rate of tax prescribed for diphenyl oxide, under section 4671(b)(3), is $8.13 per ton. This is based upon a conversion factor for benzene of 1.05 and a conversion factor for propylene of 0.62.

The rate of tax prescribed for tetrachlorophthalic anhydride, under section 4671(b)(3), is $5.87 per ton. This is based upon a conversion factor for chlorine of 1.22 and a conversion factor for xylene of 0.53.

The petitioner is Monsanto Company, a manufacturer and exporter of these substances. No material comments were received on these petitions. The following information is the basis for the determinations.

Sodium nitriolotriacetate monohydrate

HTS number: 2922.49.60.00
CAS number: 18662–53–8

Sodium nitriolotriacetate monohydrate is derived from the taxable chemicals methane, sodium hydroxide, propylene, and ammonia. Sodium nitriolotriacetate monohydrate is a solid produced predominantly by the reaction of formaldehyde with hydrogen cyanide in the presence of a catalyst, which is then further reacted with sodium hydroxide to produce sodium nitriolotriacetate monohydrate.

The stoichiometric material consumption formula for sodium nitriolotriacetate monohydrate is:

$3\ CH_4$ (methane)+3 NaOH (sodium hydroxide)+C_3H_6 (propylene)+NH_3 (ammonia)+4.5 O_2 (oxygen) → $N(CH_2COONa)_3H_2O$ (sodium nitriolotriacetate monohydrate)+5 H_2O (water)+3 H_2 (hydrogen)

Sodium nitriolotriacetate monohydrate has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 61.1 percent by weight of the materials used in its production.

Diphenyl oxide

HTS number: 2909.30.00.00
CAS number: 101–84–8

Diphenyl oxide is derived from the taxable chemicals benzene and propylene. Diphenyl oxide is a solid produced predominantly by the catalytic condensation of phenol.

The stoichiometric material consumption formula for diphenyl oxide is:

2 C_6H_6 (benzene)+2 C_3H_6 (propylene)+2 O_2 (oxygen) → $C_{12}H_{10}O$ (diphenyl oxide)+2 C_3H_6O (acetone)+H_2O (water)

Diphenyl oxide has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 78.9 percent by weight of the materials used in its production.

Tetrachlorophthalic anhydride

HTS number: 2916.19.00.00
CAS number: 117–08–8

Tetrachlorophthalic anhydride is derived from the taxable chemicals chlorine and xylene. Tetrachlorophthalic anhydride is a solid produced predominantly by the high temperature reaction of phthalic anhydride with chlorine. Phthalic anhydride is produced by the reaction of o-xylene with air in the presence of a catalyst.

The stoichiometric material consumption formula for tetrachlorophthalic anhydride is:

4 Cl_2 (chlorine)+C_8H_{10} (xylene)+3 O_2 (oxygen) → $C_8Cl_4O_3$ (tetrachlorophthalic anhydride)+3 H_2O (water) + 4 HCl (hydrogen chloride)

Tetrachlorophthalic anhydride has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 80.0 percent by weight of the materials used in its production.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–16484 Filed 7–7–94; 8:45 am]
BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 59, No. 130
Friday, July 8, 1994

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).

ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:00 a.m., Tuesday, July 12, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, financial and internal personnel issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: July 5, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 94–16681 Filed 7–6–94; 11:15 am]

BILLING CODE 8720–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 1:00 p.m., Wednesday, July 13, 1994.

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: July 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16645 Filed 7–6–94; 9:12 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 34465, July 5, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Thursday, July 7, 1994.

CHANGES IN THE MEETING: Addition of the following closed item to the meeting: Proposed response to the Department of the Treasury's Electronic Federal Tax Payment System Invitation for Expressions of Interest.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16699 Filed 7–6–94; 2:36 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Thursday, July 14, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 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: July 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–16700 Filed 7–6–94; 2:36 pm]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on July 14–15, 1994. The meeting will commence at 6:00 p.m. on July 14, 1994, and at 9:00 a.m. on July 15, 1994.

PLACE: Legal Services Corporation, 750 First Street, N.E., 10th Floor, Office of Program Services, Conference Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed pursuant to a majority vote of the Board of Directors, said vote to be solicited prior to the meeting. In this regard, contingent upon receipt of the aforementioned majority vote, the Committee will consider the recommendation of the Office of the Inspector General regarding selection of an audit firm to conduct the Corporation's annual financial audit for fiscal years 1994, 1995, and 1996. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 17, 1994 Meeting.
3. Consideration and Review of Budget and Expenses for the Period Ending May 31, 1994.
4. Consideration and Development of Plans to Utilize Uncommitted Funds.
5. Discussion of the Distribution of Fiscal Year 1995 Consolidated Operating Budget Funds Within Line Items.
6. Preliminary Discussion Regarding the Fiscal Year 1996 Budget Mark.

CLOSED SESSION:

7. Consideration of Recommendation of the Office of the Inspector General Regarding Selection of An Accounting Firm to Conduct the Corporation's Annual Audit for the Fiscal Years 1994–1996.

OPEN SESSION: (Resumed)

8. Selection of An Accounting Firm to Conduct the Corporation's Annual Audit for the Fiscal Years 1994–1996.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16646 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on July 15, 1994. The meeting will commence at 9:00 a.m. It is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, Washington, DC, 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that portion of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on June 19, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, DC, 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Approval of Minutes of June 19, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
4. Consider and Act on Internal Personnel and Operational Matters.

OPEN SESSION: (Resumed)

5. Approval of Minutes of June 19–20, 1994 Meeting.
6. Consideration of Update on the Reauthorization Legislative Process.
7. Consider and Act on Proposed Changes to Part 1608 of the Corporation's Regulations.
8. Consider and Act on Proposed Changes to Part 1621 of the Corporation's Regulations.
9. Consider and Act on Proposed Changes to Part 1611 of the Corporation's Regulations.

OPEN SESSION: (Continued)

10. Public Comment.
11. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: PATRICIA BATIE, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16647 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on July 15, 1994. The meeting will commence at 1:00 p.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 17, 1994 Meeting.
3. Presentation by Randi Roth, Farmers' Legal Action Group.
4. Report and Recommendation to the Committee Regarding Monitoring, Evaluation, and Support Functions.
5. Discussion of Issues Related to Program Improvement: Technical Assistance, Training, and Support.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16648 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on July 16, 1994. The meeting will commence at 8:00 a.m. The substantive, open portion of the meeting (i.e., deliberation of agenda item 10.) will commence at approximately 10:30 a.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote to approve draft minutes of executive sessions held on November 8, 1993; December 6, 1993; April 15, 1994; May 13, 1994, and June 18, 1994. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), and (7)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Consider and Act on Draft Minutes of the November 8, 1993 Executive Session.
3. Consider and Act on Draft Minutes of the December 6, 1993 Executive Session.
4. Consider and Act on Draft Minutes of the April 16, 1994 Executive Session.
5. Consider and Act on Draft Minutes of the May 13, 1994 Executive Session.
6. Consider and Act on Draft Minutes of the June 18, 1994 Executive Session.
7. Consultation by Board with the President on Internal Personnel and Operational Matters.
   a. Consideration of the Inspector General's Access to Corporation Documents.
8. Consider and Act on Internal Personnel and Operational Matters.
9. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.

OPEN SESSION: (Resumed)

10. Approval of Minutes of June 18, 1994 Meeting.
11. Chairman's and Members' Reports.
12. President's Report.
13. Presentation by Representatives of the Fundraising Project.
14. Presentation by Linda Rexer, President, National Association of IOLTA Programs.
15. Consideration of Issues Related to the Allocation and Distribution of the Corporation's Fiscal Year 1995 Appropriation.
16. Consider and Act on Proposed Changes to the Corporation's Bylaws.
17. Consider and Act on Operations and Regulations Committee Report.
18. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
19. Consider and Act on Audit and Appropriations Committee Report.
    a. Selection of An Accounting Firm to Conduct the Corporation's Financial Audit for the Fiscal Years 1994–1996.
20. Inspector General's Report.
21. Consideration of the Organization Responsibility for Oversight of Grantee Annual Financial Audits.

OPEN SESSION:

22. Public Comment.
23. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: July 5, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–16649 Filed 7–6–94; 9:17 am]

BILLING CODE 7050–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Tuesday, July 12, 1994.

PLACE: 6th Floor, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Buffalo Crushed Stone Co.*, Docket Nos. YORK 92–117–M, etc. (Issues include whether the judge correctly found that Buffalo Crushed Stone Company's violations of 30 C.F.R. § 56.9301 were not significant and substantial.)

2. *Peabody Coal Co.*, Docket No. LAKE 93–23. (Issues include whether the judge correctly concluded that Peabody Coal Company violated 30 C.F.R. § 75.316 (1991).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–16730 Filed 7–6–94; 8:45 am]

BILLING CODE 6735–01–M

federal register

Friday
July 8, 1994

Part II

Department of Energy

Office of Nonproliferation and National Security

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material; Final Rule

DEPARTMENT OF ENERGY

Office of Nonproliferation and National Security

10 CFR Part 710

RIN 1992–AA15

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Office of Nonproliferation and National Security, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends its regulations regarding the criteria and process used to review determinations of eligibility for access to classified matter or special nuclear material. The purpose of the rulemaking is to clarify the criteria used to determine access authorization eligibility and implement the Department's decision to reassign personnel security Hearing Officer and Review functions, formerly performed by contractors, to the DOE's Office of Hearings and Appeals.

DATES: These rules become effective August 8, 1994. Stakeholder meetings with Office of Hearings and Appeals and Office of Safeguards and Security staff to discuss procedural and logistical matters that will arise under these regulations will be held in Oak Ridge, Tennessee, on July 12, 1994, and in Albuquerque, New Mexico, on July 19, 1994. These meetings will be open to the public.

FOR FURTHER INFORMATION CONTACT:

A. Barry Dalinsky, Policy, Standards and Analysis Division, Office of Safeguards and Security, Office of Security Affairs, U.S. Department of Energy, Washington, DC 20585, (301) 903–5010

Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094; Thomas.Mann@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Summary of regulations
III. Discussion of comments received on proposed regulations
A. General analytical comments
B. Comments on specific sections of the proposed regulations
IV. Procedural requirements
V. Conclusion

I. Introduction

The DOE has established procedures that govern the resolution of questions concerning the eligibility of individuals who are employed by or applicants for employment with DOE contractors, agents, and DOE access permittees; individuals who are DOE employees or applicants for DOE employment; and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. (This access authorization is commonly referred to as a security clearance.) These procedures are codified in Subpart A of 10 CFR Part 710. Subpart A provides an opportunity for hearing and administrative review in cases when it is determined that questions concerning an individual's eligibility for access authorization cannot be favorably resolved by interview or other action.

For a number of years, the DOE has contracted for the services of Hearing Officers and Personnel Security Review Examiners to implement the regulations. The DOE has decided to use federal employees to perform those functions. The functions have been assigned to the DOE's Office of Hearings and Appeals (OHA), which is a DOE Headquarters office with a staff of professional Hearing Officers experienced in the conduct of adjudicative proceedings. Today's rulemaking implements this change. Concurrent with this change, DOE is making other procedural and substantive changes to the regulations. Each change is discussed below.

A Notice of Proposed Rulemaking was published in the Federal Register on December 8, 1993. (58 FR 64509, December 8, 1993). Eighteen comments were received. The issues raised in the comments have been thoroughly considered. As a result of suggestions made in the comments, a number of changes have been made in the proposed regulations. The comments also reflected some confusion in the timing of events that occur under Subpart A. A number of sections in Subpart A have been reorganized to alleviate any ambiguities. The comments are discussed below.

II. Summary of Regulations

As noted above, the regulations being promulgated today utilize Hearing Officers from the OHA in the administrative review process set forth in this subpart. The regulations also replace the review conducted by Personnel Security Review Examiners with a review by the OHA Director. The OHA Director will review the record in the matter, seek any additional information necessary, and issue an opinion. The OHA Director's opinion and the administrative record in the case will be transmitted to the Director of DOE's Office of Security Affairs (SA), who will make the final determination regarding the individual's access authorization.

Also, there are nomenclature changes to conform the regulations to the current DOE organization, and the applicable procedures have been streamlined. Under the previous regulations, only the SA Director had the authority to make the final determination in those cases where derogatory information was received which raised a question concerning the individual's eligibility for DOE access authorization. These regulations delegate the authority to make the final determination on eligibility for DOE access authorization to the local managers of its field offices in those cases where an individual whose request for access authorization is being processed under this subpart does not request a hearing. In all other cases, the SA Director will continue to make the final determination regarding eligibility for DOE access authorization.

The notice being published today also establishes new procedures for processing cases: in which the individual has been arrested for or convicted of a crime punishable by imprisonment for six (6) months or longer (§ 710.4(b)); in which sufficient information about the individual's background cannot be obtained to meet the investigative requirements for the access authorization requested (§ 710.4(c)); in which questions involving an individual's national allegiance are presented (§ 710.4(d)); and in which the individual fails to cooperate in the investigative or administrative review process (§ 710.4(e) and § 710.6). The criteria under § 710.11 in the current regulations have been renumbered as § 710.8, and have been modified. All changes from what was proposed last December are explained below.

Two ancillary issues involve ongoing cases already in process and the publication of OHA opinions. Comments were solicited on both of these issues. The DOE will apply the regulations being promulgated today to cases in which a notification letter is issued on or after the effective date of these rules. The DOE will continue to apply the old regulations to cases in which a notification letter was issued prior to the effective date of the new rules. Finally, the Office of Hearings and Appeals will publish opinions of Hearing Officers and the OHA Director in a commercially available, loose-leaf service in which it routinely publishes its decisions. Appropriate deletions will be made to protect the privacy of the individuals involved. See generally Freedom of Information Act, 552 U.S.C.

552, as implemented by DOE in 10 CFR Part 1004.

III. Discussion of Comments Received on Proposed Regulations

A. General Analytical Comments

Transition for Pending Cases

All cases in which the notification letter has been issued before the effective date of the new rules will be conducted under the old rules. All cases in which the notification letter is issued on or after the effective date of the new rules will be conducted under the new rules. This recognizes the fact that, with the notification letter, a copy of 10 CFR Part 710, Subpart A, is provided to the individual.

Publication of Opinions

A couple of commentors strongly supported the publication of opinions by OHA since they thought it would bring regularity to the process. However, one commentor was concerned about maintaining the privacy of individuals involved. Names, other personal identifiers, and other confidential information will be deleted from published opinions when necessary to protect individual privacy under the Freedom of Information Act. It is not necessary to specify in the regulations that opinions are going to be published. OHA already has a reporter system for its other cases, and Hearing Officer opinions and review opinions in administrative review cases will be published in that reporter, the Federal Energy Guidelines.

Source of Hearings Officers

Several commentors questioned the wisdom of changing from Hearing Officers that are obtained on as-needed contracts to Hearing Officers from the DOE's Office of Hearings and Appeals. Some of those commentors speculate that OHA Hearings Officers will not be as objective as contractor Hearing Officers because they are full time employees of the DOE. The Office of Management and Budget and the General Accounting Office have advised the Secretary of Energy of their view that hearing and review functions in the administrative review of DOE access authorization eligibility are inherently governmental functions that should not be contracted out. Noting the quasi-judicial nature of hearing and review functions under this subpart, they referred the Secretary to OMB Circular No. A–76, ¶ 6e, which specifically includes "judicial functions" as an example of an act of governing that should not be contracted out. It is for this reason that the Department agreed to federalize these functions.

There is a presumption of regularity for administrative decisions issued by federal officials, and the public can rest assured that administrative review by the OHA will not adversely affect the appeal rights of individuals. The OHA has a reputation for professionalism and independent, high quality decision-making. It is a staff office that reports directly to the Office of the Secretary, and it is separate from the Office of Security Affairs. The OHA has a history of affording individuals an unbiased forum in which every relevant argument can be heard. This certainly will continue to be the case as the OHA assumes its duties in the personnel security administrative review process.

Suggested Additions to Regulations

A number of commentors suggested that additional provisions be incorporated into the administrative review regulations. Two commentors suggested a provision that would prohibit DOE contractors from making employment decisions based upon the security implications of the results of their pre-employment screening of job applicants. This type of provision is unnecessary. By law, only the Department of Energy makes determinations on requests for DOE access authorization. It is DOE policy that contractors are to establish job employment suitability of prospective employees prior to and separate from making a request to DOE for access authorization.

Another commentor suggested a new provision that would state that sexual orientation or preference may not be used as a basis for or negative factor in determining a person's eligibility for access authorization. Under the criteria that exist now and will continue to exist under these regulations, sexual orientation or preference, in and of itself, is not considered a negative factor in determining a person's eligibility for access authorization.

One commentor suggested that the DOE add a regulation that would permit an appeal in these cases to the United States District Courts. It is beyond the scope of the present rulemaking process to incorporate a provision for judicial review in the federal courts of decisions made in DOE administrative review proceedings under this Subpart. Only Congress, acting by statute, has that type of legislative prerogative.

One commentor suggested that the regulations should provide the right to a timely hearing within a specified period of time after an access authorization has been suspended. The proposed regulations do provide for a timely hearing within a specified period of time after access authorization is suspended. The Manager, within 10 days of suspension, must forward the case to the Director, Office of Safeguards and Security (OSS) in Washington, DC, who, within 30 days, must either reinstate access authorization or authorize administrative review. When administrative review is authorized, the Manager must deliver a notification letter to the individual within 30 days. This is usually done in person. Within 20 days after receiving the notification letter, the individual may request a hearing. The Manager must transmit that request on a timely basis to the OHA; the OHA must appoint a Hearing Officer as soon as practicable, and a hearing must be held within 90 days from the date when the individual's request is received by the OHA. Unfortunately, some of these time limits appeared in § 710.7(c)(2) in the "General Provisions" part of the proposed regulations, and others appeared in proposed §§ 710.21, 710.22, and 710.26 in the "Procedures" part. In the final rule, certain provisions in the proposed §§ 710.7(c) and 710.21 have been reorganized and renumbered to state more clearly the time limits that govern the sequence of actions that must be taken by DOE officials before a case is referred to the OHA for a hearing.

One commentor suggested that the regulations provide the right to seek a stay of actions taken under these regulations. The DOE declines to establish procedures for requesting stays of access authorization actions under the same legal standards that govern stays before the Merit Systems Protection Board. Overriding national security concerns do not permit generally applicable federal personnel practices to be substituted for DOE access authorization procedures, which are mandated by Sections 141, 145 and 161 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2161, 2165 and 2201 (reprinted in Appendix A), and Executive Order 10450. Further, it should be noted that most cases involve access authorizations for employees of DOE contractors, not federal employees.

A number of comments dealt with alleged irregularities in the access authorization process and perceptions that actions are or may be taken under these regulations in reprisal for making disclosures protected by law. One commentor suggested that the DOE provide a right for an employee to introduce an affirmative defense challenging alleged irregularities in the process. This change is unnecessary. No express provision in the rules is

required to enable individuals to assert affirmative defenses based on the alleged misconduct of DOE agents or officials during any stage of the process for determining eligibility for access authorization. Specific statutory and regulatory remedies already exist to protect "whistleblowers." The Secretary of Energy is committed to the policy that both DOE Federal and contractor employees must be free to voice their concerns and opinions without fear of reprisal. She has stated that there would be "zero tolerance" for reprisal against whistleblowers. Some whistleblowers have alleged that the administrative review process has been used against them in reprisal for disclosures relating to health and safety concerns, environmental matters, as well as waste, fraud, abuse and mismanagement. Whistleblowing activities have never constituted legitimate grounds for suspension, revocation or denial of a DOE access authorization, and a new provision has been added at § 710.4(b), unambiguously stating the Department's "zero tolerance" policy for reprisals. In addition to the new hearing and review functions that would be assigned to it under this proposed rule, the OHA is responsible for conducting hearings and issuing determinations in whistleblower cases brought under DOE's Contractor Employee Protection Program, codified in 10 CFR Part 708. Since it is adjudicating both types of claims, the OHA is familiar with the applicable rules and will be sensitive to any alleged abuses of the administrative review process in cases involving whistleblowers.

One commentor suggested providing a right to reimbursement of attorneys fees and costs in cases where it is shown that the suspension of access authorization was taken in reprisal for making disclosures protected by law. This change is also unnecessary. Both contractor employee and federal employee whistleblowers who claim to be victims of reprisals already have the right to reimbursement of legal fees under existing DOE regulations, 10 CFR Part 708 (contractor employees) and the Whistleblower Protection Act of 1989 (WPA) (federal employees).

Another commentor suggested review of personnel security actions by the Office of Contractor Employee Protection if an action involves an alleged whistleblower. In addition, this commentor urged that sanctions be imposed against managers who abuse the process for determining eligibility for access authorization. As noted above, DOE is sensitive to the potential for abuses of the administrative review process where whistleblowers are involved. In response to these comments, the new § 710.4(b) expressly authorizes disciplinary action against DOE officers or employees who violate the policy against reprisals for protected whistleblowing activities. In addition, the federal Whistleblower Protection Act provides for sanctions against DOE managers who are shown to have acted against government employees in reprisal for making protected disclosures. Training is being given to security adjudicators to raise their level of sensitivity to this issue. An access authorization case in which reprisal was claimed was recently referred to the DOE Office of Contractor Employee Protection. However, any change in the DOE Contractor Employee Protection Program regulations at Part 708 is beyond the scope of the present rulemaking to revise Subpart A of Part 710.

One commentor suggested a provision that would prohibit the characterization of an individual's invocation of his rights under the Fifth Amendment to the United States Constitution as derogatory information. There is nothing in these regulations that bars an individual from invoking the privilege against self-incrimination to avoid testifying in a DOE personnel security proceeding. However, the invocation of that privilege could be construed as a refusal to cooperate with the process, and therefore constitute a basis for suspension, revocation or denial of an individual's DOE access authorization. In this context, DOE must strike a balance between the protection of individual rights and the overriding national security concerns spelled out in Sections 141, 145 and 161 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2161, 2165 and 2201, Executive Orders 10450 and 12356, and other orders on the protection of classified information and special nuclear material.

Finally, one commentor suggested a provision prohibiting coercion and threatening of witnesses and other misconduct by DOE Counsel and providing for exclusion of any evidence obtained in such manner. Misconduct by DOE Counsel, such as coercion and threatening of witnesses, is against agency policy and will not be tolerated. However, there is no indication of the existence of a systemic problem of this nature, and a regulation addressing this issue is not appropriate. Any alleged instances of misconduct should be brought to the attention of the Chief Counsel in the appropriate field office, the General Counsel, the Office of Safeguards and Security (OSS) Director in Washington, DC, and the OHA Hearing Officer.

Other General Comments

A number of commentors opposed granting the authority to suspend access authorization to the local Directors of Security. At present, this authority is exercised by the Manager of an Operations Office. After considering these comments, DOE has decided not to make the proposed change. Therefore, under the final rule, the Manager of an Operations Office will retain the authority to suspend an individual's access authorization when it is determined that a security concern exists that cannot be favorably resolved by interview or other action. As noted above, suspension of an individual's access authorization will result in the referral of the matter to the OSS Director in Washington, DC. The OSS Director must either reinstate the access authorization, or trigger the administrative review process so that the question regarding the individual's access authorization can be resolved as quickly as possible. DOE recognizes that the order of events described in § 710.7(c) and § 710.21 of the proposed regulations was not clear. Both of these provisions involve actions that occur before administrative review. As a result, § 710.21, "Suspension of Access Authorization" did not belong in the next part of the regulations entitled "Procedures." To make this clear in the final rules, the "Procedures" section is renamed "Administrative Review." The proposed § 710.7(c) is moved and renumbered as § 710.9, entitled "Action on Derogatory Information," and the proposed § 710.21 is moved and renumbered as § 710.10. The rules in the "Procedures" and "Miscellaneous" sections are renumbered accordingly, with the proposed § 710.22 becoming § 710.21 in the final rules, and so forth through the newly renumbered § 710.34, "Time Frames."

Another commentor suggests that the "cold war" aspects of the regulations should be dropped. In response to this comment, DOE is removing the phrase "or in satellites or occupied areas thereof" from the criteria in § 710.8(e), since that language specifically referred to the former Soviet Union.

Another commentor is concerned that dual citizenship will be an automatic bar to access authorization under these regulations. The question of national allegiance for individuals who exercise dual citizenship has always been a concern in the DOE access authorization process, and the purpose of this change is to state that policy explicitly. However, dual citizenship has not been

and will not necessarily be a bar to obtaining access authorization. Accordingly, § 710.4(d) has been amended to clarify that our principal concerns are whether an individual is exercising allegiance to a nation other than the United States, and if so, whether granting access authorization may constitute an unacceptable national security risk. This provision in the new rules will not trigger review of an existing access authorization of a person holding dual citizenship.

Under the proposed regulations, members of the OHA staff would be assigned by the OHA Director to act as Hearing Officers, and the opinions they issue would be subject to review by the OHA Director. Several commentors suggested that the DOE should separate the Hearing Officer function from the review function. These commentors asserted that "the same body of persons will be making both decisions, and not many board members are able to admit error." These fears are based on a lack of understanding of the manner in which the OHA is organized, and the way in which the administrative review functions under Part 710 will be separated. The OHA consists of several different divisions: the Office of the Director, the Office of Management Operations, the Office of Legal Analysis, the Office of Financial Analysis, the Office of Economic Analysis, and the Board of Contract Appeals. The Hearing Officer function will be assigned on a case-by-case basis to attorneys and senior management officials in the Office of the Director and the Offices of Legal, Financial and Economic Analysis, who will be personally responsible for the initial opinions. When an initial Hearing Officer opinion is issued by a member of one OHA office, staff work on any review of that opinion under the auspices of the OHA Director will be assigned to a different OHA office. The OHA Director will be personally responsible for review opinions.

These organizational separations of functions will be more than adequate to protect the due process and other rights of individuals. Similar separations of functions have been successfully used by the OHA in other types of proceedings for the past 19 years. For example, appeals of initial determinations made by OHA Office Directors under the Freedom of Information Act are assigned to the staff of a different OHA Office and appeal decisions are made by the OHA Director. In addition, under 10 CFR Part 205, Subpart D, objections to proposed exception decisions issued by the staff of one OHA Office are assigned to a different staff, and the final decision is signed by the OHA Director. There has never been any reluctance to reverse or modify a prior decision made by another office where such action is appropriate.

One commentor asserts that DOE has shown that it cannot properly administer this program and it should therefore be removed and placed in a separate organization with oversight from Congress. However, this comment contains no factual basis for its claim, and it is belied by over 40 years of experience by DOE and its predecessors in managing a process that safeguards national security concerns while preserving traditional American concepts of justice and fairness.

Another commentor suggests that the regulations should prohibit the use of contractors to conduct any aspect of access authorization investigations or reviews. As noted above, one of the principal reasons for revising Part 710 is to federalize a number of functions formerly performed by contractors. This transition to Hearing Officer and review functions by federal employees will bring DOE into full compliance with the requirements of OMB Circular No. A–76. Nevertheless, some predecisional functions in the initial phase of the access authorization adjudication process are, and will continue to be, performed by contractors. This is a resource issue, driven by budgetary concerns, and the DOE is not at liberty to change it at this time.

The last general comment suggests that the DOE issue a policy statement implementing the federal "Anti-Gag Law," Aug. 24, 1912, Ch. 389, Section 6, 37 Stat. 555. This law applies to removal of persons in the civil service, and provides that they shall be given notice of the charges against them and an opportunity to answer. The Anti-Gag Law further provides that a person's "right to petition Congress shall not be interfered with." Both of these protections are already afforded to individuals in the DOE access authorization process. The right to petition Congress is protected by the DOE Contractor Employee Whistleblower Program in 10 CFR Part 708, and by the federal Whistleblower Protection Act.

B. Comments on Specific Sections of the Proposed Regulations

The identifiers below reference the section or paragraph identifier in the proposed regulations published in the Notice of Proposed Rulemaking. They do not in all cases reflect the section or paragraph identifier in the final rule because some of the sections and paragraphs have been reorganized in the final rule.

Section 710.1(a). A commentor pointed out that there is no definition for the term "national security information." A definition of that term has been added.

Section 710.4(b). One commentor suggested that a felony conviction should not preclude the approval of access authorization for an individual's entire life. The DOE agrees, and if the section is read carefully, its meaning should become clear.

710.4(c). One commentor suggested that this provision in the proposed regulations was unclear. DOE agrees, and this paragraph has been rewritten to better express its meaning.

710.4(d). A couple of commentors were concerned that this paragraph would prevent a person who holds dual citizenship from obtaining access authorization. This is not intended, and the paragraph has been rewritten to make it clearer.

Section 710.5. One commentor noted that OHA Hearing Officers are not required to be attorneys. Most of those persons are attorneys, but the group also includes some senior OHA management officials who, while not attorneys, have extensive experience in conducting hearings, assembling the record, and writing decisions in adjudicative proceedings. The language in the final rule has been changed so this is clearer.

Two commentors suggested that it be clear that DOE Counsel need not possess an access authorization. DOE Counsel may or may not require access authorization, depending on whether classified information is involved in a case. Past experience shows that in the great majority of administrative review cases, access authorization will not be necessary for DOE Counsel.

Section 710.6. This section generated a large number of comments. Most of the commentors who discussed this section asserted that they believed that the section was coercive in spirit. A number of commentors thought that the term "administrative termination" was vague and needs to be described. This section is designed to give notice to people seeking access authorization that they have an obligation to be honest, forthright, and to answer all questions that the DOE deems to be pertinent to the investigation. This type of cooperation may be essential in obtaining copies of medical or other typically confidential records. However, the DOE is mindful of the possibility that there might be disputes over whether the termination or suspension of further processing is appropriate in a given situation. The section has been

rewritten to allow the individual to file an appeal of such a decision under this section. The appeal must be filed with the Director, Office of Safeguards and Security, at DOE Headquarters. The Director will investigate any claims made and decide within 30 calendar days whether the action was appropriate. If he or she determines that the action was inappropriate, the Director shall direct that the individual continue to be processed for access authorization or that access authorization for the individual be reinstated.

Section 710.7(a). A number of commentors suggested that certain terms used in these paragraphs (such as "common-sense judgment," "seriousness," and "maturity") should be specifically defined. DOE does not agree. These terms do not lend themselves to precise definitions. Moreover, the same basic terminology has been used successfully for over 40 years to describe the type of analysis used to adjudicate requests for DOE access authorization. That language is necessary to impart the degree of flexibility needed to protect both the individuals involved and the national security.

710.7(b). One commentor said that DOE should be required to state the basis for a negative determination on a request for access authorization, and make that determination a part of the administrative record. As noted above, those actions are already required, as stated in the later sections on suspension and notification. To clarify the suspension and notification process, the rule governing suspension has been codified in a new § 710.10, and the notification rule has been codified as § 710.21 in the part on "Administrative Review."

710.7(c)(1). A commentor challenged the constitutionality of these paragraphs in the proposed rule because they do not contain an exhaustive list of all types of derogatory information. This particular language is required by Executive Order 10450, § 8(a), and it provides the flexibility needed to administer the program in a manner consistent with national security concerns.

710.7(d). In response to a comment, this regulation in the final rule has been revised to specify that all DOE decision-makers must apply the criteria in this fashion. It has been renumbered as § 710.7(c) in the final rule.

Section 710.8(a) through (d). These criteria are prescribed in Executive Order 10450 and have been in use for more than 40 years. Since they must cover a wide variety of different situations, the terms by their very nature must be broad enough to provide the flexibility needed for the program. It is important to note that in some cases, national security concerns may prevent certain individuals who choose to exercise First Amendment rights from receiving DOE access authorization. This does not violate the Constitution, as one commentor suggests, since no one has a right to DOE access authorization.

710.8(e). One commentor suggested that there is no rational basis to suggest that persons who have relatives living in countries whose interests are inimical to the United States should be denied DOE access authorizations. There is an obvious rational basis for this paragraph, which focuses, among other things, on the vulnerability of an individual to coercion. Although having relatives living in those countries is a security concern, it does not necessarily constitute a bar to granting an individual access authorization. As noted above, the reference to "satellites or occupied areas" of the former Soviet Union has been deleted.

710.8(f). A number of commentors suggested that this paragraph of the regulations has been used to harass individuals who surface information that may cause embarrassment to management. Any individual who believes the personnel security process is being used to harass him or her for whistleblowing activities has adequate legal remedies under DOE regulations, 10 CFR Part 708 (contractor employees), or the Whistleblower Protection Act of 1989 (federal employees).

710.8(h). Two commentors suggest that only board certified psychiatrists should be able to provide diagnosis of mental conditions and illnesses in these proceedings. The categories of professionals qualified to render diagnoses of mental conditions has been expanded from board certified psychiatrists in conformance with the National Industrial Security Program (NISP) initiative described in Executive Order 12829, 58 FR 3479 (January 6, 1993). The DOE decisionmakers in the administrative review process will give appropriate weight to this type of evidence, depending on the knowledge, training and experience of the person rendering the opinion, and the reasons given by that person in support of the opinion.

710.8(i). One commentor is concerned that a person not be punished for asserting a Fifth Amendment privilege during any phase of the DOE personnel security process. A refusal to answer a question on Fifth Amendment grounds during the process may prevent the processing of a request for access authorization. However, no one has ever been (or will be) punished for invoking the privilege in this context, since the process for determining eligibility for access authorization is not a criminal proceeding.

710.8(j) (alcohol) and (k) (drugs). Commentors have suggested that these related criteria should not include behavior that occurred more than five years in the past. Some confusion may result from the fact that while the "Questionnaire for Sensitive Positions" (Standard Form 86) only deals with conduct within the last five years, the DOE security investigation covers the last ten years of a person's life. However, once a question concerning an individual's alcohol or illegal drug use is uncovered, under these criteria it must be resolved, no matter when it occurred. Of course, the time when such use occurred could be an appropriate fact to be weighed in the decision on an individual's access authorization (see § 710.7(c)).

710.8(l). Several commentors expressed the view that the terms in this criterion were overly vague, and allow too much discretion to DOE security personnel. Another comment asserted that the word "deviant" reflects DOE's "decades-old preoccupation with homosexual conduct." All of these comments ignored the critical first sentence in criterion (l) and focused instead on the second sentence. The first sentence describes derogatory information, in general terms, as any conduct or circumstances that raise a question concerning an individual's honesty, reliability or trustworthiness, or gives reason to believe he or she may be subject to coercion or exploitation. The second sentence includes a partial list of the specific kinds of conduct or circumstances that might raise the concerns stated in the first sentence. However, since there is no general agreement or consensus as to what type of conduct constitutes "deviant sexual activity," we have deleted that term from the final rule. In addition, since "child abuse" and "domestic violence" are subsumed within "criminal activity," we have likewise deleted these terms from the final rule. Finally, it is not possible to list every conceivable kind of conduct that would constitute derogatory information under this criterion, as urged by some commentors. As noted elsewhere in this preamble, some degree of flexibility in the definitions used is necessary to enable the DOE to administer its personnel security program.

Section 710.21(a). Several commentors suggested that the

regulations should continue to require the Manager to review the file and the rationale behind the local Director of Security's recommendation for suspension. In response to these comments, this section, renumbered as 710.10, has been rewritten to keep the authority to suspend an individual's access authorization with the Manager.

710.21(c). Several commentors focused on the use of the phrase "in general terms" to describe the notice given by the Manager to the individual upon suspension of the individual's access authorization. DOE added the requirement of a written notice to the individual at this stage in the process in response to a recommendation by the General Accounting Office. For clarity, the language of that sentence has been revised to read as follows: "The individual shall be advised in writing, in general terms, of the reason(s) why the suspension has been effected." DOE's agreement to provide a general description with the suspension action represented a careful balancing of (i) the individual's natural desire for at least some immediate information about the basis for a suspension, and (ii) DOE's need to protect national security interests by effecting the suspension without delay. The moment of suspension is not the time in the process when the individual is notified in detail of the nature of the derogatory information. That occurs in the administrative review process, in which there are much more extensive notice requirements. Those requirements are described in the next part of the regulations entitled "Administrative Review." At that stage, the individual is given notice about the derogatory information "which shall be as comprehensive and detailed as the national interest permits."

Section 710.22(b)(5). A number of commentors misread this paragraph in the proposed regulations to suggest that an individual was being given an option not to respond to a notification letter. Some commentors urged DOE to require specific denial of charges, and deem failure to specifically deny a charge an admission. Others urged that this clause be removed from the regulations and instead stated in the notification letter. This paragraph was drafted to cover the real world situation where the DOE does not receive a written response to the charges contained in a notification letter; it is not meant to convey an option not to respond. In order to protect the individual, a request for a hearing, standing alone, was considered a general denial of the charges in the notification letter. On balance, DOE has decided to continue to urge individuals to answer charges in the notification letter, but to retain the provision that a request for a hearing constitutes a general denial.

710.22(b)(6). A number of commentors questioned who would define "convenience" for purposes of scheduling hearings. The OHA Hearing Officers will make that determination on a case-by-case basis. Whenever possible, DOE intends to hold hearings within 90 calendar days of the date on which the individual's request for a hearing is received by the OHA. Due consideration will be given to scheduling concerns of both DOE Counsel and the individual involved.

710.22(b)(7). This provision states that the individual, rather than DOE, must pay for his own counsel if he wishes to be represented at an administrative review hearing. The Equal Access to Justice Act, 28 U.S.C. 2412, does not (as claimed by one commentor) apply to hearings held under Part 710. That Act provides that "[a]n agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust." "Adversary adjudication," in turn, is defined as an adjudication under section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 554, which provides that the formal adjudication requirements of the APA apply only to "every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing" (with certain exceptions not relevant here). Because administrative review hearings under Part 710 are not required by statute to be determined on the record after opportunity for an agency hearing, the APA, and therefore, the Equal Access to Justice Act, do not apply to Part 710 hearings. See *Ardestani* v. *I.N.S.*, 112 S. Ct. 515 (1991). Nevertheless, this provision does not bar an employer, such as a DOE contractor or another federal agency, from hiring an attorney to represent its employee at an administrative review hearing.

Section 710.25(b). Several commentors questioned whether it was necessary for the OHA Hearing Officer to join in any stipulations between DOE Counsel and counsel for the individual. DOE did not intend for the Hearing Officer to enter into stipulations with the parties and the clause that created the confusion has been deleted from the final rule.

Section 710.26(a) and (b). Commentors suggested that the phrases "in a timely manner" and "as soon as practicable" be replaced with an exact timetable for transmittal of a request for hearing to the OHA, and appointment of a Hearing Officer, respectively. The commentors have failed to understand that the language was not inserted as an opportunity for delay, but as guidance to DOE officials that these steps in the administrative process should be completed with dispatch. Since DOE intends to do both of these tasks swiftly, no purpose would be served by establishing a more precise timetable.

710.26(c). One commentor noted the deletion of the procedure in the former rules for requesting recusal of a Hearing Officer, and questioned whether such a motion would still be permitted under the revised rules. Any type of motion that could be made in normal motions practice under the Federal Rules of Civil Procedure will be permitted under the new Subpart A of Part 710.

710.26(d). One commentor suggested that the regulations do not set forth a process to obtain a subpoena and which party will pay to serve the subpoena as well as travel and per diem for the subpoenaed witness. Under the new rules, a party seeking a subpoena need only to request it from the Hearing Officer. The party requesting a subpoena pays for service of the subpoena, as well as the costs of travel and per diem for any witness he or she may call.

710.26(f). Two commentors suggested that a prehearing conference is a formality that is not required in these cases. DOE does not agree. The OHA intends for its Hearing Officers to convene a prehearing telephone conference in every case, to ensure that the hearing will proceed expeditiously, and to dispose of matters that can be more efficiently dealt with before hearings begin. This will require counsel to focus on the case in advance of the hearing date. In most cases, this conference will be brief.

Section 710.27. If classified information is involved in the hearing, it is DOE's practice to process the individual's attorney for access authorization whenever possible so that he or she can have access to the classified material.

710.27(c). One commentor questioned why hearings were presumed closed to the public and the press and suggested that a hearing should be open if either the individual or the DOE Counsel so requests. The regulation in this matter is designed to protect the privacy of the individual involved, and to ensure

decorum at the hearing. There are also space limitations in the rooms where hearings are held. Hearings could be open to a non-participating person if the individual or DOE Counsel so requests. This question will be decided by the Hearing Officer on a case-by-case basis. Of course, any portion of a hearing involving classified information will be closed.

710.27(d). One commentor pointed out that this provision means that the Hearing Officer may have to assist an individual who is not represented by counsel. This is correct. Another commentor suggested that the new role of DOE Counsel would preclude the Counsel from disclosing exculpatory information to the individual. While the DOE Counsel is representing the Department under the regulations, he or she still has a professional and ethical obligation to disclose any and all exculpatory information which is favorable to the individual. Nevertheless, to make this obligation explicit we have added language that requires DOE Counsel to present all evidence, both favorable and unfavorable, to the Hearing Officer that bears on the issues so that the Hearing Officer and the Director of OHA will have a full and complete record on which to base his or her opinion.

710.27(k). One commentor suggested that this paragraph should be deleted because the Hearing Officer should not consider any information that is not reviewable by the individual. This paragraph, which describes highly unusual circumstances, is required by and consistent with the provisions of Executive Order No. 10450. DOE cannot therefore comply with the request of that commentor.

710.27(n). One commentor questioned whether this provision would enable police records to be submitted without authenticating witnesses. The regulation is self-explanatory as written. It covers records compiled in the regular course of business or other physical evidence if furnished to the DOE by an investigative agency (such as the Federal Bureau of Investigation or the Office of Personnel Management) pursuant to its responsibilities to assist the Secretary in safeguarding Restricted Data, national security information, or special nuclear material. In any event, admission of evidence in these proceedings is the prerogative of the Hearing Officer, subject to the usual considerations of relevance and materiality. Since they are informal administrative hearings, the weight to be accorded any evidence is more important than its admissibility.

Section 710.28(e). One commentor maintained that this paragraph should state that the opinion of the Hearing Officer will be provided to the individual at the same time as it is served on the Manager. It is already clear from this provision that the OHA will serve the Hearing Officer's opinion on everyone involved in the case at the same time as it is served on the Manager.

Section 710.29. One commentor urged that the DOE Manager also be given the right to request review of a Hearing Officer's opinion. DOE will decline to adopt this suggestion for the final rule. DOE believes that the procedure in the proposed rule which gives the Office of Security Affairs the right to request review of a favorable Hearing Officer's opinion is adequate to protect national security.

Another commentor argued that the Office of Security Affairs should not be able to appeal a Hearing Officer's opinion to the OHA Director and (through the SA Director) make the final determination regarding an individual's access authorization. The authority to make the final determination on a DOE access authorization has historically been delegated by the Secretary of Energy (and before 1977, by her predecessors in the Energy Research and Development Administration, the Atomic Energy Commission and the Manhattan Engineer District) to the SA Director (and his predecessors in the prior agencies responsible for the nuclear weapons program). In those cases where the SA Director intends to take final action which disagrees with the opinion of the OHA Director, a request will be made to the Office of General Counsel for a legal sufficiency review, prior to a final decision.

710.29(c). There were two comments on this paragraph. The first one said that limiting language should be added to make clear that the "investigation" authorized by the OHA Director at the review stage is not for the purpose of providing a de novo hearing on factual matters that could have been developed during the initial hearing. DOE believes there is no need to specify limits which would unnecessarily confine the flexibility of the process to deal with a wide variety of situations. In some instances, it may be more efficient for the OHA Director to develop the record on minor factual matters; in other instances, it may be better to remand a case to the OHA Hearing Officer for supplementing the record on matters of greater complexity. The second comment observed that there was no reason given for going from three people (the Personnel Security Review Examiners or "PSREs") reviewing the initial opinion to review by the OHA Director. As noted above, in view of the requirement that DOE bring the Hearing Officer and review functions in-house, the Department believes this is the best way to accomplish that goal.

710.30. Some commentors urged DOE to define the term "new evidence." As with many other phrases in Part 710 that are stated in general terms, DOE believes that a more specific definition of this phrase would rob the administrative process of the flexibility needed to deal with a wide variety of different types of individual cases. On our own, we have added a sentence requiring DOE Counsel to notify the individual of any new evidence submitted by DOE.

IV. Procedural Requirements

A. Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulations do not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under Executive Order 12612.

C. Regulatory Flexibility Analysis

These regulations were reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any regulations that will have a significant economic impact on a substantial number of small entities. DOE finds that sections 603 and 604 of that Act do not apply to this rule because it will not have a significant economic impact on a substantial number of small entities. Thus the preparation of a regulatory flexibility analysis is not warranted.

D. NEPA Review

There is no impact on the human environment under the regulatory amendments being issued today. Accordingly, DOE has determined that this is not a major Federal action with significant impact upon the quality of the human environment and, therefore, preparation of an environmental assessment or an environmental impact statement is not required under the National Environmental Policy Act.

E. Paperwork Reduction Act

There will be no additional paperwork burden imposed by the amendments issued today. Therefore, the goals of the Paperwork Reduction Act are not diminished by the amendments.

F. Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The DOE certifies that today's final rule meets the requirements of sections 2 (a) and (b)(2) of Executive Order 12778.

V. Conclusion

The DOE has scheduled two stakeholder meetings to discuss procedural and logistical issues that may arise under these final rules. They will be held at Oak Ridge, Tennessee on July 12, 1994, and at Albuquerque, New Mexico on July 19, 1994. Notice of the specific time and place of each meeting will be published in the **Federal Register**. Staff members from the Office of Safeguards and Security and the Office of Hearings and Appeals will attend. It is expected that potential DOE Counsels from DOE field facilities will also attend these meetings. These meetings will be open to the public, and the DOE encourages private attorneys and others who may represent individuals in the administrative review process to attend.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, Nuclear materials.

Issued in Washington, DC, on July 1, 1994.

John G. Keliher,

Director, Office of Nonproliferation and National Security.

For the reasons set forth in the preamble, part 710 of title 10 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, sec. 141, 68 Stat. 940, as amended (42 U.S.C. 2161), Atomic Energy Act of 1954, sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); Atomic Energy Act of 1954, sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR, Chap. IV; E.O. 12356, 3 CFR, 1982 comp., p. 166.

§ 710 Heading revised

2. The part heading is revised to read as set forth above.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

3. Subpart A of part 710 is revised to read as set forth below:

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

General Provisions

Sec.
710.1 Purpose.
710.2 Scope.
710.3 Reference.
710.4 Policy.
710.5 Definitions.

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

710.6 Cooperation by the individual.
710.7 Application of the criteria.
710.8 Criteria.
710.9 Action on derogatory information.
710.10 Suspension of access authorization.

Administrative Review

710.20 Purpose of administrative review.
710.21 Notice to individual.
710.22 Additional information.
710.23 Extensions of time by the Operations Office Manager.
710.24 Appointment of DOE Counsel.
710.25 Appointment of Hearing Officer; prehearing conference; commencement of hearings.
710.26 Conduct of hearings.
710.27 Opinion of the Hearing Officer.
710.28 Action on the Hearing Officer's opinion.
710.29 New evidence.
710.30 Action by the Secretary.
710.31 Reconsideration of access eligibility.

Miscellaneous

710.32 Terminations.
710.33 Attorney representation.
710.34 Time frames.

Appendix A to Subpart A of Part 710—Selected Provisions of the Atomic Energy Act of 1954, as Amended, Sec. 141 (42 U.S.C. 2161), Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

General Provisions

§ 710.1 Purpose.

(a) This subpart establishes the criteria, procedures, and methods for resolving questions concerning the eligibility of individuals who are employed by, or applicants for employment with, Department of Energy (DOE) contractors, agents, and access permittees, individuals who are DOE employees or applicants for DOE employment, and other persons designated by the Secretary of Energy, for access to Restricted Data or special nuclear material, pursuant to the Atomic Energy Act of 1954, as amended, or for access to national security information.

(b) This subpart is published to implement Executive Order 12356, 47 FR 14874 (April 2, 1982), Executive Order 10865, 25 FR 1583 (February 24, 1960), and Executive Order 10450, 18 FR 2489 (April 27, 1954), all as amended.

§ 710.2 Scope.

The criteria and procedures outlined in this subpart shall be used in those cases in which there are questions of eligibility for DOE access authorization involving:

(a) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(b) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the DOE; and

(d) Other persons designated by the Secretary of Energy.

§ 710.3 Reference.

The pertinent sections of the Atomic Energy Act of 1954, as amended, relative to this regulation are set forth in Appendix A to this Subpart.

§ 710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established criteria for determining eligibility for access authorization and procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) It is also the policy of DOE that none of the procedures established by DOE for determining eligibility for access authorization shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

(c) In instances where the individual has been convicted of a crime punishable by imprisonment of six (6) months or longer, or the individual is currently awaiting or serving a form of preprosecution probation, or suspended or deferred sentencing, court ordered probation, or parole in conjunction with an arrest or criminal charges initiated against the individual for a crime that is punishable by imprisonment of six (6) months or longer, the DOE may suspend processing an application for access authorization until such time as the criminal prosecution, suspended sentence, deferred sentencing, probation, or parole has been completed.

(d) DOE may suspend processing an application for access authorization if sufficient information about the individual's background cannot be obtained to meet the investigative scope and extent requirements for the access authorization requested.

(e) DOE may suspend processing an application for access authorization until such time as a question regarding an individual's national allegiance is resolved. For example, if an individual is exercising rights of citizenship conferred by a country other than the United States, DOE will be concerned with whether granting access authorization to that individual constitutes an unacceptable national security risk.

(f) DOE may suspend processing an application for access authorization whenever an individual fails to fulfill the responsibilities described in § 710.6.

§ 710.5 Definitions.

(a) As used in this subpart:

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

DOE Counsel means a DOE attorney assigned to represent DOE in proceedings under this subpart. DOE Counsel shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Hearing Officer means a DOE attorney or senior management official appointed by the Director, Office of Hearings and Appeals, pursuant to § 710.25. A Hearing Officer shall be a U.S. citizen and shall have been subject to a favorably adjudicated background investigation.

Local Director of Security means the Operations Office or Naval Reactors Office Division Director of Security, or other similar title; for Washington, DC area cases, the Director, Headquarters Operations Division; for the Oak Ridge Operations Office, the Director of Personnel; for the Albuquerque Operations Office, the Director of the Personnel Security Division; for the Savannah River Operations Office, the Director of Internal Security Division; and any person designated in writing to serve in one of the aforementioned positions in an "acting" capacity.

National Security Information means any information that has been determined, pursuant to Executive Order No. 12356 or any predecessor Order, to require protection against unauthorized disclosure and that is so designated.

Operations Office Manager or *Manager* means the Manager of a DOE Operations Office, the Manager of the Rocky Flats Office, the Manager of the Pittsburgh Naval Reactors Office, the Manager of the Schenectady Naval Reactors Office, and, for Washington, DC area cases, the Director, Office of Safeguards and Security.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) Throughout this subpart the use of the male gender shall include the female gender and vice versa.

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

§ 710.6 Cooperation by the individual.

(a) It is the responsibility of the individual to cooperate by providing full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for DOE access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization, including but not limited to, personnel security interviews, DOE-sponsored mental evaluations, and other authorized DOE investigative activities under this subpart. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization. In this event, any access authorization then in effect may be terminated, or, for applicants, further processing may be suspended.

(b) If the individual believes that the provisions of paragraph (a) of this section have been inappropriately applied in his case, he may file a written appeal of the action with the Director, Office of Safeguards and Security, DOE Headquarters, within 30 calendar days of the date he was notified of the action.

(c) Upon receipt of the written appeal, the Director, Office of Safeguards and Security, shall conduct an inquiry as to the circumstances involved in the action and shall, within 30 calendar days of receipt of the written appeal, notify the individual, in writing, as to whether the action to terminate or suspend processing of access authorization was appropriate. If the Director, Office of Safeguards and Security, determines that the action was inappropriate, he shall direct that the individual continue to be processed for access authorization, or that access authorization for the individual be reinstated.

§ 710.7 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access

authorization would not endanger the common defense and security and would be clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this subpart criteria consisting of a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. DOE is not limited to these criteria or precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) In resolving a question concerning an individual's eligibility for access authorization, all DOE officials involved in the decision-making process shall consider: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

§ 710.8 Criteria.

Derogatory information shall include, but is not limited to, information that the individual has:

(a) Committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition.

(b) Knowingly established or continued a sympathetic association with a saboteur, spy, terrorist, traitor, seditionist, anarchist, or revolutionist, espionage agent, or representative of a foreign nation whose interests are inimical to the interests of the United States, its territories or possessions, or with any person advocating the use of force or violence to overthrow the Government of the United States or any state or subdivision thereof by unconstitutional means.

(c) Knowingly held membership in or had a knowing affiliation with, or has knowingly taken action which evidences a sympathetic association with the intent of furthering the aims of, or adhering to, and actively participating in, any foreign or domestic organization, association, movement, group, or combination of persons which advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or Laws of the United States or any state or subdivision thereof by unlawful means.

(d) Publicly or privately advocated, or participated in the activities of a group or organization, which has as its goal, revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means with the knowledge that it will further those goals.

(e) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States.

(f) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.31.

(g) Failed to protect classified matter, or safeguard special nuclear material; or violated or disregarded security or safeguards regulations to a degree which would be inconsistent with the national security; or disclosed classified information to a person unauthorized to receive such information.

(h) An illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist, causes, or may cause, a significant defect in judgment or reliability.

(i) Refused to testify before a Congressional Committee, Federal or state court, or Federal administrative body, regarding charges relevant to eligibility for DOE, or another Federal agency's access authorization.

(j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

(k) Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by law.

(l) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

§ 710.9 Action on derogatory information.

(a) When the reports of investigation of an individual or other reliable information reasonably tend to establish the validity and significance of one or more of the items in the criteria, or of other reliable information or facts which are derogatory, although outside the scope of the stated categories, such information shall be regarded as substantially derogatory and create a question as to the individual's eligibility for access authorization. The Local Director of Security will authorize the conduct of an interview with the individual, or request other appropriate actions, and, on the basis of such interview and/or actions, may authorize the granting or continuation of access authorization. If the question as to the individual's eligibility is not resolved through interview, and/or other actions, which may include a DOE-sponsored mental evaluation, the Local Director of Security will submit the matter to the Manager. If the Manager agrees that unresolved derogatory information is present, and that appropriate attempts to resolve such derogatory information have failed, the Manager shall forward the individual's case to the Director, Office of Safeguards and Security, with a request for authority to conduct an administrative review proceeding. If the Manager believes that the derogatory information has been favorably

resolved, the Manager shall direct that the individual be granted access authorization. A decision in the matter shall be rendered by the Manager within 10 calendar days after receipt. Following the decision of the Manager, the Director, Office of Safeguards and Security, may authorize:

(1) The granting of access authorization,

(2) The institution of administrative review procedures set forth in §§ 710.20 through 710.31, or

(3) Such other action as the Director deems appropriate.

(b) The Director, Office of Safeguards and Security, must authorize one of these options within 30 calendar days of the receipt of the case from the Manager, unless an extension is granted by the Director, Office of Security Affairs.

§ 710.10 Suspension of access authorization.

(a) In those cases where information is received which raises a question concerning the continued eligibility of an individual for DOE access authorization, the Local Director of Security may authorize action(s) to resolve the question pursuant to § 710.9. Such action(s) shall be taken on an expedited basis. If the question as to the individual's continued eligibility for access authorization is not resolved in favor of the individual, the Local Director of Security will submit the matter to the Manager with a recommendation that the individual's DOE access authorization be suspended pending the final determination resulting from the operation of the procedures provided in this subpart.

(b) Within two working days of receipt of the recommendation from the Local Director of Security to suspend the individual's DOE access authorization, the Manager shall review the matter and authorize continuation or suspension of access authorization. The access authorization of an individual shall not be suspended except by the direction of the Manager. This authority to suspend access authorization may not be delegated but may be exercised by a person who has been designated in writing as Acting Manager.

(c) Upon suspension of an individual's access authorization pursuant to paragraph (b) of this section, the individual, the individual's employer, any other DOE Operations Office having an access authorization interest in the individual, and, if known, any other government agency where the individual holds an access authorization, security clearance, or access approval, or to which the DOE has certified the individual's DOE access authorization, shall be notified immediately. The Central Personnel Clearance Index shall also be updated. Notification to the individual shall be made in writing and shall reflect, in general terms, the reason(s) why the suspension has been effected. Pending final determination of the individual's eligibility for access authorization from the operation of the procedures provided in this subpart, the individual shall not be afforded access to classified matter, special nuclear material, or unescorted access to security areas that require the individual to possess a DOE access authorization.

(d) Following the decision to suspend an individual's DOE access authorization, the Manager shall immediately notify the Director, Office of Safeguards and Security, of the action and the reason(s) therefore. In addition, the Manager, within 10 calendar days of the date of suspension, shall submit a request for authority to conduct an administrative review proceeding, accompanied by an explanation of its basis and a duplicate Personnel Security File, to the Director, Office of Safeguards and Security.

Administrative Review

§ 710.20 Purpose of administrative review.

These procedures establish methods for the conduct of the administrative review of questions concerning an individual's eligibility for access authorization when it is determined that such questions cannot be favorably resolved by interview or other action.

§ 710.21 Notice to individual.

(a) When the Director, Office of Safeguards and Security, has authorized the institution of administrative review procedures with respect to an individual's questioned eligibility for access authorization, in accordance with § 710.9, the Manager shall direct the preparation of a notification letter, approved by the local Office of Chief Counsel, or the Office of General Counsel for Headquarters cases, for delivery to the individual within 30 calendar days of the receipt of such directive from the Office of Safeguards and Security, unless an extension has been authorized by the Director, Office of Safeguards and Security. Where practicable, such letter shall be presented to the individual in person.

(b) The letter shall state:

(1) That reliable information in the possession of DOE has created a substantial doubt concerning the individual's eligibility for access authorization.

(2) The information which creates a substantial doubt regarding the individual's eligibility for access authorization (which shall be as comprehensive and detailed as the national interest permits).

(3) That the individual has the option to have the substantial doubt regarding eligibility for access authorization resolved in one of two ways:

(i) By the Manager, without a hearing, on the basis of the existing information in the case;

(ii) By personal appearance before a Hearing Officer (a "hearing").

(4) That, if the individual desires a hearing, the individual must, within 20 calendar days of the date of receipt of the notification letter, indicate this in writing to the Manager from whom the letter was received.

(5) That the individual may also file with the Manager the individual's written answer to the reported information which raises the question of the individual's eligibility for access authorization, and that, if the individual requests a hearing without filing a written answer, the request shall be deemed a general denial of all of the reported information.

(6) That, if the individual so requests, a hearing will be scheduled before a Hearing Officer, with due regard for the convenience and necessity of the parties or their representatives, for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization;

(7) That, if a hearing is requested, the individual will have the right to appear personally before a Hearing Officer; to present evidence in his own behalf, through witnesses, or by documents, or both; and, subject to the limitations set forth in § 710.26(g), to be present during the entire hearing and be accompanied, represented, and advised by counsel or representative of the individual's choosing and at the individual's own expense;

(8) That the individual's failure to file a timely written request for a hearing before a Hearing Officer in accordance with paragraph (b)(4) of this section, unless time deadlines are extended for good cause, will be considered as a relinquishment by the individual of the right to a hearing provided in this subpart, and that in such event a final decision will be made by the Manager; and

(9) That in any proceedings under this subpart DOE Counsel will be participating on behalf of and representing the Department of Energy, and that any statements made by the individual to DOE Counsel may be used in subsequent proceedings.

§ 710.22 Additional information.

The notification letter referenced in § 710.21 shall also:

(a) Describe the individual's access authorization status until further notice;

(b) Advise the individual of the right to counsel at the individual's own expense at each and every stage of the proceeding;

(c) Provide the name and telephone number of the designated DOE official to contact for any further information desired, including an explanation of the individual's rights under the Privacy Act of 1974; and

(d) Include a copy of 10 CFR Part 710, Subpart A.

§ 710.23 Extensions of time by the Operations Office Manager.

The Manager may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, Office of Safeguards and Security, when such extensions have been approved.

§ 710.24 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, an attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he is not represented by counsel, or with the individual's counsel or representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this subpart.

§ 710.25 Appointment of Hearing Officer; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, a Hearing Officer.

(c) Immediately upon appointment of the Hearing Officer, the Office of Hearings and Appeals shall notify the individual and DOE Counsel of the Hearing Officer's identity and the address to which all further correspondence should be sent.

(d) The Hearing Officer shall have all powers necessary to regulate the conduct of proceedings under this subpart, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or other physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this Subpart. Requests for subpoenas shall be liberally granted except where the Hearing Officer finds that the grant of subpoenas would clearly result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case. The Hearing Officer may take sworn testimony, sequester witnesses, and control the dissemination or reproduction of any record or testimony taken pursuant to this part, including correspondence, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(e) The Hearing Officer will determine the day, time, and place for the hearing. Hearings will normally be held at or near the appropriate DOE facility, unless the Hearing Officer determines that another location would be more appropriate. Normally the location for the hearing will be selected for the convenience of all participants. In the event the individual fails to appear at the time and place specified, the record in the case shall be closed and returned to the Manager, who will then make a final determination regarding the eligibility of the individual for DOE access authorization.

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Hearing Officer will convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone.

(g) Hearings shall commence within 90 calendar days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. Any extension of the hearing date past 90 calendar days from the date the request for hearing is received by the Office of Hearings and Appeals shall be approved by the Director, Office of Hearings and Appeals.

§ 710.26 Conduct of Hearings.

(a) In all hearings conducted under this subpart, the individual shall have the right to be represented by a person of his own choosing. The individual is responsible for producing witnesses in his own behalf, including requesting the issuance of subpoenas, if necessary, or presenting other proof before the Hearing Officer to support his defense to the allegations contained in the notification letter. With the exception of procedural or scheduling matters, the Hearing Officer is prohibited from initiating or otherwise engaging in ex parte discussions about the case during the pendency of proceedings under this part.

(b) Unless the Hearing Officer finds good cause for granting a waiver of this paragraph or granting an extension of time, in the event that the individual unduly delays the hearing, such as by failure to meet deadlines set by the Hearing Officer, the record shall be closed, and a final decision shall be made by the Manager on the basis of the record in the case.

(c) Hearings shall be open only to DOE Counsel, duly authorized representatives of the staff of DOE, the individual and his counsel or other representatives, and such other persons as may be authorized by the Hearing Officer. Unless otherwise ordered by the Hearing Officer, witnesses shall testify in the presence of the individual but not in the presence of other witnesses.

(d) DOE Counsel shall assist the Hearing Officer in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Hearing Officer. The individual shall be afforded the opportunity of presenting evidence, including testimony by the individual in the individual's own behalf. The proponent of a witness shall conduct the direct examination of that witness. All witnesses shall be subject to cross-examination, if possible. Whenever reasonably possible, testimony shall be given in person.

(e) The Hearing Officer may ask the witnesses any questions which the Hearing Officer deems appropriate to assure the fullest possible disclosure of relevant and material facts.

(f) During the course of the hearing, the Hearing Officer shall rule on all questions presented to the Hearing Officer for the Hearing Officer's determination.

(g) In the event it appears during the course of the hearing that Restricted Data or national security information may be disclosed, it shall be the duty of the Hearing Officer to assure that disclosure is not made to persons who are not authorized to receive it.

(h) Formal rules of evidence shall not apply, but the Federal Rules of Evidence may be used as a guide for procedures and principles designed to assure production of the most probative evidence available. The Hearing Officer shall admit into evidence any matters, either oral or written, which are material, relevant, and competent in determining issues involved, including the testimony of responsible persons concerning the integrity of the individual. In making such determinations, the utmost latitude shall be permitted with respect to relevancy, materiality, and competency. The Hearing Officer may also exclude evidence which is incompetent, immaterial, irrelevant, or unduly repetitious. Every reasonable effort shall be made to obtain the best evidence available. Subject to §§ 710.26(l), 710.26(m), 710.(n), 710.26(o), hearsay evidence may in the discretion of the Hearing Officer and for good cause shown be admitted without strict adherence to technical rules of admissibility and shall be accorded such weight as the circumstances warrant.

(i) Testimony of the individual and witnesses shall be given under oath or affirmation. Attention of the individual and each witness shall be directed to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(j) The Hearing Officer shall endeavor to obtain all the facts that are reasonably available in order to arrive at findings. If, prior to or during the proceedings, in the opinion of the Hearing Officer, the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Hearing Officer shall recommend to the Operations Office Manager concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the local Office of Chief Counsel or the Office of General Counsel in Headquarters cases. If, in the opinion of the Hearing Officer, the circumstances of such amendment may involve undue hardships to the individual because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

(k) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Hearing Officer without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization or person, provided the individual is given notice that it has been received and may be considered by the Hearing Officer, and is informed of its contents provided such is not prohibited by paragraph (g) of this section.

(l) Any oral or written statement adverse to the individual relating to a controverted issue may be received and considered by the Hearing Officer without affording an opportunity for cross-examination in either of the following circumstances:

(1) The head of the agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would be substantially harmful to the national interest;

(2) The Secretary or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that:

(i) The statement concerned appears to be reliable and material; and

(ii) Failure of the Hearing Officer to receive and consider such statement would, in view of the access sought to Restricted Data, national security information, or special nuclear material, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify

(A) Due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or

(B) Due to some other specified cause determined by the head of the agency to be good and sufficient.

(m) Whenever procedures under paragraph (l) of this section are used:

(1) The individual shall be given a summary or description of the information which shall be as comprehensive and detailed as the national interest permits, and

(2) Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person(s).

(n) Records compiled in the regular course of business, or other physical evidence other than investigative reports obtained by DOE, may be received and considered subject to rebuttal without authenticating witnesses provided that such information has been furnished to DOE by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary to safeguard Restricted Data, national security information, or special nuclear material.

(o) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Secretary or his special designee for that particular purpose has made a preliminary determination that such physical evidence appears to be material;

(2) The Secretary or his special designee for that particular purpose has made a determination that failure to receive and consider such physical evidence would, in view of the access sought to Restricted Data, national security information, or special nuclear material sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such physical evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(p) The Hearing Officer may request the Local Director of Security to arrange for additional investigation on any points which are material to the deliberations of the Hearing Officer and which the Hearing Officer believes need further investigation or clarification. In this event, the Hearing Officer shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which the evidence should be sought. The Local Director of Security shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Hearing Officer.

(q) A written transcript of the entire proceedings shall be made and, except for portions containing Restricted Data or national security information, a copy of such transcript shall be furnished the individual without cost.

(r) Whenever information is made a part of the record under the exceptions

authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.27 Opinion of the Hearing Officer.

(a) The Hearing Officer shall carefully consider the record in view of the standards set forth herein and shall render an initial opinion as to whether the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Hearing Officer shall consider the factors stated in paragraph 710.7(c) to determine whether the findings will be adverse or favorable.

(b) In reaching the findings, the Hearing Officer shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Hearing Officer shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer.

(c) The Hearing Officer shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Hearing Officer attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Hearing Officer's opinion shall be predicated upon the Hearing Officer's findings of fact. If, after considering all the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Hearing Officer shall render a favorable opinion; otherwise, the Hearing Officer shall render an adverse opinion.

(e) The Office of Hearings and Appeals shall issue the opinion of the Hearing Officer within 30 calendar days of the receipt of the hearing transcript by the Hearing Officer, or the closing of the record, whichever is later, unless an extension is granted by the Director, Office of Hearings and Appeals. Copies of the Hearing Officer's opinion will be provided to the Office of Security Affairs, the Manager, the individual concerned and his counsel or other representatives, DOE Counsel, and any other party identified by the Hearing Officer. At that time, the individual shall also be notified of his right to request further review of his case pursuant to § 710.28.

(f) In the event the Hearing Officer's opinion is favorable to the individual, a copy of the administrative record in the case shall also be provided to the Office of Security Affairs. The Director, Office of Security Affairs will determine whether:

(1) To grant or reinstate the individual's access authorization, or

(2) To refer the case to the Director, Office of Hearings and Appeals, for further review.

(g) In the event the Hearing Officer's opinion is adverse to the individual, and the individual does not file a request for further review pursuant to § 710.28, a copy of the administrative record shall be provided to the Director, Office of Security Affairs, who shall make a final determination on the basis of the material contained in the administrative record.

§ 710.28 Action on the Hearing Officer's opinion.

(a) The Office of Security Affairs or the individual involved may file a request for review of the Hearing Officer's opinion issued under § 710.27 within 30 calendar days of receipt of the opinion. Any such request shall be filed with the Director, Office of Hearings and Appeals, and served on the other party.

(b) Within 15 calendar days after filing a request for review under this section, the party seeking review shall file a statement identifying the issues on which it wishes the Director, Office of Hearings and Appeals, to focus. A copy of such statement shall be served on the other party, who may file a response within 20 days of receipt of the statement.

(c) The Director, Office of Hearings and Appeals, may initiate an investigation of any statement contained in the request for review and utilize any relevant facts obtained by such investigation in conducting the review of the Hearing Officer's opinion. The Director, Office of Hearings and Appeals, may solicit and accept submissions from either the individual or the Office of Security Affairs, that are relevant to the review. The Director, Office of Hearings and Appeals, may establish appropriate time frames to allow for such responses. In reviewing the Hearing Officer's opinion, the Director, Office of Hearings and Appeals, may consider any other source of information that will advance the evaluation, provided that both parties are afforded an opportunity to respond to all third person submissions. All information obtained under this section shall be made part of the administrative record.

(d) Within 45 days of the closing of the record, the Director, Office of Hearings and Appeals, shall make specific findings disposing of each substantial issue identified in a written statement in support of the request for review and the written response submitted by either the individual or the Office of Security Affairs, and shall predicate his opinion on the administrative record, including any new evidence that may have been submitted pursuant to § 710.29. If, after considering all the factors in light of the criteria set forth in this subpart, the Director, Office of Hearings and Appeals, is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or continue access authorization to the individual, the Director, Office of Hearings and Appeals, shall render an opinion favorable to the individual; otherwise, the Director, Office of Hearings and Appeals, shall render an opinion adverse to the individual. The written opinion of the Director, Office of Hearings and Appeals, shall be provided to the Director, Office of Security Affairs, accompanied by the administrative record in the case. The Director, Office of Hearings and Appeals, shall notify the individual of the foregoing action.

(e) Within 30 calendar days of receipt of the opinion of the Director, Office of Hearings and Appeals, the Director, Office of Security Affairs, will make the final determination, based on a complete review of the record, whether access authorization shall be granted or denied, or reinstated or revoked. If, after considering all of the factors in light of the criteria set forth in this subpart, the Director, Office of Security Affairs, determines that it will not endanger the common defense and security and will be clearly consistent with the national interest, access authorization shall be granted to or reinstated for the individual; otherwise, the Director, Office of Security Affairs, shall determine that access authorization

shall be denied to or revoked for the individual.

(f) The Director, Office of Security Affairs, shall, through the Director, Office of Safeguards and Security, inform the individual involved and his counsel or representative in writing of the final determination and provide a copy of the written opinion rendered by the Director, Office of Hearings and Appeals. Copies of the correspondence shall also be provided to the Director, Office of Hearings and Appeals, the Manager, DOE Counsel, and any other party. In the event of an adverse determination, the correspondence shall indicate the findings by the Director, Office of Security Affairs, with respect to each allegation contained in the notification letter.

§ 710.29 New evidence.

(a) In the event of the discovery of new evidence relevant to the allegations contained in the notification letter prior to final determination of the individual's eligibility for access authorization, such evidence shall be submitted by the offering party to the Director, Office of Safeguards and Security. DOE Counsel shall notify the individual of any new evidence submitted by DOE.

(b) The Director, Office of Safeguards and Security, shall:

(1) Refer the matter to the Hearing Officer appointed in the individual's case if the Hearing Officer has not yet issued an opinion. The Hearing Officer getting the application for the presentation of new evidence shall determine the appropriate form in which any new evidence, and the other party's response, shall be received, e.g., by testimony before the Hearing Officer, by deposition or by affidavit.

(2) In those cases where the Hearing Officer's opinion has been issued, the application for presentation of new evidence shall be referred to the Director, Office of Hearings and Appeals, or the Director, Office of Security Affairs, depending upon where the case resides. In the event that the Director, Office of Hearings and Appeals, or Director, Office of Security Affairs, determines that the new evidence should be received, he shall determine the form in which it, and the other party's response, shall be received.

(c) When new evidence submitted by either party is received into the record, the opposing party shall be afforded the opportunity to cross-examine the source of the new information or to submit a written response, unless the information is subject to the exceptions in § 710.26 (l) or (o).

§ 710.30 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of § 710.26 (l) or (o), only the Secretary may issue a final determination denying or revoking the access authorization after personally reviewing the record.

(b) When the Secretary makes a final determination regarding the individual's eligibility for DOE access authorization, the individual will be notified, by the Director, Office of Security Affairs, of that decision and of the Secretary's findings with respect to each allegation contained in the notification letter and each substantial issue identified in the statement in support of the request for review.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to Restricted Data, national security information, or special nuclear material if the security of the nation so requires. The Secretary's authority may not be delegated and may be exercised only when the Secretary determines that the procedures prescribed in § 710.26 (l) or (o) cannot be invoked consistent with the national security, and such determination shall be conclusive.

§ 710.31 Reconsideration of access eligibility.

(a) Where, pursuant to the procedures set forth in §§ 710.20 through 710.30, the Director, Office of Security Affairs, or the Secretary has made a determination granting or reinstating access authorization to an individual, the individual's eligibility for access authorization shall be reconsidered as a new administrative review under the procedures set forth in this subpart when previously unconsidered substantially derogatory information is identified, or the individual violates a commitment or promise upon which the DOE previously relied to favorably resolve an issue of access eligibility.

(b) Where, pursuant to those procedures, the Manager, Director, Office of Security Affairs, or the Secretary has made a determination denying or revoking access authorization to an individual, the individual's eligibility for access authorization may be reconsidered when there is a bona fide offer of employment requiring access to Restricted Data, national security information or special nuclear material, and there is either:

(1) Material and relevant new evidence which the individual and the individual's representatives are without fault in failing to present earlier, or

(2) Convincing evidence of reformation or rehabilitation.

(c) A request for reconsideration shall be submitted in writing to the Manager having jurisdiction over the position for which access authorization is required. A request for reconsideration shall be accompanied by an affidavit setting forth in detail the new evidence or evidence of reformation or rehabilitation. The Manager shall notify the individual as to whether the individual's eligibility for access authorization will be reconsidered and, if so, the method by which such reconsideration will be accomplished.

(d) Final determinations regarding eligibility for DOE access authorization in reconsideration cases shall be made by the Director, Office of Security Affairs.

Miscellaneous

§ 710.32 Terminations.

In the event the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this subpart shall be terminated without a final determination as to the individual's eligibility for access authorization.

§ 710.33 Attorney representation.

In the event the individual is represented by an attorney or other representatives, the individual shall file with the Hearing Officer and DOE Counsel a document designating such attorney or representatives and authorizing one such attorney or representative to receive all correspondence, transcripts, and other documents pertaining to the proceeding under this subpart.

§ 710.34 Time frames.

Statements of time established for processing aspects of a case under this subpart are the agency's desired time frames in implementing the procedures set forth in this subpart. They shall have no impact upon the final disposition of an access authorization by an Operations Office Manager, the Director, Office of Security Affairs, or the Secretary, and shall confer no rights upon an individual whose eligibility for access authorization is being considered.

Appendix A to Subpart A of Part 710—Selected Provisions of the Atomic Energy Act of 1954, as Amended, Sec. 141 (42 U.S.C. 2161), Sec. 145 (42 U.S.C. 2165), Sec. 161 (42 U.S.C. 2201)

(By authority of the Department of Energy Organization Act, 42 U.S.C. 7151(a), the Secretary of Energy or her designated representative is to be substituted for the "Commission" and "General Manager" as appropriate.)

Sec. 141. Policy. It shall be the policy of the Commission to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. * * *

Sec. 145. Restriction. (a) No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 141, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this appendix, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) In the event an investigation made pursuant to subsections (a) and (b) of this appendix develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(e) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this appendix be made by the Federal Bureau of Investigation.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this appendix, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation.

(g) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this appendix, that permitting a person access to Restricted Data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

(h) Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b, to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

Sec. 161. General provisions. In the performance of its functions the Commission is authorized to:

(a) Establish advisory boards to advise with and make recommendations to the Commission on legislation, policies, administration, research, and other matters, provided that the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board;

(b) Establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property;

(c) Make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in exercising any authority provided in this chapter, or in the administration or enforcement of this Act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. Witnesses subpoenaed under this subsection, shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

* * * * *

(i) Prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to the Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;

* * * * *

(n) Delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57b, 61, 108, 123, 145b (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145f, and 161a;

* * * * *

(p) Make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

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Friday
July 8, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 23
Airworthiness Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 27805; Notice No. 94–20]

RIN 2120–AE62

Airworthiness Standards; Airframe Proposals Based on European Joint Aviation Requirements Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes changes to the airframe airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These proposals arise from the joint effort of the Federal Aviation Administration (FAA) and the European Joint Aviation Authorities (JAA) to harmonize the Federal Aviation Regulations (FAR) and the Joint Aviation Requirements (JAR) for airplanes that will be certified in these categories. The proposed changes would provide nearly uniform airframe airworthiness standards for airplanes certificated in the United States under 14 CFR part 23 (part 23) and in the JAA countries under Joint Aviation Requirements 23 (JAR 23) simplifying airworthiness approvals for import and export purposes.

DATES: Comments must be submitted on or before November 7, 1994.

ADDRESSES: Comments on this document should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27805, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27805. Comments may be inspected in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE–7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the duplicate information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, ACE–112, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27805." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request, from the above office, a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

At the June 1990 meeting of the JAA Council (consisting of JAA members from European countries) and the FAA, the FAA Administrator committed the FAA to support the harmonization of the FAR with the JAR being developed for use by the European authorities who are members of the JAA. In response to this commitment, the FAA Small Airplane Directorate established an FAA Harmonization Task Force to work with the JAR 23 Study Group to harmonize part 23 and the proposed JAR 23. The General Aviation Manufacturers Association (GAMA) also established a JAR 23/part 23 Committee to provide technical assistance in this effort.

Following a review of the first draft of proposed JAR 23, members of the FAA Harmonization Task Force and the GAMA Committee met in Brussels, Belgium for the October 1990 meeting of the JAR 23 Study Group. Representatives from the Association Europeenne des Constructeures de Material Aerospatial (AECMA), an organization of European airframe manufacturers, also attended. The main agenda item for this meeting was the establishment of procedures to accomplish harmonization of the airworthiness standards for normal, utility, and acrobatic category airplanes. The JAA had decided that its initial rulemaking effort should be limited to these three categories and that commuter category airworthiness standards should be addressed separately.

After that meeting, technical representatives from each of the four organizations (GAMA, AECMA, FAA and JAA) met to resolve differences between the proposed JAR and part 23. This portion of the harmonization effort involved a number of separate meetings of specialists in the flight, airframe, powerplant, and systems disciplines. These meetings showed that harmonization would require revisions to both part 23 and the proposed JAR 23.

Near the end of the effort to harmonize the normal, utility, and acrobatic category airplane airworthiness standards, the JAA requested and received recommendations from its member countries on proposed airworthiness standards for commuter category airplanes. The JAA and the FAA held specialist and study group meetings to discuss these recommendations, which resulted in proposals to revise portions of the part 23 commuter category airworthiness standards.

Unlike the European rules, where commuter category airworthiness standards are separate, for U.S. rulemaking it is advantageous to adopt normal, utility, acrobatic, and commuter category airworthiness standards simultaneously, since commuter category airworthiness standards are already contained in part 23. Accordingly, this NPRM proposes to

revise the airframe airworthiness standards for all part 23 airplanes.

During the part 23 harmonization effort, the FAA established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991), which held its first meeting on May 23, 1991. The ARAC on General Aviation and Business Airplane (GABA) Issues was established at that meeting to provide advice and recommendations to the Director, Aircraft Certification Service, FAA, regarding the airworthiness standards in part 23 as well as related provisions of parts 91 and 135 of the regulations.

The FAA announced, on June 2–5, 1992, at the JAA/FAA Harmonization Conference in Toronto, Ontario, Canada, that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the JAR and the FAR. Coinciding with that announcement, the FAA assigned the ARAC on GABA Issues those rulemaking projects related to JAR/part 23 harmonization that were in final coordination between the JAA and the FAA. The harmonization process included the intention to present the results of JAA/FAA coordination to the public as NPRM's. Subsequently, the ARAC on GABA Issues established an ARAC–JAR 23 Study Group.

The JAR 23 Study Group made recommendations to the ARAC on GABA Issues concerning the FAA disposition of the rulemaking issues coordinated between the JAA and the FAA. The draft NPRM's previously prepared by the FAA harmonization team were made available to the harmonization working group to assist them in their effort.

A notice of the formation of the JAR/FAR 23 Harmonization Working Group was published on November 30, 1992 (57 FR 56626). The group held its first meeting on February 2, 1993. These efforts resulted in the proposals for airframe airworthiness standards contained in this notice. The ARAC on GABA Issues agreed with these proposals.

The FAA received unsolicited comments from the JAA dated January 20, 1994, concerning issues that were left unresolved with the JAR 23 Study Group. The JAR/FAR 23 Harmonization Working Group did not address some of the unresolved issues because the JAA had not yet reached positions on those issues. Unresolved issues will be dealt with at future FAR/JAR Harmonization meetings. With respect to other issues unresolved by the JAR 23 Study Group, the JAR/FAR 23 Harmonization Working Group recommendations did not reflect harmonization, but reflected the technical discussion of the merits of each issue that had been thoroughly debated at the JAR/FAR Harmonization meetings. (The Working Group Chairperson had been present at the Harmonization meetings.) The JAA comments have been placed in the docket for this proposal, and will be considered along with those received during the comment period.

Following completion of these harmonization efforts, the FAA determined that the proposed revisions to part 23 were too numerous for a single NPRM. The FAA decided to simplify the issues by issuing four NPRM's. These NPRM's address the airworthiness standards in the specific areas of systems and equipment, powerplant, flight, and airframe. These NPRM's propose changes in all seven subparts of part 23. Since there is some overlap, interested persons are advised to review all four NPRMs to identify all proposed changes to a particular section.

Discussion of Proposals

Section 23.301 Loads

This proposal would amend § 23.301(d) by limiting the applicability of Appendix A to "single-engine, excluding turbines" airplanes rather than the current single-engine limitation. The JAA proposed "single reciprocating engine" instead of "single-engine," which appears in the current regulations. The FAA proposes "single-engine, excluding turbines" for the reasons explained in the preamble to Appendix A. The effect would be to eliminate alternative Appendix A airplane design requirements for turbine engines because the JAA determined, and the FAA agrees, that only single-engine airplanes, excluding turbines, were envisioned when Appendix A was introduced. Turbine airplane designs may continue to be FAA certificated by substantiation to part 23, Subpart C, requirements plus any special conditions as prescribed under § 21.16. The proposed changes to this section clarify that Appendix A applies only to single-engine airplanes, except turbines.

In § 23.301(d), the phrase "For conventional, single-engine airplanes of 6,000 pounds or less" would be replaced by the phrase "For airplane configurations described in Appendix A23.1."

Section 23.335 Design Airspeeds

Portions of § 23.335 would be revised for clarification and harmonization with JAR 23. Paragraph (a)(1) would be revised by adding a definition for W/S as "wing loading at the design maximum takeoff weight." Paragraph (a)(1)(i) and (ii) would be revised to correct the equations for design cruise speed from "33 W/S" to "33 $\sqrt{(W/S)}$" and from "36 $\sqrt{W/S}$" to "36$\sqrt{(W/S)}$."

Section 23.335(b)(4) would be revised by adding a new paragraph (b)(4)(iii) that includes a new mach number speed margin, 0.07M, for commuter category airplanes. Because commuter category airplanes are normally operated at higher altitudes than normal, utility, and acrobatic category airplanes, they experience greater atmospheric variations, such as horizontal gusts and the penetration of jet streams or cold fronts. Therefore, a higher minimum speed margin is required. The JAR proposed adding this mach number speed margin. The original mach number speed margin of 0.05M is retained for normal, utility, and acrobatic category airplanes.

An incorrect equation, $\sqrt{(n_g)}\ V_{S1}$, appears in § 23.335(d)(1). This equation for the design speed for maximum gust intensity, V_B, would be corrected to $V_{S1}\ \sqrt{n_g}$.

Section 23.337 Limit Maneuvering Load Factors

Section 23.337(a)(1) would be revised by clarifying the equation and by adding a definition for "W." This definition of "W," "design maximum takeoff weight," was requested by the JAA to harmonize with JAR 23.

Section 23.341 Gust Load Factors

Section 23.341 would be reorganized to provide a new paragraph (a) that clarifies that each airplane must be designed to withstand loads on each lifting surface that result from gusts specified in § 23.333(c). Existing paragraphs (a) and (b) would be redesignated as (b) and (c), respectively. The text of the proposed paragraph (b) would be revised to eliminate the phrase, "considering the criteria of § 23.333(c), to develop the gust loading on each lifting surface" since this requirement would be located in proposed paragraph (a). The reference to paragraph (b) in redesignated § 23.341(b) is changed to paragraph (c) to conform. The text for the redesignated paragraph (c) would be revised to delete the phrase "for conventional configurations" because it is no longer accurate, and to revise the definition for wing loading (W/S). These changes are being proposed at the request of the JAA to harmonize with JAR 23.

Section 23.343 Design Fuel Loads

Proposed new § 23.343 would harmonize with the corresponding JAR

except for paragraph (c). This proposed requirement, which is a modified version of § 25.343 that covers transport category, would apply to all part 23 airplane categories, except one paragraph that would be limited to commuter category airplanes.

Airplanes already exist with "maximum zero fuel" weight limits that apply to zero fuel in the airplane (wing, fuselage, and so forth), rather than in the wing only. Therefore, "maximum wing zero fuel" weight was suggested for use when it is appropriate for the type of fuel system in the design.

The FAA agreed, in a JAA/FAA Harmonization Study Group Meeting in Vienna, in July 1992, to propose the requirements in three paragraphs. The JAA would only propose paragraphs (a) and (b) for JAR 23 because they do not have a 45-minute fuel reserve operating rule. Also, the JAA decided to put paragraph (c) into a Notice of Proposed Action (NPA) to await the creation of the necessary operating rule. In February 1993, the same group agreed to have paragraph (b) address "maximum zero wing fuel" weight, instead of "maximum zero fuel" weight as mentioned above. The group agreed not to refer to the Operating Limitation Section of the Airplane Flight Manual (AFM) required by proposed § 23.1583(c)(6) (as presented in the Flight Harmonization NPRM) since that section already contains a reference to § 23.343.

Section 23.345 High Lift Devices

Revised § 23.345(a) would have minor, non-substantive, clarifying changes. The term "fully deflected" would be changed to "fully extended" because it more accurately describes flap conditions and positions. The phrase "resulting in limit load factors" would be removed because the requirement already exists in § 23.301(a). Current paragraph (d) would be redesignated as paragraph (c) without change.

Current paragraph (c) would be redesignated as paragraph (d) and revised by including the requirements of § 23.457. Paragraph (e) would be deleted since it merely references the requirements of § 23.457, which have been moved to § 23.345(d). This arrangement places all "flap" requirements in one location, and would harmonize the requirements with JAR 23.

Section 23.347 Unsymmetrical Flight Conditions

The proposed revision to § 23.347 would redesignate the existing text as paragraph (a) and add a new paragraph (b) that includes requirements for a flick maneuver (snap roll), if requested for aerobatic category airplanes. This change is being made to harmonize with the JAR.

Section 23.349 Rolling Conditions

Section 23.349(a)(2) would be revised to simplify the unsymmetric semispan load assumption to 100 percent and 75 percent for all design weights up through 19,000 pounds. The FAA had suggested varying the latter percentage linearly between 70 percent and 77.5 percent to include aircraft weighing up to 19,000 pounds. After discussion with the JAA, the FAA agrees that 75 percent is an appropriate assumption for all part 23 airplanes.

Section 23.369 Special Conditions for Rear Lift Truss

This proposal would amend § 23.369 by amending the equation and by adding a definition for wing loading (W/S) for clarification and to harmonize with JAR 23.

Section 23.371 Gyroscopic and Aerodynamic Loads

Section 23.371(a) would be revised and reorganized by designating the existing text as paragraph (a) and adding new paragraphs (b) and (c).

Revisions to the text of proposed paragraph (a) would delete the limitation for turbine powered engines; add inertial loads, and replace the word "engines" with "engine(s) and propeller(s), if applicable." These changes would clarify that these requirements apply to all part 23 airplanes.

Proposed new paragraph (b) would clarify and distinguish the requirements for airplanes approved for acrobatic maneuvers. These clarifications are needed to harmonize with the JAR.

Proposed new paragraph (c) would clarify that commuter category airplanes must comply with the gust conditions in § 23.341 in addition to the requirement of § 23.371(a). This clarification is necessary to harmonize with the JAR.

Section 23.391 Control Surface Loads

This proposal would revise § 23.391 by deleting paragraph (b) and removing the designation for paragraph (a). Current paragraph (b) is a reference to alternative values of control loading in Appendix B. Appendix B was previously removed by Amendment No. 23–42 (56 FR 344, January 3, 1991).

Section 23.393 Loads Parallel to Hinge Line

Proposed new § 23.393, as suggested by the JAA, would contain a modified version of the requirement of § 23.657(c) concerning loads parallel to the hinge line, which would be deleted from § 23.657. The requirement would specify minimum inertial load values, and be included in new § 23.393(b) to group the load factors in consecutive sections.

Section 23.399 Dual Control System

Existing § 23.399 does not address the forces exerted on a dual control system when both pilots act together. The JAA has proposed adding a new paragraph (b) to account for these pilot forces. The material in present § 23.399 would be reorganized as paragraph (a), revised to clarify that it is the greater of the forces that apply, and a new paragraph (b) would be added to include the JAA suggestion and harmonize the rules.

Section 23.415 Ground Gust Conditions

This proposal would amend § 23.415 by revising paragraph (a)(2) to add a definition for wing loading (W/S) to harmonize with JAR 23. It would also revise paragraph (c). Before paragraph (c) was added in Amendment No. 23–45, the FAA agreed to a more comprehensive version of the tie-down criteria that was suggested by the JAA. This amendment would implement that agreement and harmonize the rules.

Section 23.441 Maneuvering Loads

The JAA suggested that § 23.441(b) be revised to include a new design requirement for the vertical tail of a commuter category airplane. The JAA determined that the vertical tail structure must be shown to be adequate for the loads imposed when the airplane is yawed by rudder deflection to the maximum attainable angle and is suddenly allowed to return by neutralizing the rudder. The maximum yaw condition is governed by any of several constraining conditions; for example, control surface stops, maximum available booster effort, or the various maximum pilot rudder forces that may be imposed. The JAA stressed that the design yaw excursions need to be examined throughout the full range of speeds of the flight envelope. The FAA agrees. Although this is a significant departure from the structural design philosophy depicted in part 23 (full use of all controls at maneuvering speed) the addition of a similar requirement to part 25 has served to reduce the static overload failures in part 25 airplanes. It is expected that the addition of the proposed requirement to § 23.441(b) would reduce this type failure in commuter category airplanes.

In addition, the permissible overswing angle that may be assumed under § 23.441(a)(2) would be changed from 1.3 to 1.5 times the static sideslip angle of paragraph (a)(3). The JAA suggested that the 1.5 figure more closely represents reality. The FAA agrees and the rule is changed to harmonize with the JAR. Finally, for clarification, the word "resulting" is changed to "overswing" in the first sentence of paragraph (a)(2).

Section 23.443 Gust Loads

Section 23.443(c) would be revised by changing the format of the formula, revising the definition of weight, "W," and correcting the subscripts of the distance to the lift center, "1_{vt}." The current definition reads "W = airplane weight (lbs.)." The proposed definition reads "W = the applicable weight of the airplane in the particular load case (lbs.)." The proposed changes are for clarity and harmonization with JAR 23.

Section 23.455 Ailerons

The heading the precedes § 23.455 would be amended by deleting the term "Wing Flaps" so that the heading reads "AILERONS AND SPECIAL DEVICES." This change reflects the proposed deletion of the wing flap requirements from § 23.457 and their placement in § 23.345.

Section 23.457 Wing Flaps

The FAA proposes to delete this section. As discussed under § 23.345, above, the wing flap requirements have been revised and consolidated in proposed § 23.345 to group these requirements together.

Section 23.473 Ground Load Conditions and Assumptions

The reference in § 23.473(c)(1) would be revised. In amendment No. 23–42 (January 3, 1991, 56 FR 344), § 23.473(c)(1) incorrectly continued to reference "§ 23.67(a) or (b)(1)." The reference in § 23.473(c)(1) should have been changed to "§ 23.67(b)(1)."

The FAA also intends that turbine powered airplanes be included in § 23.473(c)(1) because these airplanes are required to be "climb positive" with one engine inoperative. Therefore, § 23.473(c)(1) must also reference "§ 23.67(c)."

Originally, the FAA intended to harmonize § 23.473(c)(1) by citing only § 23.67. However, after considering the two issues noted above, the FAA has determined that the intent described is lost unless § 23.473(c)(1) specifically includes "§ 23.67(b)(1) or (c)."

Paragraph (f), which addresses energy absorption tests, would be revised to parallel the language of JAR 23.473(f) with no substantive change from current paragraph (f).

Section 23.497 Supplementary Conditions for Tail Wheels

Proposed new § 23.497(c) would establish design standards for the aft-mounted propellers of § 23.925(b). The FAA has determined that certain portions of the design standards for aft-mounted propellers more properly belong in subpart C on structure. The remainder of the standards would remain in subpart E.

Section 23.499 Supplementary Conditions for Nose Wheels

Proposed new §§ 23.499 (d) and (e) would establish nose wheel conditions for airplanes with a steerable nose wheel controlled by hydraulic or other power and for airplanes with a steerable wheel that has a direct mechanical connection to the rudder pedals. Initial versions of these two paragraphs were introduced at the Second Structures Specialist Meeting, revised, and ratified by the JAR 23 Study Group in April 1991. The new paragraphs codify current certification practice and distinguish the two types of control systems to harmonize with JAR 23.

Section 23.521 Water Load Conditions

This proposal would amend § 23.521 by deleting paragraph (c), which was added by Amendment No. 23–45. The JAA pointed out that paragraph (c) contains requirements already covered in paragraph (a). The FAA agrees, and proposes to delete paragraph (c).

Section 23.561 General

This proposal would amend §§ 23.561 (b), (d), and (e) by revising the existing requirements to harmonize with JAR 23. Revised paragraph (b), concerning occupant protection, proposes language similar to part 25/JAR 25. Paragraph (d), concerning turnovers, would be revised to simplify and clarify the requirements without making substantive changes. Proposed new paragraph (e), concerning supporting structure, would be revised to add references to § 23.561(b)(3) and § 23.787(c) to ensure that items of mass are retained to higher accelerations than the occupant for occupant protection.

Section 23.571 Metallic Pressurized Cabin Structures

Section 23.571 would be revised by changing the heading from "Pressurized cabin" to "Metallic pressurized cabin structure" because nonmetallic structure is addressed in § 23.573(a). The introductory text would be revised to limit the applicability to normal, utility, and acrobatic category only because commuter category airplanes are addressed separately. Paragraph (a) would be revised to require the fatigue strength investigation to show that the structure can withstand repeated loads of variable magnitude expected in service. Currently, fatigue strength may be shown by tests or analysis or both. Under the proposed revision, structural strength must be shown by tests or by analysis supported by test evidence.

Section 23.572 Metallic Wing, Empennage, and Associated Structures

This proposal would revise the heading to add the word "metallic" and revise § 23.572(a) to limit the applicability to normal, utility, and acrobatic category airplanes and to make minor editorial changes. Paragraph (a)(1) is revised to harmonize with JAR 23 by requiring tests or analysis supported by test evidence, as discussed under § 23.571 of this preamble.

Section 23.573 Damage Tolerance and Fatigue Evaluation of Structure

This proposal would amend § 23.573(a)(5) to clarify the regulation because, as written, it could be easily misread. The rewritten requirement uses the word "any" rather than "each" to indicate that another limiting factor exists. It also changes the order of the clauses to prevent the regulation from addressing "failure of the limit load capacity." The rewritten text makes it clear that "Each bonded joint is required to be substantiated by tests" is not the desired result.

The FAA is not proposing a revision to paragraph (b) even though it is not identical in format to JAR 23.573(b). While current FAR § 23.573(b) of title 14 contains two subparagraphs and JAR 23.573(b) (JAR 23-Post Consultation) contains six subparagraphs, the two are technically identical.

This proposal would delete § 23.573(c). Inspections and other procedures would be moved to § 23.575 and be made applicable to four sections pertaining to fatigue evaluation, namely, §§ 23.571, 23.572, 23.573 and 23.574.

Technically, these actions harmonize with the efforts taken by the JAA in similar paragraphs of JAR 23. JAR 23 contains identical inspection requirements in JAR 23.571(b), JAR 23.572(c) and JAR 23.573(c). The FAA format is different from the JAR 23 presentation. JAR 23 uses three paragraphs; proposed § 23.575 uses one section to accomplish the identical end result.

Section 23.574 Metallic Damage Tolerance and Fatigue Evaluation of Commuter Category Airplanes

This proposal would add a new § 23.574 that would delineate the damage tolerance and fatigue evaluation requirement for commuter category airplanes. The United Kingdom Civil Aviation Authority proposed to revise JAR 23.571 and 23.572 to require commuter category airplanes to meet the fail-safe provisions of those sections, and, thus, remove the safe-life provisions. The FAA representative agree with the intent of the proposal but could not agree with any specific recommendation because the FAA was in the process of determining requirements for commuter category airplanes in the aging aircraft program. The majority of the subgroup decided they would not recommend the United Kingdom Civil Aviation Authority proposal.

In the evaluation of aging aircraft, the FAA determined that new commuter category airplanes must meet damage tolerance requirements. The FAA then evaluated the damage tolerance procedures added by Amendment No. 23–44, and the FAA is now proposing to add new § 23.574 that would require commuter category airplanes to comply with the damage tolerance and fatigue evaluation of § 23.573. Accordingly, as discussed previously, §§ 23.571 and 23.572 would be revised to clarify that these sections would apply only to normal, utility, and acrobatic category airplanes. Newly type certificated commuter category airplanes would have to meet proposed § 23.574 instead of §§ 23.571 and 23.572.

JAR 23 Structures Specialists and the JAR 23 Study Group agree with these requirements and consider the impact upon the JAR 23 effort; they decided to place JAR 23.574 on the NPA list. By these actions, the JAA and the FAA will propose the same damage tolerance provisions for newly certificated commuter category airplanes.

Section 23.575 Inspections and Other Procedures

This proposal would add a new § 23.575 that would clarify that airplane manufacturers are required to provide recommendations for inspection frequencies, locations and methods when the design is approved by the FAA. Whether these inspections and procedures are required has been unclear for the past 20 years. This proposal clarifies that. Both safe-life and damage-tolerant airplane designs would be involved. Also, both composite and metallic airplanes would be included.

Section 23.573(c) would be moved to § 23.575 and revised. The revision consists of naming those requirements that are included, namely §§ 23.571, 23.572, 23.573 and 23.574. These four sections address pressurized cabin, wing, empennage (tail), and associated structures for metallic airplanes. They also provide standards for damage tolerance and fatigue evaluations of both composite and metallic airplane structures. Proposed § 23.575 would harmonize these rules with JAR 23 technically, but a simple format.

Section 23.607 Fasteners

This proposal would amend § 23.607 by changing the section heading, by redesignating the existing requirement as paragraph (c), and by adding new paragraphs (a) and (b) to require the following: if the loss of a non-selflocking fastener would preclude continued safe flight and landing, a locking device must be incorporated, and the fastener must not be adversely affected by environmental conditions such as temperature or vibration. These requirements would be added for harmonization.

Section 23.611 Accessibility Provisions

Structural specialists from both the JAA and FAA agreed that § 23.611, Accessibility, is unclear in its intent and examples would be an aid to understanding.

The proposed revision would clarify the requirement. In the Instructions for Continued Airworthiness required under § 23.1529, recommended or required inspection items to which access must be provided are identified. Following are examples of such items: (1) Principle structural elements and control system components that require inspection; (2) replaceable parts; and (3) parts that require adjustment or lubrication. Section 23.611 requires that, for any part requiring servicing, there must be a means of access incorporated into the aircraft design to allow this servicing to be accomplished. Whether the access provided is appropriate will depend on the nature of the item, and the frequency and complexity of the required inspection or maintenance actions.

Section 23.629 Flutter

Section 23.629 would be revised to require either flight flutter tests and rational analysis or flight flutter tests and compliance with the FAA's "Simplified Flutter Prevention Criteria." Section 23.629 currently requires flutter substantiation by only one of three methods: a rational analysis, flight flutter test, or compliance with the "Simplified Flutter Prevention Criteria." The JAA argues that unless the rational analysis or simplified analysis is verified by some flight flutter tests, the validity of such an analysis is unknown. The JAA also points out that the extent of flight flutter testing depends upon the analysis prepared and the experience with similar designs. The FAA structures specialist agreed with these arguments and with harmonizing this section, even though it would represent an increased requirement for substantiation. These changes would be enacted by proposed revisions to § 23.629 (a), (b), and (c), noting that the designations of paragraphs (b) and (c) would be switched. Paragraph (d)(3)(i) would be revised to change the phrase "T-tail or boom tail" to "T-tail or other unconventional tail configurations" to be more inclusive and to represent the standard used in current certification.

Also, Amendment No. 23–45 added § 23.629 (g) and (h), which contain the phrase "by analysis or test" and is consistent with the original part 23 requirement in § 23.629(a); that is, the applicant is able to choose the method of substantiation. JAR 23.629 (g) and (h) propose that substantiation be done only "by analysis." The JAA argues that the analysis required by the rule must be based upon a previously verified flutter analysis model. The JAA notes that this requirement exists in § 23.629(a), which generally states that full scale flight flutter tests must be conducted when the adequacy of flutter analysis and wind tunnel tests have not been established by previous experience with airplanes having similar design features, and when modifications to the type design have a significant effect upon the critical flutter modes. The FAA proposes to harmonize with JAR 23 by amending § 23.629 (g) and (h) to remove the "or test" phrase. For an airplane that has undergone modification that could affect its flutter characteristics, proposed paragraph (i) would allow freedom from flutter to be shown by tests (under paragraph (a)) or by analysis alone if that analysis is based on previously approved data.

Section 23.657 Hinges

This proposal would amend § 23.657 by deleting paragraph (c), which covers loads parallel to the hinge line. As discussed above, this requirement would be moved to keep the load factors in consecutive regulatory sections.

Section 23.673 Primary Flight Controls

A proposed revision to § 23.673 would delete the requirements for two-control airplanes consistent with actions being taken in the Flight Harmonization

NPRM §§ 23.177 and 23.201. The two-control airplane regulations were introduced in 1945 but no two-control airplanes have been certificated for several decades and no need is foreseen for these regulations. If an applicant proposes a two-control airplane, the FAA would issue special conditions. Accordingly, § 23.673(b) and the paragraph (a) indicator, since it is no longer needed, are deleted.

Additional harmonization with JAR 23 is accomplished by this action.

Section 23.725 Limit Drop Tests

This proposal would amend § 23.725 by adding brackets to clarify the effective weight equation in paragraph (b).

Section 23.755 Hulls

This proposal would amend § 23.755 by deleting paragraph (b), which provides that keels of hull seaplanes or amphibians of less than 1,500 pounds need not be compartmented and which is redundant with paragraph (a). The proposal would also redesignate paragraph (c) as new paragraph (b) and edit it for clarification.

Section 23.865 Fire Protection of Flight Controls, Engine Mounts, and Other Flight Structures

This section on fireproof material and shielding would be revised by changing the words "engine compartment" to "designated fire zones" to be consistent with recent revisions to §§ 23.1203 and 23.1181. The revision would include the phrase "adjacent areas that would be subjected to the effects of fire in the designated fire zones." Adding this phrase clarifies FAA practice that areas in and around a designated fire zone must also be protected, and harmonizes the rule with JAR 23.

Section 23.925 Propeller Clearance

This proposal would amend § 23.925(b), Aft mounted propellers, by removing the requirements on tail wheels, bumpers, and energy absorption devices and moving them to § 23.497, Supplementary conditions for tail wheels, as discussed above. The inspection/replacement criteria for tail wheel, bumper, and energy absorption device would be deleted because the inspection/replacement is required in § 23.1529 and does not need to be repeated here.

Appendix A

Three areas of Appendix A would be revised: (1) A23.1 General; (2) A23.11 Control surface loads, paragraph (c), Surface loading conditions; and (3) Table 2—Average limit control surface loading. A new figure would be added to Appendix A: Figure A7, Chordwise load distribution for stabilizer and elevator, or fin and rudder. These proposed revisions are based upon limitations in JAR 23, Appendix A. They are needed to specify the configurations for which the wing and tail surface loads, required in A23.7, are valid.

The title of Appendix A is revised by removing the words "for conventional, single-engine airplanes of 6,000 pounds or less maximum weight," because the weight limitation is unnecessary in the title and appears in paragraph A23.1(a).

In A23.1, existing paragraph (a) would be revised extensively, and existing paragraph (b) would be deleted and replaced by new paragraph (b). The word "conventional" would be removed and replaced by ten subparagraphs that more accurately describe what is meant by that term. The term "single engine" is changed to "single engine, excluding turbines" to clarify the applicability of the Appendix. This change would permit the use of a rotary engine. Note that this was accomplished in JAR–VLA and AC 23–11 by using the term "single engine (spark- or compression-ignition)." The format differs from that originally proposed and agreed to by JAA/FAA structures specialists. However, the technical content remains the same. The JAA believes that these criteria represent those envisioned when Appendix A was first introduced.

Clarifying changes would be made to A23.11, paragraph (c)(1). Then, six paragraphs and a diagram, with defined terms, would be added to specify and clarify the conditions that apply. Paragraph (d) would be revised to correct a section reference.

The Chordwise Distribution for the Horizontal Tail I portion of Table 2 would be deleted and replaced by the reference "See Figure A7" so that a more appropriate design load may be applied. The Vertical Tail II portion of Table 2 would be corrected by removing the (a) and (b) references, and duplicate statements, so that "Right and Left," "Figure A5 Curve (1)," and "Same as above" remain in the columns.

A new Figure A7 would be added to define both the chordwise load distribution and its corresponding parameters.

Regulatory Evaluation Summary

Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal Agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) would generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in DOT's Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

Of the part 23 sections that would be amended or added, the FAA has identified only 6 that would result in additional compliance costs, totalling between $12,000 and $20,000 per certification. When amortized over a production run, these costs would have a negligible impact on the cost per airplane. The FAA solicits comments concerning the incremental certification/development costs attributable to the proposed rule.

The primary benefit of the proposed rule would be the cost efficiencies of harmonization with the JAR for those manufacturers who choose to market airplanes in JAA countries as well as to manufacturers in JAA countries who choose to market airplanes in the United States. Other benefits of the proposed rule would be decreased reliance on special conditions, simplification of the certification process through clarification of existing requirements, and increased flexibility through optional designs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that

the proposed amendments would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. Instead, the proposed airframe certification procedures would be harmonized with those of the JAA and would lessen restraints on trade.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, according to Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA proposes to revise the airframe airworthiness standards for normal, utility, acrobatic, and commuter category airplanes to harmonize them with the standards that were published for the same category airplanes by the Joint Airworthiness Authorities in Europe. If adopted, the proposed revisions would reduce the regulatory burden on United States and European airplane manufacturers by relieving them of the need to show compliance with different standards each time they seek certification approval of an airplane in a different country.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 23 of the Federal Aviation Regulations (14 CFR part 23) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. app. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.301 is amended by revising paragraph (d) to read as follows:

§ 23.301 Loads.

* * * * *

(d) Simplified structural design criteria may be used if they result in design loads not less than those prescribed in §§ 23.331 through 23.521. For airplane configurations described in appendix A, section A23.1, the design criteria of appendix A of this part are an approved equivalent of §§ 23.321 through 23.459. If appendix A of this part is used, the entire appendix must be substituted for the corresponding sections of this part.

3. Section 23.335 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(1)(ii); by removing the period and adding "; and either" to the end of paragraph (b)(4)(i); by revising paragraph (b)(4)(ii); by adding a new paragraph (b)(4)(iii); and by revising the introductory text of paragraph (d)(1) to read as follows:

§ 23.335 Design airspeeds.

* * * * *

(a) * * *

(1) Where W/S = wing loading at the design maximum takeoff weight, V_c (in knots) may not be less than—

(i) $33\sqrt{(W/S)}$ (for normal, utility, and commuter category airplanes);

(ii) $36\sqrt{(W/S)}$ (for acrobatic category airplanes).

* * * * *

(b) * * *

(4) * * *

(ii) Mach 0.05 for normal, utility, and acrobatic category airplanes (at altitudes where M_D is established); or

(iii) Mach 0.07 for commuter category airplanes (at altitudes where M_D is established) unless a rational analysis, including the effects of automatic systems, is used to determine a lower margin. If a rational analysis is used, the minimum speed margin must be enough to provide for atmospheric variations (such as horizontal gusts, and the penetration of jet streams or cold fronts), instrument errors, airframe production variations, and must not be less than Mach 0.05.

* * * * *

(d) * * *

(1) V_B may not be less than the speed determined by the intersection of the line representing the maximum positive lift, $C_{N\,MAX}$, and the line representing the rough air gust velocity on the gust V–n diagram, or $V_{S1}\sqrt{n_g}$, whichever is less, where:

* * * * *

4. Section 23.337 is amended by revising paragraph (a)(1) to read as follows:

§ 23.337 Limit maneuvering load factors.

(a) * * *

$$(1)\ 2.1+\frac{24{,}000}{W+10{,}000}\ \text{for normal and commuter category}$$

airplanes, where W = design maximum takeoff weight, except that n need not be more than 3.8;

* * * * *

5. Section 23.341 is amended by redesignating existing paragraphs (a) and (b) as paragraphs (b) and (c), respectively; by adding a new paragraph (a); by revising the redesignated paragraph (b); and by revising the introductory text, the formula, and the definition of "W/S" in the redesignated paragraph (c) to read as follows:

§ 23.341 Gust loads factors.

(a) Each airplane must be designed to withstand loads on each lifting surface resulting from gusts specified in § 23.333(c).

(b) The gust load for a canard or tandem wing configuration must be computed using a rational analysis, or

may be computed in accordance with paragraph (c) of this section, provided that the resulting net loads are shown to be conservative with respect to the gust criteria of § 23.333(c).

(c) In the absence of a more rational analysis, the gust load factors must be computed as follows:

$$n = 1 + \frac{K_g U_{de} V a}{498 (W/S)}$$

* * * * *

W/S=Wing loading (p.s.f.) due to applicable weight of the airplane in the particular load case.

* * * * *

6. A new § 23.343 is added to read as follows:

§ 23.343 Design fuel loads.

(a) The disposable load combinations must include each fuel load in the range from zero fuel to the selected maximum fuel load.

(b) If fuel is carried in the wings, the maximum allowable weight of the airplane without any fuel in the wing tank(s) must be established as "maximum zero wing fuel weight," if it is less than the maximum weight.

(c) For commuter category airplanes, a structural reserve fuel condition, not exceeding fuel necessary for 45 minutes of operation at maximum continuous power, may be selected. If a structural reserve fuel condition is selected, it must be used as the minimum fuel weight condition for showing compliance with the flight load requirements prescribed in this part and—

(1) The structure must be designed to withstand a condition of zero fuel in the wing at limit loads corresponding to:

(i) Ninety percent of the maneuvering load factors defined in § 23.337, and

(ii) Gust velocities equal to 85 percent of the values prescribed in § 23.333(c).

(2) The fatigue evaluation of the structure must account for any increase in operating stresses resulting from the design condition of paragraph (c)(1) of this section.

(3) The flutter, deformation, and vibration requirements must also be met with zero fuel in the wings.

7. Section 23.345 is revised to read as follows:

§ 23.345 High lift devices.

(a) If flaps or similar high lift devices are to be used for takeoff, approach or landing, the airplane, with the flaps fully extended at V_F, is assumed to be subjected to symmetrical maneuvers and gusts within the range determined by—

(1) Maneuvering, to a positive limit load factor of 2.0; and

(2) Positive and negative gust of 25 feet per second acting normal to the flight path in level flight.

(b) V_F must be assumed to be not less than 1.4 V_S or 1.8V_{SF}, whichever is greater, where—

(1) V_S is the computed stalling speed with flaps retracted at the design weight; and

(2) V_{SF} is the computed stalling speed with flaps fully extended at the design weight.

However, if an automatic flap load limiting device is used, the airplane may be designed for the critical combinations of airspeed and flap position allowed by that device.

(c) In determining external loads on the airplane as a whole, thrust, slipstream, and pitching acceleration may be assumed to be zero.

(d) the flaps, their operating mechanism, and their supporting structures, must be designed to withstand the conditions prescribed in paragraph (a) of this section. In addition, with the flaps fully extended at V_F, the following conditions, taken separately, must be accounted for:

(1) A head-on gust having a velocity of 25 feet per second (EAS), combined with propeller slipstream corresponding to 75 percent of maximum continuous power; and

(2) The effects of propeller slipstream corresponding to maximum takeoff power.

8. Section 23.347 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 23.347 Unsymmetrical flight conditions.

* * * * *

(b) Acrobatic category airplanes certified for flick maneuvers (snap-roll) must be designed for additional asymmetric loads acting on the wing and the horizontal tail.

9. Section 23.349(a)(2) is revised to read as follows:

§ 23.349 Rolling conditions.

* * * * *

(a) * * *

(2) For normal, utility, and commuter categories, in Condition A, assume that 100 percent of the semispan wing airload acts on one side of the airplane and 75 percent of this load on the other side.

* * * * *

10. Section 23.369(a) is revised to read as follows:

§ 23.369 Rear lift truss.

(a) If a rear lift truss is used, it must be designed to withstand conditions of reversed airflow at a design speed of—

$V = 8.7\sqrt{(W/S)} + 8.7$ (knots), where W/S = wing loading at design maximum takeoff weight.

* * * * *

11. Section 23.371 is revised to read as follows:

§ 23.371 Gyroscopic and aerodynamic loads.

(a) Each engine mount and its supporting structure must be designed for the gyroscopic, inertial, and aerodynamic loads that result, with the engine(s) and propeller(s), if applicable, at maximum continuous r.p.m., under either:

(1) The conditions prescribed in § 23.351 and § 23.423; or

(2) All possible combinations of the following—

(i) A yaw velocity of 2.5 radians per second;

(ii) A pitch velocity of 1.0 radian per second;

(iii) A normal load factor of 2.5; and

(iv) Maximum continuous thrust.

(b) For airplanes approved for acrobatic maneuvers, each engine mount and its supporting structures must be designed to withstand the combined maximum yaw velocity, pitch velocity, and corresponding load factors expected during such maneuvers.

(c) For commuter category airplanes, the gust conditions specified in § 23.341 must be added to the conditions required by paragraph (a) of this section.

§ 23.391 [Amended]

12. Section 23.391 is amended by removing paragraph (b) and removing the designation "(a)" from the remaining text.

13. A new § 23.393 is added to read as follows:

§ 23.393 Loads parallel to hinge line.

(a) Control surfaces and supporting hinge brackets must be designed to withstand inertial loads acting parallel to the hinge line.

(b) In the absence of more rational data, the inertial loads may be assumed to be equal to KW, where—

(1) K = 24 for vertical surfaces;

(2) K = 12 for horizontal surfaces; and

(3) W = weight of the movable surfaces.

14. Section 23.399 is revised to read as follows:

§ 23.399 Dual control system.

(a) Each dual control system must be designed to withstand the force of the pilots operating in opposition, using

individual pilot forces not less than the greater of—

(1) 0.75 times those obtained under § 23.395; or

(2) The minimum forces specified in § 23.397(b).

(b) Each dual control system must be designed to withstand the force of the pilots applied together in the same direction, using individual pilot forces not less than 0.75 times those obtained under § 23.395.

15. Section 23.415 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 23.415 Ground gust conditions.

(a) * * *

(2) If pilot forces less than the minimums specified in § 23.397(b) are used for design, the effects of surface loads due to ground gusts and taxiing downwind must be investigated for the entire control system according to the formula:

$$H = K c S q$$

where—

H = limit hinge moment (ft.-lbs.);

c = mean chord of the control surface aft of the hinge line (ft.);

S = area of control surface aft of the hinge line (sq. ft.);

q = dynamic pressure (p.s.f.) based on a design speed not less than $14.6\sqrt{(W/S)} + 14.6$ (f.p.s.) where W/S = wing loading at design maximum weight, except that the design speed need not exceed 88 (f.p.s.);

K = limit hinge moment factor for ground gusts derived in paragraph (b) of this section. (For ailerons and elevators, a positive value of K indicates a moment tending to depress the surface and a negative value of K indicates a moment tending to raise the surface).

* * * * *

(c) At all weights between the empty weight and the maximum weight declared for tie-down stated in the appropriate manual, any declared tie-down points and surrounding structure, control system, surfaces and associated gust locks must be designed to withstand the limit load conditions that exist when the airplane is tied down and that result from wind speeds of up to 65 knots horizontally from any direction.

16. Section 23.441 is amended by revising paragraph (a)(2) and adding a new paragraph (b) to read as follows.

§ 23.441 Maneuvering loads.

(a) * * *

(2) With the rudder deflected as specified in paragraph (a)(1) of this section, it is assumed that the airplane yaws to the overswing sideslip angle. In lieu of a rational analysis, an overswing angle equal to 1.5 times the static sideslip angle of paragraph (a)(3) of this section may be assumed.

* * * * *

(b) For commuter category airplanes, the loads imposed by the following additional maneuver must be substantiated at speeds from V_A to V_D/M_D. When computing the tail loads—

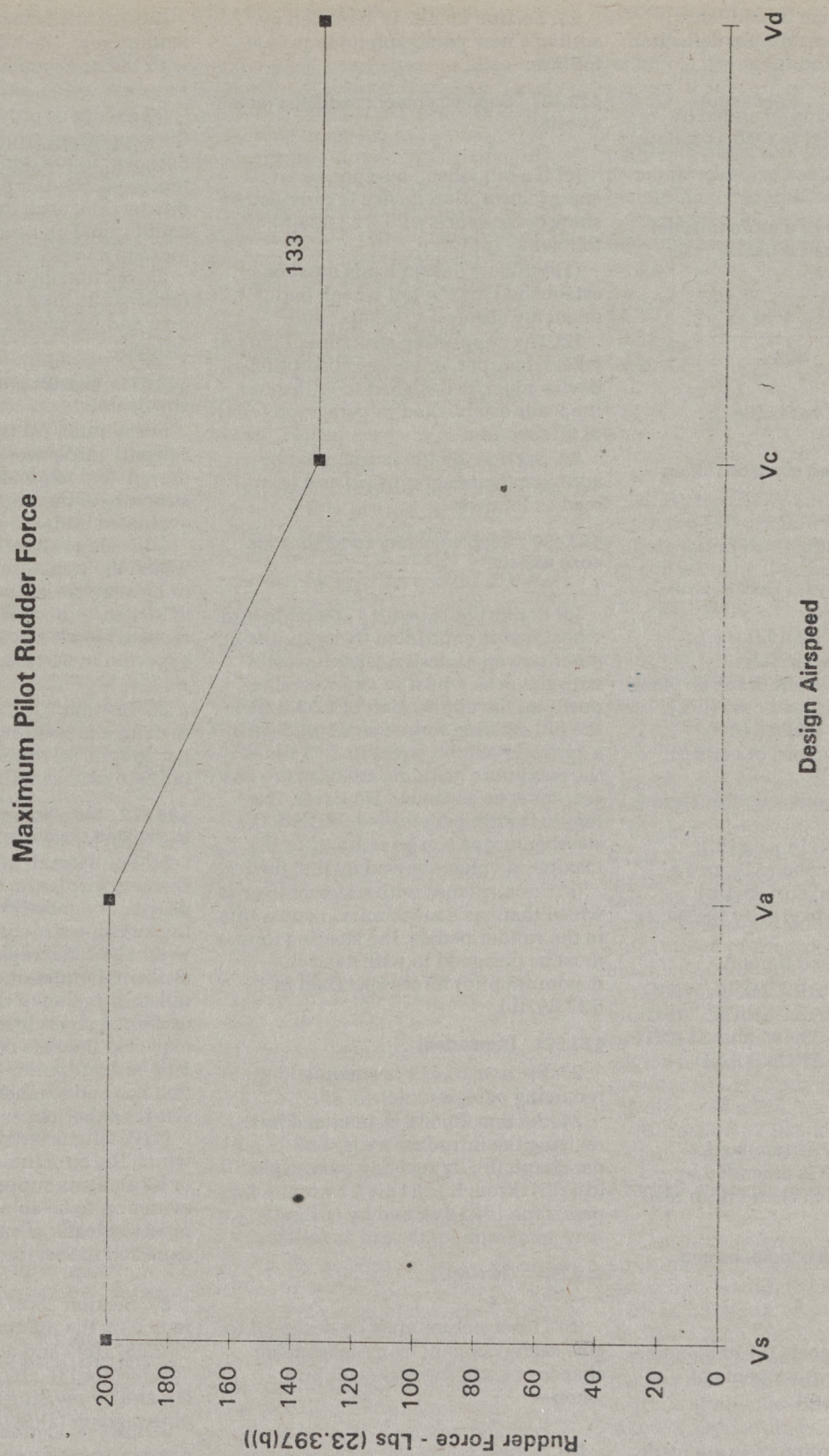
(1) The airplane must be yawed to the largest attainable steady state sideslip angle, with the rudder at maximum deflection caused by any one of the following:

(i) Control surface stops;

(ii) Maximum available booster effort;

(iii) Maximum pilot rudder force as shown below:

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(2) The rudder must be suddenly displaced from the maximum deflection to the neutral position.

* * * * *

17. Section 23.443 is amended by revising paragraph (c) to read as follows:

§ 23.443 Gust loads.

* * * * *

(c) In the absence of a more rational analysis, the gust load must be computed as follows:

$$L_{vt} = \frac{K_{gt} U_{dc} V a_{vt} S_{vt}}{498}$$

where—

L_{vt}=Vertical surface loads (lbs.);

$$k_{gt} = \frac{0.88 \mu_{gt}}{5.3 + \mu_{gt}} = \text{gust alleviation factor;}$$

$$\mu_{gt} = \frac{2W}{\rho c_t g a_{vt} S_{vt}} \left[\frac{K}{l_{vt}}\right]^2 = \text{lateral mass ratio;}$$

U_{de}=Derived gust velocity (f.p.s.);
ρ=Air density (slugs/cu. ft.);
W=the applicable weight of the airplane in the particular load case (lbs.);
S_{vt}=Area of vertical surface (ft.^{2});
c_t=Mean geometric chord of vertical surface (ft.);
a_{vt}=Lift curve slope of vertical surface (per radian);
K=Radius of gyration in yaw (ft.);
l_{vt}=Distance from airplane c.g. to lift center of vertical surface (ft.);
g=Acceleration due to gravity (ft./sec.^{2}); and
V=Equivalent airspeed (knots).

18. The heading "AILERONS, WING FLAPS, AND SPECIAL DEVICES" that appears between §§ 23.445 and 23.455 is revised to read "AILERONS AND SPECIAL DEVICES".

§ 23.457 [Removed]

19. Section 23.457 is removed.

20. Section 23.473 is amended by revising paragraph (c)(1) and (f) to read as follows:

§ 23.473 Ground load conditions and assumptions.

* * * * *

(c) * * *

(1) The airplane meets the one-engine-inoperative climb requirements of § 23.67(b)(1) or (c); and

* * * * *

(f) If energy absorption tests are made to determine the limit load factor corresponding to the required limit descent velocities, these tests must be made under § 23.723(a).

* * * * *

21. Section 23.497 is amended by adding a new paragraph (c) to read as follows:

§ 23.497 Supplementary conditions for tail wheels.

* * * * *

(c) If a tail wheel, bumper, or an energy absorption device is provided to show compliance with § 23.925(b), the following apply:

(1) Suitable design loads must be established for the tail wheel, bumper, or energy absorption device; and

(2) The supporting structure of the tail wheel, bumper, or energy absorption device must be designed to withstand the loads established in paragraph (c)(1) of this section.

22. Section 23.499 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 23.499 Supplementary conditions for nose wheels.

* * * * *

(d) For airplanes with a steerable nose wheel that is controlled by hydraulic or other power, at design takeoff weight with the nose wheel in any steerable position, the application of 1.33 times the full steering torque combined with a vertical reaction equal to 1.33 times the maximum static reaction on the nose gear must be assumed. However, if a torque limiting device is installed, the steering torque can be reduced to the maximum value allowed by that device.

(e) For airplanes with a steerable nose wheel that has a mechanical connection to the rudder pedals, the steering torque must be designed to withstand the maximum pilot forces specified in § 23.397(b).

§ 23.521 [Amended]

23. Section 23.521 is amended by removing paragraph (c).

24. Section 23.561 is amended by revising the introductory text of paragraph (b); by revising paragraphs (d)(1)(i) through (d)(1)(iv); by removing paragraph (d)(1)(v); and by adding a new paragraph (e) to read as follows:

§ 23.561 General.

* * * * *

(b) The structure must be designed to give each occupant every reasonable chance of escaping serious injury when—

* * * * *

(d) * * *

(1) * * *

(i) The most adverse combination of weight and center of gravity position;

(ii) Longitudinal load factor of 9.0g;

(iii) Vertical load factor of 1.0g; and

(iv) For airplanes with tricycle landing gear, the nose wheel strut failed with the nose contacting the ground.

* * * * *

(e) Except as provided in § 23.787(c), the supporting structure must be designed to restrain, under loads up to those specified in paragraph (b)(3) of this section, each item of mass that could injure an occupant if it came loose in a minor crash landing.

25. Section 23.571 is amended by revising the heading, the introductory text, and paragraph (a), to read as follows:

§ 23.571 Metallic pressurized cabin structures.

For normal, utility, and acrobatic category airplanes, the strength, detail design, and fabrication of the metallic structure of the pressure cabin must be evaluated under one of the following:

(a) A fatigue strength investigation in which the structure is shown by tests, or by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected in service; or

* * * * *

26. Section 23.572 is amended by revising the heading and by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 23.572 Metallic wing, empennage, and associated structures.

(a) For normal, utility, and acrobatic category airplanes, the strength, detail design, and fabrication of those parts of the airframe structure whose failure would be catastrophic must be evaluated under one of the following unless it is shown that the structure, operating stress level, materials and expected uses are comparable, from a fatigue standpoint, to a similar design that has had extensive satisfactory service experience:

(1) A fatigue strength investigation in which the structure is shown by tests, or by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected in service; or

* * * * *

27. Section 23.573 is amended by removing the reference in paragraph (b) "§ 23.571(c)" and adding in its place "§ 23.571(a)(3)"; by removing paragraph (c); and by revising the introductory text of paragraph (a)(5) to read as follows:

§ 23.573 Damage tolerance and fatigue evaluation of structure.

(a) * * *

(5) For any bonded joint, the failure of which would result in catastrophic loss of the airplane, the limit load

capacity must be substantiated by one of the following methods—

* * * * *

28. A new § 23.574 is added to read as follows:

§ 23.574 Metallic damage tolerance and fatigue evaluation of commuter category airplanes.

For commuter category airplanes—

(a) *Metallic damage tolerance.* An evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, defects, or damage will be avoided throughout the operational life of the airplane. This evaluation must be conducted in accordance with the provisions of § 23.573, except as specified in paragraph (b) of this section, for each part of the structure that could contribute to a catastrophic failure.

(b) *Fatigue (safe-life) evaluation.* Compliance with the damage tolerance requirements of paragraph (a) of this section is not required if the applicant establishes that the application of those requirements is impractical for a particular structure. This structure must be shown, by analysis supported by test evidence, to be able to withstand the repeated loads of variable magnitude expected during its service life without detectable cracks. Appropriate safe-life scatter factors must be applied.

29. A new § 23.575 is added to read as follows:

§ 23.575 Inspections and other procedures.

Each inspection or other procedure, based on an evaluation required by §§ 23.571, 23.572, 23.573, or 23.574, must be established to prevent catastrophic failure and must be included in the Limitations Section of the Instructions for Continued Airworthiness required by § 23.1529.

30. Section 23.607 is revised to read as follows:

§ 23.607 Fasteners.

(a) Each non-self-locking bolt, screw, nut, pin, or other fastener must, if its loss would preclude continued safe flight and landing, incorporate a locking device.

(b) Fasteners and their locking devices must not be adversely affected by the environmental conditions associated with the particular installation.

(c) No self-locking nut may be used on any bolt subject to rotation in operation unless a non-friction locking device is used in addition to the self-locking device.

31. Section 23.611 is revised to read as follows:

§ 23.611 Accessibility provisions.

For each part that requires maintenance, inspection, or other servicing, appropriate means must be incorporated into the aircraft design to allow such servicing to be accomplished.

32. Section 23.629 is amended by revising the introductory text of paragraph (a); by redesignating existing paragraph (b) as paragraph (c) and revising it; by redesignating existing paragraph (c) as paragraph (b) and revising its introductory text; by revising paragraph (d)(3)(i); by revising paragraphs (g) and (h); and by adding a new paragraph (i) to read as follows:

§ 23.629 Flutter.

(a) It must be shown by the methods of paragraph (b), and either paragraph (c) or (d) of this section, that the airplane is free from flutter, control reversal, and divergence for any condition of operation within the limit V-n envelope and at all speeds up to the speed specified for the selected method. In addition—

* * * * *

(b) Flight flutter tests must be made to show that the airplane is free from flutter, control reversal and divergence and to show that—

* * * * *

(c) Any rational analysis used to predict freedom from flutter, control reversal and divergence must cover all speeds up to 1.2 V_D.

(d) * * *

(3) * * *

(i) Does not have a T-tail or other unconventional tail configurations;

* * * * *

(g) For airplanes showing compliance with the fail-safe criteria of §§ 23.571 and 23.572, the airplane must be shown by analysis to be free from flutter up to V_D/M_D after fatigue failure, or obvious partial failure of a principal structural element.

(h) For airplanes showing compliance with the damage tolerance criteria of § 23.573, the airplane must be shown by analysis to be free from flutter up to V_D/M_D with the extent of damage for which residual strength is demonstrated.

(i) For modifications to the type design that could affect the flutter characteristics, compliance with paragraph (a) of this section must be shown, except that analysis based on previously approved data may be used alone to show freedom from flutter, control reversal and divergence, for all speeds up to the speed specified for the selected method.

§ 23.657 [Amended]

33. Section 23.657 is amended by removing paragraph (c).

§ 23.673 [Amended]

34. Section 23.673 is amended by removing paragraph (b) and the paragraph designation "(a)" for the remaining paragraph.

35. Section 23.725 is amended by revising the equation in paragraph (b) to read as follows:

§ 23.725 Limit drop tests.

* * * * *

(b) * * *

$$W_c = W\frac{[h+(1-L)d]}{(h+d)}$$

* * * * *

36. Section 23.755 is amended by removing paragraph (b), and by redesignating paragraph (c) as paragraph (b) and revising it to read as follows:

§ 23.755 Hulls.

* * * * *

(b) Watertight doors in bulkheads may be used for communication between compartments.

37. Section 23.865 is revised to read as follows:

§ 23.865 Fire protection of flight controls, engine mounts, and other flight structure.

Flight controls, engine mounts, and other flight structure located in designed fire zones, or in adjacent areas that would be subjected to the effects of fire in the designated fire zones, must be constructed of fireproof material or be shielded so that they are capable of withstanding the effects of a fire. Engine vibration isolators must incorporate suitable features to ensure that the engine is retained if the non-fireproof portions of the isolators deteriorate from the effects of a fire.

38. Section 23.925 is amended by revising paragraph (b) to read as follows:

§ 23.925 Propeller clearance.

* * * * *

(b) *Aft-mounted propellers.* In addition to the clearances specified in paragraph (a) of this section, an airplane with an aft mounted propeller must be designed such that the propeller will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings.

* * * * *

39. Appendix A is amended by revising the title, section A23.1, paragraphs A23.11 (c)(1) and (d), and Table 2; and by adding Figure A7 to the end of the Appendix read as follows:

Appendix A to Part 23—Simplified Design Load Criteria

A23.1 General

(a) The design load criteria in this appendix are an approved equivalent of those in §§ 23.321 through 23.459 of this subchapter for an airplane having a maximum weight of 6,000 pounds or less and the following configuration:

(1) A single engine, excluding turbines;

(2) A main wing located closer to the airplane's center of gravity than the aft, fuselage-mounted, empennage;

(3) A main wing that contains a quarter-chord sweep angle of not more that 15 degrees fore and aft;

(4) A main wing that is equipped with trailing-edge controls (ailerons or flaps, or both);

(5) A main wing aspect ratio not greater than 7;

(6) A horizontal tail aspect ratio not greater than 4;

(7) A horizontal tail volume coefficient not less than 0.34;

(8) A vertical tail aspect ratio not greater than 2;

(9) A vertical tail planform area not greater than 10 percent of the wing planform area; and

(10) Symmetrical airfoils must be used in both the horizontal and vertical tail designs.

(b) This appendix A criteria may not be used on any airplane configuration that contains any of the following design features:

(1) Canard, tandem-wing, close-coupled, or tailless arrangements of the lifting surfaces;

(2) Biplane or multiplane wing arrangements;

(3) T-tail, V-tail, or cruciform-tail (+) arrangements;

(4) Highly-swept wing planforms (more than 15-degrees of sweep at the quarter-chord), delta planforms, or slatted lifting surfaces; or

(5) Winglets or other wing tip devices, or outboard fins.

* * * * *

A23.11 Control Surface Loads

* * * * *

(c) * * *

(1) Simplified limit surface loadings for the horizontal tail, vertical tail, aileron, wing flaps, and trim tabs are specified in figures 5 and 6 of this appendix.

(i) The distribution of load along the span of the surface, irrespective of the chordwise load distribution, must be assumed proportional to the total chord, except on horn balanced surfaces.

(ii) The load on the stabilizer and elevator, and the load on fin and rudder, must be distributed chordwise as shown in Figure A7 of this appendix.

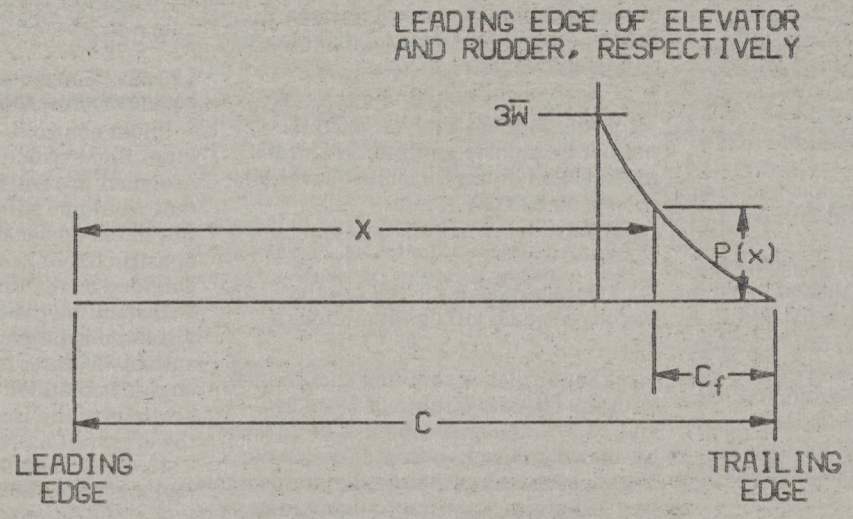
(iii) In order to ensure adequate torsional strength and to account for maneuvers and gusts, the most severe loads must be considered in association with every center of pressure position between the leading edge and the half chord of the mean chord of the surface (stabilizer and elevator, or fin and rudder).

(iv) To ensure adequate strength under high leading edge loads, the most severe stabilizer and fin loads must be further considered as being increased by 50 percent over the leading 10 percent of the chord with the loads aft of this appropriately decreased to retain the same total load.

(v) The most severe elevator and rudder loads should be further considered as being distributed parabolically from three times the mean loading of the surface (stabilizer and elevator, or fin and rudder) at the leading edge of the elevator and rudder, respectively, to zero at the trailing edge according to the equation:

$$P(x) = 3(\overline{w})\left[\frac{c - x}{c_f}\right]^2$$

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Where—

P(x) = local pressure at the chordwise stations x,

c = chord length of the tail surface,

cf = chord length of the elevator and rudder respectively, and

w = average surface loading as specified in Figure A5.

(vi) The chordwise loading distribution for ailerons, wing flaps, and trim tabs are specified in Table 2 of this appendix.

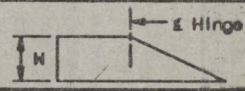
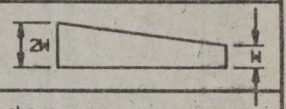
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(d) *Outboard fins.* Outboard fins must meet the requirements of § 23.445.

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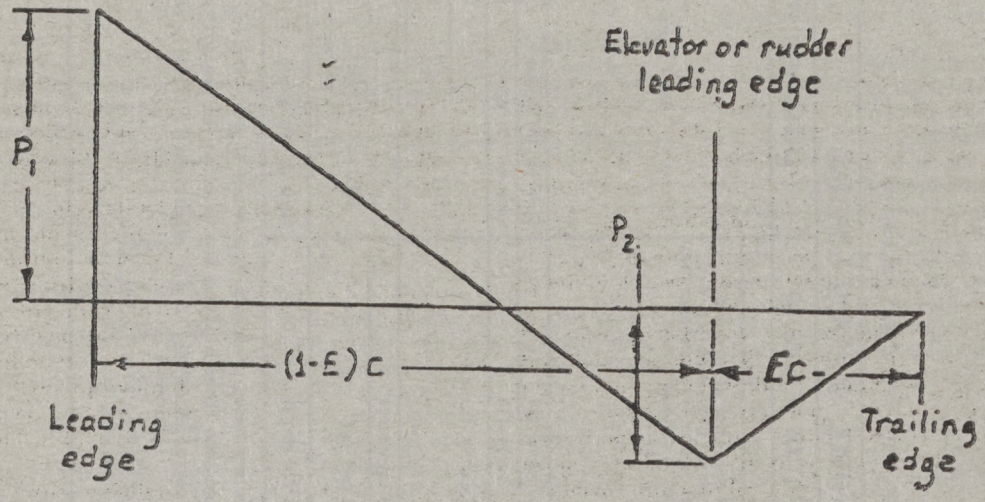
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TABLE 2 - Average limit control surface loading

AVERAGE LIMIT CONTROL SURFACE LOADING			
SURFACE	DIRECTION OF LOADING	MAGNITUDE OF LOADING	CHORDWISE DISTRIBUTION
HORIZONTAL TAIL I	a) Up and Down	Figure A5 Curve (2)	See Figure A7
	b) Unsymmetrical loading (Up and Down)	100% $\bar{w}$ on one side airplane ℄ 65% $\bar{w}$ on other side airplane ℄ for normal and utility categories. For acrobatic category see A23.11(C)	
VERTICAL TAIL II	a) Right and Left	Figure A5 Curve (1)	Same as (A) above
	b) Right and Left	Figure A5 Curve (1)	Same as (B) above
AILERON III	a) Up and Down	Figure A6 Curve (5)	(C) 
WING FLAP IV	a) Up	Figure A6 Curve (4)	(D) 
	b) Down	.25 x Up Load (a)	
TRIM TAB V	a) Up and Down	Figure A6 Curve (3)	Same as (D) above

NOTE: The surface loadings I, II, III, and V above are based on speeds V_A min and V_C min. The loading of IV is based on V_F min. If values of speeds greater than these minimums are selected for design, the appropriate surface loadings must be multiplied by the ratio $\left[\frac{V_{selected}}{V_{minimum}}\right]^2$. For conditions I, II, III, and V the multiplying factor used must be the higher of $\left[\frac{V_A \text{ sel.}}{V_A \text{ min.}}\right]^2$ or $\left[\frac{V_C \text{ sel.}}{V_C \text{ min.}}\right]^2$.

FIGURE A7 — CHORDWISE LOAD DISTRIBUTION FOR STABILIZER AND ELEVATOR OR FIN AND RUDDER



$$P_1 = 2\,(\overline{w})\,\frac{(2 - E - 3d')}{(1 - E)}$$

$$P_2 = 2\,(\overline{w})\,(3d' + E - 1)$$

where: $\overline{w}$ = average surface loading (as specified in figure A.5)

E = ratio of elevator (or rudder) chord to total stabilizer and elevator (or fin and rudder) chord.

d' = ratio of distance of center of pressure of a unit spanwise length of combined stabilizer and elevator (or fin and rudder) measured from stabilizer (or fin) leading edge to the local chord. Sign convention is positive when center of pressure is behind leading edge.

c = local chord.

Note: Positive values of $\overline{w}$, P_1 and P_2 are all measured in the same direction.

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Thomas E. McSweeny,

Director, Aircraft Certification Service.

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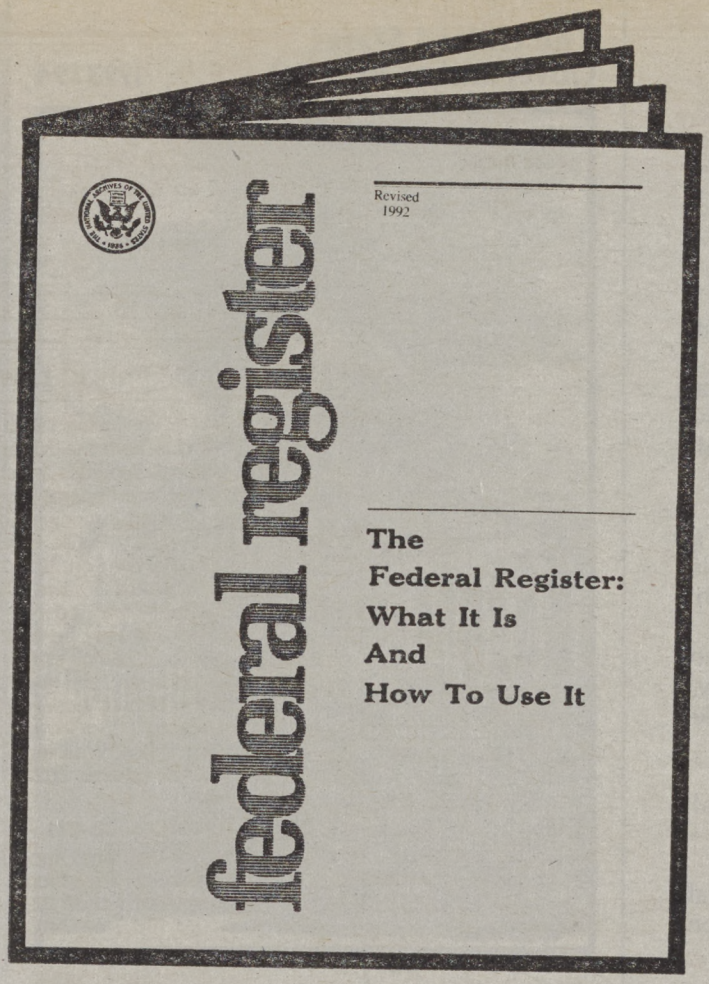
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